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**Brad Henry, Governor**  
**M. Susan Savage,**  
**Secretary of State**  
**Peggy Coe, Managing Editor**

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# Notices of Rulemaking Intent

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

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

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

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

*[OAR Docket #09-1064]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

### **PROPOSED RULES:**

Subchapter 15. Motor Vehicle Pollution Control Devices [REVOKED]

252:100-15-1. Purpose [REVOKED]

252:100-15-2. Definitions [REVOKED]

252:100-15-3. Scope [REVOKED]

252:100-15-4. Prohibitions [REVOKED]

252:100-15-5. Maintenance, repair or testing [REVOKED]

252:100-15-6. Liquefied petroleum gas [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [REVOKED]

Appendix E. Primary Ambient Air Quality Standards [NEW]

Appendix F. Secondary Ambient Air Quality Standards [REVOKED]

Appendix F. Secondary Ambient Air Quality Standards [NEW]

### **SUMMARY:**

The Department proposes to revoke OAC 252:100-15, Motor Vehicle Pollution Control Devices, because the Department does not have the legal authority to enforce these rules.

In order to update the ambient air quality standards for lead (Pb), the Department proposes to revoke the current Appendices E and F, referenced in OAC 252:100-3, Air Quality Standards and Increments, and add new Appendices E and F to make them consistent with current federal standards.

### **AUTHORITY:**

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

### **PRIOR REGISTER PUBLICATION OF NOTICE:**

A Notice of Rulemaking Intent for this action was also published at 26 Ok Reg 627 on March 16, 2009.

### **COMMENT PERIOD:**

Oral comments may be made at the August 25, 2009, Environmental Quality Board meeting.

### **PUBLIC HEARINGS:**

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, August 25, 2009, at the Doubletree Hotel Warren Place, 6110 South Yale Avenue, Tulsa, OK 74136.

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

N/A

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

The proposed rules are available for review at the Air Quality Division of the Department at [http://www.deq.state.ok.us/AQDnew/council\\_mtgs/index.htm](http://www.deq.state.ok.us/AQDnew/council_mtgs/index.htm), or copies may be obtained from the Department by calling Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100.

### **RULE IMPACT STATEMENT:**

Copies of the rule impact statement may be obtained by contacting Cheryl E. Bradley at (405) 702-4100.

### **CONTACT PERSON:**

For information regarding the proposed rulemaking, contact Cheryl E. Bradley at [cheryl.bradley@deq.ok.gov](mailto:cheryl.bradley@deq.ok.gov). Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl Bradley. The Air Quality Division FAX number is (405)702-4101.

### **ADDITIONAL INFORMATION:**

This Notice reflects a location update for the hearing of these rules by the Environmental Quality Board.

### **PERSONS WITH DISABILITIES:**

Should you desire to attend but have a disability and need an accommodation, please notify the Department three (3) days in advance at (405)702-7100. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

*[OAR Docket #09-1064; filed 5-26-09]*

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

*[OAR Docket #09-1065]*

### **RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

### **PROPOSED RULES:**

Subchapter 17. Incinerators

Part 1. General Provisions

252:100-17-1. Purpose [AMENDED]

## Notices of Rulemaking Intent

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252:100-17-1.1. Reference to 40 CFR [AMENDED]  
252:100-17-1.2. Terminology related to 40 CFR [REVOKED]  
252:100-17-1.3. Incinerators and fuel-burning equipment or units [NEW]  
Part 3. General Purpose Incinerators  
252:100-17-2. Applicability [AMENDED]  
252:100-17-2.1. Exemptions [AMENDED]  
252:100-17-2.2. Definitions [AMENDED]  
252:100-17-4. Particulate matter [AMENDED]  
252:100-17-5. Incinerator design and operation requirements [AMENDED]  
252:100-17-5.1. Alternative incinerator design requirements [AMENDED]  
252:100-17-7. Test methods [AMENDED]  
Part 4. Biomedical Waste Incinerators [NEW]  
252:100-17-8. Applicability [NEW]  
252:100-17-9. Definitions [NEW]  
252:100-17-10. Design and operation [NEW]  
252:100-17-11. Emission limits [NEW]  
Subchapter 31. Control of Emission of Sulfur Compounds  
Part 1. General Provisions [REVOKED]  
252:100-31-1. Purpose [AMENDED AND RENUMBERED TO 252:100-31-28]  
252:100-31-2. Definitions [AMENDED AND RENUMBERED TO 252:100-31-29]  
Part 2. Ambient Air Concentration Limits or Impacts for New and Existing Equipment, Sources, or Facilities [REVOKED]  
252:100-31-7. Ambient air concentration limits [AMENDED AND RENUMBERED TO 252:100-31-30]  
Part 3. Existing Equipment Standards [REVOKED]  
252:100-31-13. Sulfuric acid plants [AMENDED AND RENUMBERED TO 252:100-31-32]  
252:100-31-15. Kraft pulp mills [AMENDED AND RENUMBERED TO 252:100-31-33]  
252:100-31-16. Fossil fuel-fired steam generators [AMENDED AND RENUMBERED TO 252:100-31-34]  
Part 5. New Equipment Standards [REVOKED]  
252:100-31-25. Fuel-burning equipment [AMENDED AND RENUMBERED TO 252:100-31-35]  
252:100-31-26. Petroleum and natural gas processes [AMENDED AND RENUMBERED TO 252:100-31-36]  
252:100-31-27. Pulp mills [AMENDED AND RENUMBERED TO 252:100-31-37]  
252:100-31-28. Purpose [NEW]  
252:100-31-29. Definitions [NEW]  
252:100-31-30. Allowable sulfur dioxide (SO<sub>2</sub>) and hydrogen sulfide (H<sub>2</sub>S) ambient air concentrations for new and existing sources [NEW]  
252:100-31-31. Excess emission reporting [NEW]  
252:100-31-32. Requirements for sulfuric acid plants that were in being on or before August 17, 1971 [NEW]

252:100-31-33. Requirements for kraft pulp mills that are in being on or before July 1, 1972 [NEW]  
252:100-31-34. Requirements for fossil fuel-fired steam generator units that were in being on or before July 1, 1972 [NEW]  
252:100-31-35. Requirements for fuel-burning equipment that is in being or modified after July 1, 1972 [NEW]  
252:100-31-36. Requirements for petroleum and natural gas processes that are in being or modified after December 31, 1974 [NEW]  
252:100-31-37. Requirements for pulp mills that are in being or modified after December 31, 1974 [NEW]  
Appendix A. Allowable Emissions for Incinerators with Capacities in Excess of 100 lbs/hr [REVOKED]  
Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]  
Appendix B. Allowable Emissions for Incinerators with Capacities less than 100 lb/hr [REVOKED]

### SUMMARY:

The Department is proposing to amend Parts 1 and 3 of OAC 252:100-17, Incinerators, to remove obsolete language and clarify the remaining provisions. In addition, the Department is proposing to revoke Appendix A, Allowable Emissions for Incinerators with Capacities in Excess of 100 lb/hr and Appendix B, Allowable Emissions for Incinerators with Capacities Less than 100 lb/hr. The current provisions of both appendices are proposed to be rolled into a new Appendix A, Allowable Particulate Matter Emission Rate for Incinerators.

The Department is proposing to add a new Part 4, Biomedical Waste Incinerators, to Subchapter 17, Incinerators. The new part will incorporate the Best Available Control Technology for this type of incinerator originally established under the authority of Subchapter 41, Control of Emission of Hazardous and Toxic Air Contaminants, which was revoked in 2007. In addition, the Department has identified regulatory gaps in Subchapter 17, Part 7, Hospital, Medical and Infectious Waste Incinerators, when pathological waste, low-level radioactive waste, and chemotherapeutic waste is incinerated. The addition of Part 4 will reestablish the Department's authority to require design and emission standards for biomedical waste incinerators and close the regulatory gap in Part 7 of Subchapter 17.

The Department is proposing changes to Subchapter 31, Control of Emission of Sulfur Compounds, to clarify the language and add a new requirement that all new sources of sulfur dioxide (SO<sub>2</sub>) meet the same ambient air standards currently applicable to any facility that was in being before July 1, 1972, and any petroleum and natural gas processing facility that is in being after December 31, 1974.

### AUTHORITY:

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

**COMMENT PERIOD:**

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on July 15, 2009. 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 one (1) day prior to the Council meeting. Copies of the written responses will be provided to the Council and the public at that Council meeting. Oral comments may be made at the July 15, 2009 hearing and at the August 25, 2009, Environmental Quality Board meeting.

**PUBLIC HEARINGS:**

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, July 15, 2009, at the DEQ headquarters, 707 N. Robinson St., Oklahoma City, Oklahoma, 73102.

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, August 25, 2009, at the Doubletree Hotel Warren Place, 6110 South Yale Avenue, Tulsa, OK 74136.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 of the EPA regulations 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 at [http://www.deq.state.ok.us/AQDnew/council\\_mtg/index.htm](http://www.deq.state.ok.us/AQDnew/council_mtg/index.htm), or copies may be obtained from the Department by calling Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100.

**RULE IMPACT STATEMENT:**

Copies of the rule impact statement may be obtained by contacting Cheryl E. Bradley at (405) 702-4100.

**CONTACT PERSON:**

Please send written comments on the proposed rule changes to Cheryl E. Bradley at [cheryl.bradley@deq.ok.gov](mailto:cheryl.bradley@deq.ok.gov). Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl Bradley. The Air Quality Division FAX number is (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)702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

*[OAR Docket #09-1065; filed 5-26-09]*

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# Gubernatorial Approvals

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

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

*[OAR Docket #09-896]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

Subchapter 30. Continuing Professional Education  
10:15-30-9. [AMENDED]

### **GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-896; filed 5-12-09]*

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

*[OAR Docket #09-951]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

Subchapter 1. General Provisions  
75:15-1-2 [AMENDED]  
Subchapter 2. Domestic Violence and Sexual Assault Programs  
75:15-2-1 [AMENDED]  
75:15-2-4 [AMENDED]  
Subchapter 4. Batterers Intervention Programs  
75:15-4-5 [AMENDED]  
75:15-4-19 [AMENDED]  
Subchapter 5. Client Records and Confidentiality  
75:15-5-3 [AMENDED]  
75:15-5-3.1 [AMENDED]  
Subchapter 9. Program Management and Performance Improvement  
75:15-9-9 [AMENDED]  
Subchapter 13. Personnel and Volunteers  
75:15-13-15 [AMENDED]  
Subchapter 15. Governing Authority  
75:15-15-3 [AMENDED]

75:15-15-5 [AMENDED]  
**GUBERNATORIAL APPROVAL:**  
May 4, 2009

*[OAR Docket #09-951; filed 5-15-09]*

## **TITLE 75. ATTORNEY GENERAL CHAPTER 20. ADDRESS CONFIDENTIALITY PROGRAM**

*[OAR Docket #09-952]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

75:20-1-2 [AMENDED]  
75:20-1-3 [AMENDED]  
75:20-1-5 [AMENDED]  
75:20-1-6 [AMENDED]  
75:20-1-9 [AMENDED]  
75:20-1-10 [AMENDED]  
75:20-1-13 [AMENDED]  
75:20-1-14 [AMENDED]  
75:20-1-15 [AMENDED]

### **GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-952; filed 5-15-09]*

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

*[OAR Docket #09-949]*

### **RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

### **RULES:**

Subchapter 1. General Provisions  
87:10-1-2. Definitions [AMENDED]

### **GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-949; filed 5-15-09]*

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

*[OAR Docket #09-950]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 26. Qualified transportation account option [NEW]
- 87:10-26-1. Qualified transportation account option [NEW]
- 87:10-26-2. Definitions [NEW]
- 87:10-26-3. Reimbursements for participation [NEW]
- 87:10-26-4. Amount of benefit available [NEW]
- 87:10-26-5. Internal revenue code and regulations [NEW]
- 87:10-26-6. Elections/mid year changes [NEW]
- 87:10-26-7. Qualified transportation account option [NEW]
- 87:10-26-8. Claims for reimbursement [NEW]
- 87:10-26-9. Reimbursement or payment of mass transit expense [NEW]
- 87:10-26-10. Forfeiture of unused benefits [NEW]
- 87:10-26-11. Report to employees [NEW]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-950; filed 5-15-09]*

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**TITLE 130. CEREBRAL PALSY  
COMMISSION  
CHAPTER 1. ORGANIZATION**

*[OAR Docket #09-966]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 130:1-1-13 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-966; filed 5-19-09]*

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

*[OAR Docket #09-963]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Filing and Disposition of Complaints  
140:3-3-2 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 24, 2009

*[OAR Docket #09-963; filed 5-18-09]*

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

*[OAR Docket #09-964]*

**RULEMAKING ACTION:**

Gubernatorial approval of Permanent Rules

**RULES:**

- Subchapter 5. Procedures for Renewal License  
140:10-5-2 [AMENDED]  
140:10-5-3 [AMENDED]
- Subchapter 8. Administrative Fees  
140:10-8-1 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 24, 2009

*[OAR Docket #09-964; filed 5-18-09]*

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

*[OAR Docket #09-965]*

**RULEMAKING ACTION:**

Gubernatorial approval of Permanent Rules

**RULES:**

- Subchapter 1. General Provisions  
140:15-1-2 [AMENDED]
- Subchapter 5. Certificates for Injectables  
140:15-5-1 through 140:15-5-3 [AMENDED]
- Subchapter 7. Safety and Public Welfare Provisions  
140:15-7-5 [AMENDED]
- Subchapter 8. Animal Chiropractic Diagnosis and Treatment  
140:15-8-2 [AMENDED]
- Subchapter 9. Chiropractic Specialties  
140:15-9-1 through 140:15-9-6 [AMENDED]
- Subchapter 10. Acupuncture [NEW]  
140:15-10-1 through 140:15-10-2 [NEW]
- Subchapter 11. Homeopathy [NEW]  
140:15-11-1 through 140:15-11-2 [NEW]
- Subchapter 12. Naturopathy [NEW]  
140:15-12-1 through 140:15-12-2 [NEW]

**GUBERNATORIAL APPROVAL:**

April 21, 2009

*[OAR Docket #09-965; filed 5-18-09]*

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 5. RULES OF PRACTICE**

*[OAR Docket #09-944]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. General Provisions
- Part 1. General
- 165:5-1-3 Definitions. [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
- 165:5-7-27 Enhancement or addition of injection and disposal wells [AMENDED]
- Subchapter 15. Orders
- 165:5-15-6. Location exception orders [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-944; filed 5-15-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 9. HEALTH CARE  
INFORMATION**

*[OAR Docket #09-968]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Required Information
- 310:9-3-1 [AMENDED]
- Subchapter 5. Collection and Release of Information
- 310:9-5-2.1 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-968; filed 5-19-09]*

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

*[OAR Docket #09-969]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. License Requirements
- 310:205-3-5 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-969; filed 5-19-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 315. PUBLIC BATHING PLACE  
FACILITY STANDARDS**

*[OAR Docket #09-970]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. General Provisions
- 310:315-1-2 [AMENDED]
- Subchapter 3. Plan Documents
- 310:315-3-1 [AMENDED]
- Subchapter 7. Construction and Operation
- 310:315-7-9 [AMENDED]
- 310:315-7-10 [AMENDED]
- 310:315-7-11 [AMENDED]
- 310:315-7-12 [AMENDED]
- 310:315-7-14 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-970; filed 5-19-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 345. REGISTRATION OF  
SANITARIANS AND ENVIRONMENTAL  
SPECIALISTS**

*[OAR Docket #09-971]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Applications
- 310:345-3-1 [AMENDED]

## Gubernatorial Approvals

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Subchapter 7. Revocation and Reinstatement  
310:345-7-2 [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-971; filed 5-19-09]*

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

*[OAR Docket #09-972]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
310:400-1-3 [AMENDED]  
Subchapter 5. Rules of Professional Conduct  
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  
310:400-9-4 [AMENDED]  
310:400-9-7 [REVOKED]  
Subchapter 11. Supervised Experience Requirements  
310:400-11-3 [AMENDED]  
310:400-11-4 [AMENDED]  
310:400-11-5 [AMENDED]  
Subchapter 13. Fees  
310:400-13-2 [AMENDED]  
Subchapter 15. Issuance and Maintenance of License  
310:400-15-3 [AMENDED]  
310:400-15-4 [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-972; filed 5-19-09]*

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

*[OAR Docket #09-973]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
310:403-1-2 [AMENDED]  
Subchapter 7. Rules of Professional Conduct

310:403-7-2 [AMENDED]  
310:403-7-3 [AMENDED]  
Subchapter 15. Supervised Experience Requirements  
310:403-15-7 [AMENDED]  
Subchapter 21. Continuing Education Requirements  
310:403-21-1.1 [NEW]  
310:403-21-3 [AMENDED]  
Subchapter 25. License and Specialty Renewal  
310:403-25-8 [AMENDED]  
Subchapter 27. Licensure by Endorsement  
310:403-27-1 [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-973; filed 5-19-09]*

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

*[OAR Docket #09-974]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
310:405-1-2.1 [AMENDED]  
Subchapter 3. Rules of Professional Conduct  
310:405-3-2 [AMENDED]  
310:405-3-3 [AMENDED]  
310:405-3-6 [AMENDED]  
Subchapter 7. Application Procedures  
310:405-7-8.1 [NEW]  
Subchapter 11. Supervised Experience Requirement  
310:405-11-2 [AMENDED]  
310:405-11-4 [AMENDED]  
Subchapter 13. Fees  
310:405-13-2 [AMENDED]  
Subchapter 15. Licensure Examinations  
310:405-15-2 [AMENDED]  
Subchapter 17. Continuing Education Requirements  
310:405-17-2 [AMENDED]  
310:405-17-3 [AMENDED]  
310:405-17-4.1 [AMENDED]  
Subchapter 21. License and Specialty Renewal  
310:405-21-6 [AMENDED]  
Subchapter 27. Licensure by Endorsement  
310:405-27-3 [AMENDED]

**GUVERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-974; filed 5-19-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 515. COMMUNICABLE DISEASE  
AND INJURY REPORTING**

*[OAR Docket #09-975]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. Disease and Injury Reporting Requirements

310:515-1-1.1 [AMENDED]

310:515-1-3 [AMENDED]

310:515-1-4 [AMENDED]

310:515-1-7 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-975; filed 5-19-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 525. DIRECT SERVICES TO  
INDIVIDUALS**

*[OAR Docket #09-976]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Disease and Prevention Services [NEW]

310:525-5-1. Purpose [NEW]

310:525-5-2. Fees [NEW]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-976; filed 5-19-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 531. VISION SCREENING**

*[OAR Docket #09-977]*

**RULEMAKING ACTION:**

Gubernatorial approval of Permanent rules

**RULES:**

Subchapter 1. General Provisions

310:531-1-1 [AMENDED]

310:531-1-3 [AMENDED]

Subchapter 3. Advisory Committee

310:531-3-1 [AMENDED]

Subchapter 5. Vision Screening Standards for Children

310:531-5-1 [AMENDED]

310:531-5-2 [AMENDED]

310:531-5-3 [AMENDED]

310:531-5-4 [NEW]

Subchapter 7. Registry Enforcement for Vision Screening

Providers [NEW]

310:531-7-1 [NEW]

310:531-7-2 [NEW]

310:531-7-3 [NEW]

310:531-7-4 [NEW]

310:531-7-5 [NEW]

310:531-7-6 [NEW]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-977; filed 5-19-09]*

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

*[OAR Docket #09-978]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Adult Immunizations

310:535-3-2 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-978; filed 5-19-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 546. FEE SCHEDULE FOR  
PUBLIC HEALTH LABORATORY SERVICE**

*[OAR Docket #09-979]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

310:546-1-2 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-979; filed 5-19-09]*

## Gubernatorial Approvals

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**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 551. ADVANCEMENT IN STEM  
CELL CURES AND THERAPIES ACT**

*[OAR Docket #09-980]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. General Provisions [NEW]  
310:551-1-1 [NEW]  
310:551-1-2 [NEW]
- Subchapter 2. Research on Human Tissue Regeneration and  
Human Diseases [NEW]
- Subchapter 3. Reporting of Stem Cell Research [NEW]  
310:551-3-1 [NEW]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-980; filed 5-19-09]*

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

*[OAR Docket #09-981]*

**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]  
310:661-2-4 [AMENDED]
- Subchapter 3. Administration  
310:661-3-2 [AMENDED]  
310:661-3-3.1 [NEW]
- Subchapter 5. Minimum Standards  
310:661-5-1.1 [NEW]  
310:661-5-1.2 [NEW]  
310:661-5-1.3 [NEW]  
310:661-5-2 [AMENDED]  
310:661-5-2.1 [NEW]  
310:661-5-2.2 [NEW]  
310:661-5-2.3 [NEW]  
310:661-5-2.4 [NEW]  
310:661-5-3.1 [NEW]  
310:661-5-4.1 [NEW]  
310:661-5-6 [NEW]  
310:661-5-7 [NEW]  
310:661-5-8 [NEW]  
310:661-5-9 [NEW]
- Subchapter 6. Hospice Inpatient Service Requirements  
310:661-6-7 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-981; filed 5-19-09]*

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

*[OAR Docket #09-982]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 5. Compliance with Federal, State, and Local  
Laws  
310:667-5-4 [AMENDED]
- Subchapter 59. Classification of Hospital Emergency  
Services  
310:667-59-1 [AMENDED]  
310:667-59-3 [AMENDED]  
310:667-59-5 [AMENDED]  
310:667-59-20 [NEW]

**GUBERNATORIAL APPROVAL:**

April 28, 2009

*[OAR Docket #09-982; filed 5-19-09]*

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

*[OAR Docket #09-983]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Licenses  
310:675-3-1.1 [AMENDED]  
310:675-3-5 [AMENDED]  
310:675-3-5.1 [AMENDED]  
310:675-3-8 [AMENDED]
- Subchapter 7. Administration  
310:675-7-4 [AMENDED]  
310:675-7-12.1 [AMENDED]  
310:675-7-20 [AMENDED]
- Subchapter 11. Intermediate Care Facilities for the  
Mentally Retarded (16 beds and less (ICF/MR-16)  
310:675-11-1 [AMENDED]  
310:675-11-5 [AMENDED]  
310:675-11-8 [AMENDED]  
310:675-11-9 [AMENDED]
- Subchapter 13. Staff Requirements  
310:675-13-8 [AMENDED]

310:675-13-9 [AMENDED]  
Subchapter 19. Feeding Assistants  
310:675-19-6 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 28, 2009

*[OAR Docket #09-983; filed 5-19-09]*

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

*[OAR Docket #09-984]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
310:677-1-3 [AMENDED]  
310:677-1-6 [AMENDED]  
Subchapter 3. Nurse Aide Training and Competency  
Examination Program  
310:677-3-2 [AMENDED]  
Subchapter 5. Nurse Aide Registry  
310:677-5-2 [AMENDED]  
Subchapter 7. Hearings  
310:677-7-5 [NEW]  
Subchapter 11. Long Term Care Aides  
310:677-11-4 [AMENDED]  
Subchapter 13. Certified Medication Aides  
310:677-13-8 [AMENDED]  
310:677-13-12 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
April 28, 2009

*[OAR Docket #09-984; filed 5-19-09]*

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**TITLE 325. OKLAHOMA HORSE RACING  
COMMISSION  
CHAPTER 75. OKLAHOMA-BRED  
PROGRAM**

*[OAR Docket #09-992]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rule

**RULE:**

325:75-1-2 [AMENDED]  
325:75-1-3 [AMENDED]  
325:75-1-3.1 [NEW]  
325:75-1-4 [AMENDED]  
325:75-1-4.1 [NEW]

325:75-1-5 [AMENDED]  
325:75-1-7 [AMENDED]  
325:75-1-8 [AMENDED]  
325:75-1-9 [AMENDED]  
325:75-1-10 [AMENDED]  
325:75-1-12 [AMENDED]  
325:75-1-12.1 [NEW]  
325:75-1-13.1 [NEW]  
325:75-1-14 [AMENDED]  
325:75-1-16 [AMENDED]  
325:75-1-19 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
May 4, 2009

*[OAR Docket #09-992; filed 5-20-09]*

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

*[OAR Docket #09-993]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rule

**RULE:**

Subchapter 9. Requirements for Manufacturer, Distributor,  
or Manufacturer/Distributor, and Their Employee License  
Applicants  
325:80-9-1 [AMENDED]  
325:80-9-2 [AMENDED]  
Subchapter 11. Requirements for Vendor License  
325:80-11-2 [AMENDED]  
325:80-11-3 [AMENDED]  
Subchapter 15. Requirements for Independent Testing  
Laboratory License  
325:80-15-1 [AMENDED]

**GUBERNATORIAL APPROVAL:**  
May 4, 2009

*[OAR Docket #09-993; filed 5-20-09]*

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

*[OAR Docket #09-1053]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. Office of the Executive Director  
Part 3. Office of the Advocate General  
377:3-1-28. General grievance procedures [AMENDED]

## Gubernatorial Approvals

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### GUBERNATORIAL APPROVAL:

May 6, 2009

*[OAR Docket #09-1053; filed 5-26-09]*

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

*[OAR Docket #09-1054]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

Subchapter 13. Office of the Executive Director  
Part 3. Requirements for Secure Juvenile Detention Centers  
377:3-13-43. Staff Requirements [AMENDED]

### GUBERNATORIAL APPROVAL:

May 6, 2009

*[OAR Docket #09-1054; filed 5-26-09]*

### TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 5. OFFICE OF THE PAROLE BOARD

*[OAR Docket #09-1056]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

Subchapter 3. Pre-release Planning  
377:5-3-1. Pre-release planning [AMENDED]  
377:5-3-2. Scheduling of the Targeted Review Date  
~~tentative release date~~ [AMENDED]  
377:5-3-4. Review of the Targeted Review Date ~~tentative~~  
~~release date~~ [AMENDED]  
Subchapter 5. Hearings  
377:5-5-1. Definitions [AMENDED]  
377:5-5-2. Parole Hearing [AMENDED]  
377:5-5-3. Parole Revocation Hearing [AMENDED]  
377:5-5-4. Administrative Transfer Hearings (community)  
[AMENDED]  
377:5-5-5. Conduct of Parole Revocation and  
Administrative Transfer Hearing [AMENDED]

### GUBERNATORIAL APPROVAL:

May 6, 2009

*[OAR Docket #09-1056; filed 5-26-09]*

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

*[OAR Docket #09-1055]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

Subchapter 1. General Provisions  
377:35-1-2. Definitions [AMENDED]  
Subchapter 3. Security and Control  
377:35-3-7. Contraband [AMENDED]  
377:35-3-8. Searches and control of contraband/evidence  
[AMENDED]  
377:35-3-10. Escape policies and procedures  
[AMENDED]

### GUBERNATORIAL APPROVAL:

May 6, 2009

*[OAR Docket #09-1055; filed 5-26-09]*

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

*[OAR Docket #09-1066]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

Subchapter 1. General Provisions  
380:30-1-7 [AMENDED]  
Subchapter 3. Wage Claim Procedures  
380:30-3-4 [AMENDED]  
380:30-3-5 [AMENDED]

### GUBERNATORIAL APPROVAL:

May 6, 2009

*[OAR Docket #09-1066; filed 5-26-09]*

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

*[OAR Docket #09-1068]*

#### RULEMAKING ACTION:

Gubernatorial approval of permanent rules

#### RULES:

380:40-1-2 [AMENDED]  
380:40-1-7 [AMENDED]  
380:40-1-20 [AMENDED]  
380:40-1-21 [AMENDED]  
380:40-1-23 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1068; filed 5-26-09]*

**TITLE 435. STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION  
CHAPTER 1. ADMINISTRATION AND  
ORGANIZATION**

*[OAR Docket #09-1023]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

435:1-1-7. Fees [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1023; filed 5-21-09]*

**TITLE 435. STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION  
CHAPTER 55. LICENSED ORTHOTISTS  
AND PROSTHETISTS AND REGISTERED  
TECHNICIANS AND ASSISTANTS**

*[OAR Docket #09-1024]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. Annual Renewal/ Continuing Education  
435:55-5-3. Continuing education requirements for  
renewal [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1024; filed 5-21-09]*

**TITLE 435. STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION  
CHAPTER 60. RADIOLOGIST ASSISTANTS**

*[OAR Docket #09-1025]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Chapter 60. Radiologist Assistants [NEW]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1025; filed 5-21-09]*

**TITLE 435. STATE BOARD OF MEDICAL  
LICENSURE AND SUPERVISION  
CHAPTER 65. ANESTHESIOLOGIST  
ASSISTANTS**

*[OAR Docket #09-1026]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 435:65-1-1. Purpose [NEW]
- 435:65-1-2. Interpretation of Rules and Regulations [NEW]
- 435:65-1-3. License required [NEW]
- 435:65-1-4. Application for initial licensure/renewal of license [NEW]
- 435:65-1-5. Supervision [NEW]
- 435:65-1-6. Disciplinary action [NEW]
- 435:65-1-7. Student anesthesiologist assistants [NEW]
- 435:65-1-8. Fees [NEW]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1026; filed 5-21-09]*

**TITLE 455. MERIT PROTECTION  
COMMISSION  
CHAPTER 10. MERIT SYSTEM OF  
PERSONNEL ADMINISTRATION**

*[OAR Docket #09-881]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. General Provisions
- 455:10-1-2. Definitions [AMENDED]
- 455:10-1-5. Review of Commission records [AMENDED]
- 455:10-1-7. Organization [AMENDED]
- 455:10-1-10. Forms and instructions [AMENDED]
- Subchapter 3. Jurisdiction, Rights and Processes
- 455:10-3-1.1. Time [AMENDED]
- 455:10-3-2. Determining jurisdiction; "file" defined [AMENDED]
- 455:10-3-3.3. No jurisdiction over designation of worksite [NEW]
- 455:10-3-4.1. Notice of appeal [AMENDED]
- 455:10-3-6. Alleged violations of employee's freedom of expression [AMENDED]
- 455:10-3-15. Transcripts [AMENDED]
- 455:10-3-17. Continuances [AMENDED]
- Subchapter 7. Investigations
- 455:10-7-2. Directed investigation [AMENDED]
- 455:10-7-4. Investigative report [AMENDED]
- 455:10-7-6. Investigative file [AMENDED]
- Subchapter 9. Hearing Process

# Gubernatorial Approvals

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455:10-9-1. Prehearing conference [AMENDED]  
455:10-9-2. Hearing [AMENDED]  
Subchapter 11. Discipline  
455:10-11-1. General [AMENDED]  
455:10-11-4. Progressive discipline [AMENDED]  
455:10-11-14. Causes for discharge, suspension without pay or involuntary demotion [AMENDED]  
455:10-11-17. Discharge [AMENDED]  
Subchapter 15. Attorney Fees and Costs  
455:10-15-4. Request [AMENDED]  
Subchapter 19. Internal Agency Grievance Resolution Procedures  
Part 1. General Provisions  
455:10-19-1. General [AMENDED]  
Part 5. Grievance Provisions  
455:10-19-35. Grievance [AMENDED]

## GUVERNATORIAL APPROVAL:

May 6, 2009

*[OAR Docket #09-881; filed 5-12-09]*

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

*[OAR Docket #09-903]*

## RULEMAKING ACTION:

Gubernatorial approval of permanent rules

## RULES:

Chapter 10. Non-Coal Rules And Regulations [AMENDED]

## GUVERNATORIAL APPROVAL:

April 29, 2009

*[OAR Docket #09-903; filed 5-13-09]*

### TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 1. ADMINISTRATIVE OPERATIONS

*[OAR Docket #09-1038]*

## RULEMAKING ACTION:

Gubernatorial approval of permanent rules

## RULES:

Subchapter 1. General Provisions  
490:1-1-1. Purpose [AMENDED]  
490:1-1-2. Definitions [AMENDED]  
Subchapter 3. Oklahoma State Board of Examiners for Long Term Care Administrators  
490:1-3-1. Organization [AMENDED]  
490:1-3-2. Officers and committees [AMENDED]

490:1-3-3. Meeting of the Board [AMENDED]  
490:1-3-8. Executive Director [AMENDED]  
Subchapter 5. Investigative Procedures  
490:1-5-2. Receipt of complaints [AMENDED]  
490:1-5-2.1. Receipt of referrals or reports [AMENDED]  
490:1-5-3. ~~Investigation of complaints~~ Complaints: investigations and investigative reports [AMENDED]  
490:1-5-4. Preparation of investigative report [REVOKED]  
490:1-5-5. Board decision [REVOKED]  
490:1-5-6. Notice [REVOKED]  
490:1-5-7. Hearing [AMENDED]  
490:1-5-7.1. Administrative fines [AMENDED]  
490:1-5-8. Reporting [AMENDED]  
Subchapter 6. Administrator Registry  
490:1-6-1 General provisions [AMENDED]  
Subchapter 7. Fees and deposits  
490:1-7-1. Fees and deposits [AMENDED]  
490:1-7-2. Schedule of fees [AMENDED]  
Subchapter 9. Continuing education  
490:1-9-1. General provisions for continuing education programs [AMENDED]  
490:1-9-3. Approval of continuing education programs [AMENDED]  
490:1-9-4. Continuing education requirements [AMENDED]  
490:1-9-5. Auditing of continuing education ~~Hours~~ hours [AMENDED]

## GUVERNATORIAL APPROVAL:

May 06, 2009

*[OAR Docket #09-1038; filed 5-22-09]*

### TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS CHAPTER 10. LONG TERM CARE ADMINISTRATORS

*[OAR Docket #09-1039]*

## RULEMAKING ACTION:

Gubernatorial approval of permanent rules

## RULES:

Subchapter 1. Licensing of Long Term Care Administrators  
490:10-1-2.1. General requirements that must be met by each applicant [AMENDED]  
490:10-1-3. Requirements for initial licensure [AMENDED]  
490:10-1-4. Requirements for licensure by reciprocity/licensure by interstate endorsement [AMENDED]  
490:10-1-5. Requirements for a provisional license [AMENDED]  
490:10-1-9. Inactive license [AMENDED]  
490:10-1-10. Requirements for reinstatement from inactive status [AMENDED]

- Subchapter 3. Application for Licensure
- 490:10-3-1. Application for initial licensure, licensure by reciprocity/interstate endorsement, or provisional license [AMENDED]
- 490:10-3-1.1. Evidence requirements [AMENDED]
- 490:10-3-2. National ("NAB") examination [AMENDED]
- 490:10-3-3. State standards examination [AMENDED]
- 490:10-3-4. Admission to the state State Standards and national examinations [AMENDED]
- 490:10-3-5. Application for licensure renewal [AMENDED]
- Subchapter 5. Discipline
- 490:10-5-3. Disciplinary action [AMENDED]
- 490:10-5-5. Summary Suspension [AMENDED]
- Subchapter 7. Administrator University
- 490:10-7-3. General provisions [AMENDED]
- Subchapter 8. Administrator-In-Training (AIT) internship [AMENDED]
- 490:10-8-2. Application [AMENDED]
- 490:10-8-3. Training permit [AMENDED]
- 490:10-8-4. Preceptor selection [AMENDED]
- 490:10-8-5. Preceptor qualifications ~~and agreements~~ [AMENDED]
- 490:10-8-5.1. Preceptor designation/assignment to an AIT intern/trainee [NEW]
- 490:10-8-6. Curriculum [AMENDED]
- 490:10-8-7. Module reports [AMENDED]
- 490:10-8-8. Preceptor's final report [AMENDED]
- 490:10-8-9. Preceptor's checklist [AMENDED]
- 490:10-8-10. Change of status and discontinuance [AMENDED]
- 490:10-8-11. Dismissal from program [AMENDED]
- 490:10-8-12. Compensation of AIT's Interns/Trainees [AMENDED]
- 490:10-8-13. AIT time on the job [AMENDED]
- 490:10-8-14. AIT Internship exempt status [AMENDED]
- 490:10-8-16. Refusal to approve or renew preceptor or intern assignment [AMENDED]
- 490:10-8-17. Supervision of AIT's interns/trainees [AMENDED]
- Subchapter 13. Standards for Administrators
- 490:10-13-1. Administrator Code of Ethics [AMENDED]
- 490:10-13-2. Administrator Responsibilities [AMENDED]
- 490:10-13-3. Requirements for administrators who serve as the Administrator-of-Record of two-or-more licensed long term care facilities located within a fifty (50) mile radius of each other, wherein the total number of occupied beds does not exceed one-hundred-twenty (120) beds and wherein one-or-more individuals is/are employed in Assistant Administrator, ~~Unlicensed~~, capacities [AMENDED]

**GUBERNATORIAL APPROVAL:**

MAY 06, 2009

*[OAR Docket #09-1039; filed 5-22-09]*

**TITLE 490. OKLAHOMA STATE BOARD OF EXAMINERS FOR LONG TERM CARE ADMINISTRATORS**  
**CHAPTER 15. LONG TERM CARE CERTIFIED ASSISTANT ADMINISTRATORS**

*[OAR Docket #09-1040]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1 Certification of Long Term Care "Assistant Administrators, ~~Unlicensed~~" [AMENDED]
- 490:15-1-1. Purpose [AMENDED]
- 490:15-1-3. Minimum qualifications for an individual applicant to meet certification requirements for an Assistant Administrator, ~~Unlicensed~~ [AMENDED]
- 490:15-1-3.1. Evidence Requirements [NEW]
- 490:15-1-4. Conditions of employment for individuals 'certified' by the Board as having met the minimum qualifications required for them to serve as a "Assistant Administrator, ~~Unlicensed~~" [AMENDED]
- Subchapter 3. Application for certification and requirements for continued eligibility
- 490:15-3-1. Application process [AMENDED]
- 490:15-3-2. Approval process [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 06, 2009

*[OAR Docket #09-1040; filed 5-22-09]*

**TITLE 530. OFFICE OF PERSONNEL MANAGEMENT**  
**CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES**

*[OAR Docket #09-998]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Affirmative Action and Equal Employment Opportunity
- Part 2. Discrimination Complaints Investigation
- 530:10-3-26 [AMENDED]
- Part 3. Affirmative Action
- 530:10-3-33.3 [AMENDED]
- 530:10-3-33.6 [AMENDED]

**GUBERNATORIAL APPROVAL:**

April 13, 2009

*[OAR Docket #09-998; filed 5-20-09]*

**TITLE 530. OFFICE OF PERSONNEL  
MANAGEMENT  
CHAPTER 10. MERIT SYSTEM OF  
PERSONNEL ADMINISTRATION RULES**

*[OAR Docket #09-999]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Appendix A. Pay Band Schedule [REVOKED]

Appendix A. Pay Band Schedule [NEW]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-999; filed 5-20-09]*

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**TITLE 535. OKLAHOMA STATE BOARD OF  
PHARMACY  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

*[OAR Docket #09-1017]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 5. General Course in Method of Operations

535:1-5-5.1. Complaint confidentiality [AMENDED]

Subchapter 7. Individual Proceedings

535:1-7-2. Serving of notices [AMENDED]

535:1-7-4. Failure to appear or failure to comply  
[AMENDED]

535:1-7-5. Subpoenas [AMENDED]

535:1-7-7. Final orders [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1017; filed 5-21-09]*

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

*[OAR Docket #09-1018]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Pharmacists

535:10-3-4. Uniform pharmacy continuing education  
[AMENDED]

Subchapter 5. Interns, Preceptors and Training Areas

535:10-5-1.1. Purpose [AMENDED]

535:10-5-1.2. Definitions [AMENDED]

535:10-5-3. Intern requirements; licenses [AMENDED]

535:10-5-4. Intern practice requirements [AMENDED]

535:10-5-5. Intern credit hours; computation [AMENDED]

535:10-5-9. Training area requirements [AMENDED]

535:10-5-13. Intern file destruction [AMENDED]

Subchapter 7. Pharmacist Licensure

535:10-7-8. Foreign pharmacy graduates licensure  
applicants [AMENDED]

Subchapter 11. Pharmacist Administration of  
Immunizations

535:10-11-3. D.Ph. administering of immunization  
requirements [AMENDED]

535:10-11-5. D.Ph. training requirements for  
administration of immunizations [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1018; filed 5-21-09]*

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

*[OAR Docket #09-1019]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Pharmacies

535:15-3-4.1. Pharmacy licensing requirement  
[AMENDED]

535:15-3-9. Non-resident pharmacies [AMENDED]

535:15-3-10. Inventory [AMENDED]

535:15-3-13. Pharmacist's responsibility in a pharmacy  
[AMENDED]

Subchapter 6. Hospital Drug Room

535:15-6-4. Staffing requirements [AMENDED]

535:15-6-11. Administration of drugs to patients  
[AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1019; filed 5-21-09]*

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

*[OAR Docket #09-1020]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 10. Good Compounding Practices

- Part 1. Good Compounding Practices for Non-sterile Products [NEW]  
 535:15-10-2. Definitions [AMENDED]  
 535:15-10-3. Pharmacist responsibilities [AMENDED]  
 535:15-10-4. Drug compounding facilities [AMENDED]  
 535:15-10-5. Compounding equipment [AMENDED]  
 535:15-10-6. Component selection requirements [AMENDED]  
 535:15-10-7. Control of drug product containers [AMENDED]  
 535:15-10-8. Drug compounding controls [AMENDED]  
 535:15-10-8.1. Transfer of compounded prescription [NEW]  
 535:15-10-8.2. Beyond use dating [NEW]  
 535:15-10-9. Labeling [AMENDED]  
 535:15-10-10. Records and reports [AMENDED]  
 535:15-10-11. Pharmacy generated product requirements [AMENDED]  
 535:15-10-12. Compounding for a prescriber's office use [AMENDED]  
 535:15-10-13. Compounding veterinarian products [AMENDED]  
 535:15-10-14. Compounding of non-sterile hazardous drugs [NEW]  
 535:15-10-15. Compounding of non-sterile radiopharmaceuticals [NEW]  
 Part 3. Good Compounding Practices for Sterile Products [NEW]  
 535:15-10-50. Purpose [NEW]  
 535:15-10-51. Definitions [NEW]  
 535:15-10-52. Pharmacist responsibilities [NEW]  
 535:15-10-53. General requirements [NEW]  
 535:15-10-54. CSP microbial risk levels [NEW]  
 535:15-10-55. Drug compounding facilities [NEW]  
 535:15-10-56. Compounding equipment [NEW]  
 535:15-10-57. Component selection requirements [NEW]  
 535:15-10-58. Control of drug product containers [NEW]  
 535:15-10-59. Drug compounding controls [NEW]  
 535:15-10-60. Transfer of compounded prescription [NEW]  
 535:15-10-61. Beyond-use dating [NEW]  
 535:15-10-62. Labeling [NEW]  
 535:15-10-63. Records and reports [NEW]  
 535:15-10-64. Compounding for institution and/or practitioner administration [NEW]  
 535:15-10-65. Compounding of sterile hazardous drugs [NEW]  
 535:15-10-66. Compounding of sterile radiopharmaceuticals [NEW]  
 535:15-10-67. Compounding of sterile allergen extracts [NEW]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-1020; filed 5-21-09]*

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

*[OAR Docket #09-1021]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Manufacturers  
 535:20-3-1. Manufacturer permit [REVOKED]  
 535:20-3-1.1. Purpose [NEW]  
 535:20-3-1.2. Definitions [RESERVED]  
 535:20-3-2. Registration; manufacturer licensing, registration or permit requirement [AMENDED]  
 535:20-3-3. Minimum required information for licensure [AMENDED]  
 535:20-3-4. Minimum qualifications [AMENDED]  
 535:20-3-5. Personnel [AMENDED]  
 535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records [AMENDED]  
 535:20-3-6.1. Facility requirements [NEW]  
 535:20-3-6.2. Multiple Licensing [NEW]  
 535:20-3-6.3. Security [NEW]  
 535:20-3-6.4. Storage [NEW]  
 535:20-3-6.5. Examination of materials [NEW]  
 535:20-3-6.6. Returned, damaged, and outdated drugs [NEW]  
 535:20-3-6.7. Recordkeeping [NEW]  
 535:20-3-6.8. Written policies and procedures [NEW]  
 535:20-3-6.9. Responsible persons [NEW]  
 535:20-3-6.10. Compliance with federal, state and local laws [NEW]  
 535:20-3-6.11. Salvaging and reprocessing [NEW]  
 535:20-3-9. Prohibited conduct [NEW]  
 Subchapter 5. Packagers  
 535:20-5-1. Definitions [AMENDED]  
 535:20-5-1.1. Purpose [NEW]  
 535:20-5-2. Registration; packager permit requirement [AMENDED]  
 535:20-5-3. Minimum required information for licensure [AMENDED]  
 535:20-5-4. Minimum qualifications [AMENDED]  
 535:20-5-5. Personnel [AMENDED]  
 535:20-5-6. Minimum requirements for storage, handling, maintenance and records for RX Only drugs [AMENDED]  
 535:20-5-6.1. Facility requirements [NEW]  
 535:20-5-6.2. Multiple Licensing [NEW]  
 535:20-5-6.3. Security [NEW]  
 535:20-5-6.4. Storage [NEW]  
 535:20-5-6.5. Examination of materials [NEW]  
 535:20-5-6.6. Returned, damaged, and outdated drugs [NEW]

# Gubernatorial Approvals

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- 535:20-5-6.7. Recordkeeping [NEW]
- 535:20-5-6.8. Written policies and procedures [NEW]
- 535:20-5-6.9. Responsible persons [NEW]
- 535:20-5-6.10. Compliance with federal, state and local laws [NEW]
- 535:20-5-6.11. Salvaging and reprocessing [NEW]
- 535:20-5-9. Prohibited conduct [NEW]
- Subchapter 7. Wholesalers and Pedigree Rules
- 535:20-7-7.7. Recordkeeping; including pedigree requirement [AMENDED]
- Subchapter 9. Medical Gas Suppliers and Distributors
- 535:20-9-3. Medical gas suppliers [AMENDED]
- 535:20-9-4. Medical gas distributors [AMENDED]
- 535:20-9-6. Prohibited Conduct [NEW]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1021; filed 5-21-09]*

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

*[OAR Docket #09-1022]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Applicants, Registrants, and Applications
- 535:25-3-4. Requirements for applicants or registrants who have had action against any license, permit or certificate [AMENDED]
- Subchapter 9. Violations of the Rules of Registrant Conduct
- 535:25-9-8. Failure to maintain effective controls [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 4, 2009

*[OAR Docket #09-1022; filed 5-21-09]*

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

*[OAR Docket #09-1029]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 3. Education and Examination Requirements
- 605:10-3-1. Prelicense education requirements [AMENDED]
- 605:10-3-5. Examinations [AMENDED]

- 605:10-3-6. Continuing education requirements [AMENDED]
  - Subchapter 5. Instructor and Entity Requirements and Standards
  - 605:10-5-1. Approval of prelicense course offerings [AMENDED]
  - 605:10-5-2. Approval of continuing education offerings [AMENDED]
  - 605:10-5-3. Standards for Commission approved real estate courses [AMENDED]
  - Subchapter 7. Licensing Procedures and options
  - 605:10-7-2. License terms and fees; renewals; reinstatements [AMENDED]
  - 605:10-7-9. Nonresident licensing [AMENDED]
  - 605:10-7-10. Resident applicants currently or previously licensed in other states [AMENDED]
  - Subchapter 13. Trust Account Procedures
  - 605:10-13-1. Duty to account; broker [AMENDED]
  - Subchapter 15. Disclosures
  - 605:10-15-4. Residential Property Condition Disclosure Act forms [AMENDED]
- GUBERNATORIAL APPROVAL:**  
May 4, 2009

*[OAR Docket #09-1029; filed 5-22-09]*

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**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 3. ELECTION PROCEDURES**

*[OAR Docket #09-897]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- 630:3-1-1 through 630:3-1-21 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2009

*[OAR Docket #09-897; filed 5-12-09]*

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**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 10. LICENSING AND USE PERMITS**

*[OAR Docket #09-898]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1 - General Provisions and Licensing
- 630:10-1-4. User fees [REVOKED]
- 630:10-1-5. Commercial licensing [AMENDED]
- 630:10-1-7. Limitation on licensing of flotation devices [AMENDED]
- Subchapter 2 - Public Access Areas

630:10-2-2. Camping fees [AMENDED]  
630:10-2-4. Use of public access areas [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2009

*[OAR Docket #09-898; filed 5-12-09]*

**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 15. PROTECTION OF NATURAL  
RESOURCES**

*[OAR Docket #09-899]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

630:15-1-14. Ice chest ~~restriction~~ restrictions  
[AMENDED]

**GUBERNATORIAL APPROVAL:**

May 1, 2009

*[OAR Docket #09-899; filed 5-12-09]*

**TITLE 695. OVERSIGHT COMMITTEE  
FOR STATE EMPLOYEE CHARITABLE  
CONTRIBUTIONS  
CHAPTER 10. OKLAHOMA STATE  
CHARITABLE CAMPAIGN RULES**

*[OAR Docket #09-997]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 1. General Provisions  
695:10-1-5 [AMENDED]  
Subchapter 3. Principal Combined Fund Raising  
Organization  
Part 3. Local Principal Combined Fund Raising  
Organization (Local PCFRO)  
695:10-3-33 [AMENDED]  
Subchapter 5. Conduct of The Charitable Campaign  
695:10-5-4 [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 4, 2009

*[OAR Docket #09-997; filed 5-20-09]*

**TITLE 780. OKLAHOMA DEPARTMENT OF  
CAREER AND TECHNOLOGY EDUCATION  
CHAPTER 10. ADMINISTRATION AND  
SUPERVISION**

*[OAR Docket #09-986]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. State Technical Assistance, Supervision, and  
Services  
780:10-3-2 [AMENDED]  
780:10-3-3 [AMENDED]  
780:10-3-4 [AMENDED]  
780:10-3-8 [AMENDED]  
Subchapter 5. Finance  
780:10-5-4 [AMENDED]  
Subchapter 7. Local Programs, Career Majors or  
Instructional Positions:  
Application; Student Accounting; Evaluation  
780:10-7-1 [AMENDED]  
780:10-7-3 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-986; filed 5-20-09]*

**TITLE 780. OKLAHOMA DEPARTMENT OF  
CAREER AND TECHNOLOGY EDUCATION  
CHAPTER 15. TECHNOLOGY CENTERS**

*[OAR Docket #09-987]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Subchapter 3. Technology Centers Education  
780:15-3-2 [AMENDED]  
780:15-3-3 [AMENDED]  
780:15-3-7 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-987; filed 5-20-09]*

**TITLE 780. OKLAHOMA DEPARTMENT OF  
CAREER AND TECHNOLOGY EDUCATION  
CHAPTER 20. PROGRAMS AND SERVICES**

*[OAR Docket #09-988]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

# Gubernatorial Approvals

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**RULES:**

- Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs
- 780:20-3-2 [AMENDED]
- 780:20-3-5 [AMENDED]

**GUBERNATORIAL APPROVAL:**

May 6, 2009

*[OAR Docket #09-988; filed 5-20-09]*

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**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 1. OPERATIONS AND  
PROCEDURES**

*[OAR Docket #09-957]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 15. Hunter Education Rules
- 800:1-15-1. General requirements [AMENDED]
- 800:1-15-2. Hunter education certification requirements [AMENDED]
- 800:1-15-3. Instructors [AMENDED]
- Subchapter 19. Aquatic Education Rules [NEW]
- 800:1-19-1. Instructors [NEW]
- 800:1-19-2. Administrative requirements [NEW]

**GUBERNATORIAL APPROVAL:**

March 24, 2009

*[OAR Docket #09-957; filed 5-18-09]*

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

*[OAR Docket #09-960]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Harvest and Possession Limits
- 800:10-1-4. Size Limits on Fish [AMENDED]
- 800:10-1-5. Bag limits on fish [AMENDED]
- Subchapter 3. Methods of Taking
- 800:10-3-5. Use of bow and arrow, grabhooks, gigs, spears, and spearguns, snagging, noodling and netting
- Subchapter 5. Area Restrictions and Special Fees
- 800:10-5-1.1. Definitions [NEW]

- 800:10-5-2. Department fishing areas [AMENDED]
- 800:10-5-3. Designated trout areas [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2009

*[OAR Docket #09-960; filed 5-18-09]*

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**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 15. COMMERCIAL HARVEST  
RULES; AQUATIC SPECIES**

*[OAR Docket #09-958]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 7. Commercial Mussel Harvest
- 800:15-7-4. Mussel sanctuaries [AMENDED]
- Subchapter 9. Commercial Turtle Harvest
- 800:15-9-3. General; operating provisions [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2009

*[OAR Docket #09-958; filed 5-18-09]*

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**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 20. RESTRICTION ON AQUATIC  
SPECIES INTRODUCTION**

*[OAR Docket #09-959]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Restricted Exotic Fish
- 800:20-1-2. List of restricted exotic species [AMENDED]
- Subchapter 4. Aquatic Nuisance Species Restrictions [NEW]
- 800:20-4-1. Purpose [NEW]
- 800:20-4-2. Movement of aquatic plants [NEW]
- 800:20-4-3. List of restricted aquatic nuisance species [NEW]
- 800:20-4-4. Penalties [NEW]

**GUBERNATORIAL APPROVAL:**

March 24, 2009

*[OAR Docket #09-959; filed 5-18-09]*

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

*[OAR Docket #09-962]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

Chapter 25. Wildlife Rules [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2009

*[OAR Docket #09-962; filed 5-18-09]*

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**TITLE 800. DEPARTMENT OF WILDLIFE  
CONSERVATION  
CHAPTER 30. DEPARTMENT OF  
WILDLIFE LANDS MANAGEMENT**

*[OAR Docket #09-961]*

**RULEMAKING ACTION:**

Gubernatorial approval of permanent rules

**RULES:**

- Subchapter 1. Use of Department Managed Lands
  - 800:30-1-4. Camping [AMENDED]
  - 800:30-1-5. Vehicles [AMENDED]
  - 800:30-1-7. Livestock and feral hogs [AMENDED]
- Subchapter 3. Mineral Exploration and Production
  - 800:30-3-2. General Provisions [AMENDED]
  - 800:30-3-3. Site Development [AMENDED]

**GUBERNATORIAL APPROVAL:**

March 24, 2009

*[OAR Docket #09-961; filed 5-18-09]*

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# Emergency Adoptions

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

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

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

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

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 669. TRAUMA CARE ASSISTANCE REVOLVING FUND

*[OAR Docket #09-967]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 1. General Provisions  
310:669-1-3 [AMENDED]

### **AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-2530.9.

### **DATES:**

#### **Public Hearing:**

April 9, 2009

#### **Adoption:**

April 9, 2009

#### **Submitted to Governor:**

April 13, 2009

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

April 27, 2009

#### **Effective:**

Immediately upon the Governor's approval

#### **Expiration:**

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

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

"N/A"

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

"N/A"

#### **ANALYSIS:**

The purpose of the proposed amendment is to delete the language specifying the manner that distribution calculations of the pro rata share are computed to ensure that smaller, primarily rural, distribution entities are not excluded in participation of the fund. The analysis conducted upon the release of the final report by the OSDH Internal Auditing Division on April 9, 2009 revealed that if the rule language at 310:669-1-3 is strictly interpreted, all licensed ground ambulance services in the state of Oklahoma, with the exception of two urban and one rural services, would be excluded from participation in the fund and many rural hospitals would also be excluded. Removal of this restrictive language is critical to the successful application of the Trauma Care Assistance Revolving Fund to develop and support a sustainable trauma system in Oklahoma.

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

The analysis conducted upon the release of the final report by the OSDH Internal Auditing Division on April 9, 2009 revealed that if the rule language at 310:669-1-3 is strictly interpreted, all licensed ground ambulance services in the state of Oklahoma, with the exception of two urban and one rural services, would be excluded from participation in the fund and many rural hospitals would also be excluded. Removal of this restrictive language is critical to the successful application of the Trauma Care Assistance Revolving Fund to develop and support a sustainable trauma system in Oklahoma. If the

proposed rule is not implemented, there will likely be a significant disincentive for smaller, mostly rural hospitals and ambulance services to engage and participate in the state's developing trauma system.

#### **CONTACT PERSON:**

Patrice Greenawalt, Director, Trauma Division, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299; telephone: 405-271-2657; electronic mail: patriceg@health.ok.gov.

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

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **310:669-1-3. Rounding of numbers**

The Department shall:

- (1) ~~Take~~ take the pro rata distributions to the second decimal point or hundredths place (.00) by rounding back from the third or thousandths place (.000); ~~and~~
- (2) ~~Take the fraction for distribution calculations to the third decimal point or thousandths place (.000) by rounding back from the fourth or ten thousandths place (.0000).~~

*[OAR Docket #09-967; filed 5-19-09]*

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

*[OAR Docket #09-905]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 1. Physicians  
317:30-5-1. [AMENDED]  
317:30-5-2. [AMENDED]  
Part 69. Certified Registered Nurse Anesthetists  
317:30-5-605. [AMENDED]  
317:30-5-607. [AMENDED]  
317:30-5-608. [REVOKED]  
317:30-5-609. [REVOKED]

# Emergency Adoptions

317:30-5-610. [REVOKED]  
317:30-5-611. [AMENDED]  
Part 70. Anesthesiologist Assistants [NEW]  
317:30-5-612. [NEW]  
317:30-5-613. [NEW]  
317:30-5-614. [NEW]  
317:30-5-615. [NEW]

(Reference APA WF # 09-09)

## AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Sections 5003 through 5016 of Title 63 of Oklahoma Statutes; and Sections 3201 through 3208 of Title 59 of Oklahoma Statutes.

## DATES:

### Adoption:

April 9, 2009

### Approved by Governor:

April 28, 2009

### Effective:

July 1, 2009

### Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rules to comply with the Oklahoma Anesthesiologist Assistant Act found at 59 Okla. Stat. 3201-3208. The Act allows for the licensing of Anesthesiologist Assistants (AA) which thus enables them to contract with the Oklahoma Health Care Authority to provide crucial and necessary services to SoonerCare members.

## ANALYSIS:

Agency rules are revised to comply with the Oklahoma Anesthesiologist Assistant Act found at 59 Okla. Stat. 3201-3208. The Act allows Anesthesiologist Assistants to perform a variety of anesthesiology services under the direct supervision of a licensed anesthesiologist. Revisions further the Act by allowing AA's to contract with OHCA as well as define the parameters under which AA's may practice. Anesthesiologist Assistants must always practice under the direct supervision of a licensed anesthesiologist. Rules clarify billing procedures and allowable billing rates for AA's, Certified Registered Nurse Anesthetists (CRNA), as well as physicians while they are supervising or medically directing services of CRNA's or AA's. Revisions also remove references to Elective Sterilizations, Hysterectomies and abortions from the Certified Registered Nurse Anesthetist rules, as these services are provided for in other rules.

## CONTACT PERSON:

Tywanda Cox at (405) 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE JULY 1, 2009:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 1. PHYSICIANS

#### 317:30-5-1. Eligible providers

To allow patients free choice of physicians, the Oklahoma Health Care Authority (OHCA) recognizes all licensed medical and osteopathic physicians as being eligible to receive

payment for compensable medical services rendered in behalf of a person eligible for such care in accordance with the rules and regulations covering the Authority's medical care programs. Payment will be made to fully licensed physicians who are participating in medical training programs as students, interns, residents, or fellows, or in any other capacity in training for services outside the training setting and are not in a duplicative billing situation. In addition, payment will be made to the employing facility for services provided by physicians who meet all requirements for employment by the Federal Government as a physician and are employed by the Federal Government in an IHS facility or who provide services in a 638 Tribal Facility. Payment will not be made to a provider who has been suspended or terminated from participation in the program.

(1) Payment to physicians under Medicaid SoonerCare is made for services clearly identifiable as personally rendered services performed on behalf of a specific patient. There are no exceptions to personally rendered services unless specifically set out in coverage guidelines.

(2) Payment is made to the attending physician in a teaching medical facility for compensable services when he/she signs as claimant, and renders personal and identifiable services to the patient in conformity with Federal regulations. ~~Payment will be made to a physician for supervising the services of a CRNA unless the CRNA bills directly.~~

(3) Payment is made to a physician for medically directing the services of a Certified Registered Nurse Anesthetist (CRNA) at a rate of 50% of the physician allowable for anesthesia services.

(4) Payment is made to a physician for the direct supervision of an Anesthesiologist Assistant (AA) at a rate of 50% of the physician allowable for anesthesia services. Direct supervision means the on-site, personal supervision by an anesthesiologist who is present in the office, or is present in the surgical or obstetrical suite when the procedure is being performed and who is in all instances immediately available to provide assistance and direction to the AA while anesthesia services are being performed.

#### 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 Oklahoma Health Care Authority's (OHCA's) ~~medical programs~~ SoonerCare program, 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 must be based on a determination made by the OHCA's medical consultant in individual circumstances.

(1) Coverage includes the following medically necessary services:

(A) Inpatient hospital visits for all SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.

(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~~ ~~surgery center~~ 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 members with proven malignancies or opportunistic infections.
- (G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member 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 physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".
- (I) Diagnostic x-ray and laboratory services.
- (J) Mammography screening and additional follow-up mammograms.
- (K) Obstetrical care.
- (L) Pacemakers and prostheses inserted during the course of a surgical procedure.
- (M) Prior authorized examinations for the purpose of determining medical eligibility for programs ~~under the jurisdiction of the Authority administered by ABCDM 16 08MA016E~~, Authorization for Examination and Billing, must accompany the claim.
- (N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.
- (O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and ~~executes~~ ~~execute~~ the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for I.U.D. insertion 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 is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.
- (P) Genetic counseling (requires special medical review prior to approval).
- (Q) Weekly blood counts for members receiving the drug Clozaril.
- (R) Complete blood count (CBC) and platelet count prior to receiving chemotherapeutic agents, radiation therapy or medication such as DPA-D-Penicillamine on a regular basis for treatment other than for malignancy.
- (S) Payment for 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 member 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 members 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 SoonerCare 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 member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;

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(ii) The contact must be documented in the medical record.

(X) ~~The Payment payment to a physician for supervision medically directing the services of a CRNA or for the direct supervision of the services of an Anesthesiologist Assistant (AA) is limited services unless the CRNA bills directly. The maximum allowable fee for the services of both providers combined is limited to the maximum allowable had the service been performed solely by the anesthesiologist.~~

(Y) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.

(Z) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and adult are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

(i) Transplant procedures, 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 SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.

(iv) Procedures considered experimental or investigational are not covered.

(AA) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(i) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure.

(ii) Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.

(BB) Total parenteral nutritional therapy (TPN) for identified diagnoses and when prior authorized.

(CC) Ventilator equipment.

(DD) Home dialysis equipment and supplies.

(EE) Ambulatory services for treatment of members 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~~ beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(FF) 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 member to describe their smoking use;

(II) Advising the member to quit;

(III) Assessing the willingness of the member to quit;

(IV) Assisting the member 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, advanced registered nurse practitioners, certified nurse midwives, dentists, 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 care coordination 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 member 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.

(GG) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.

(2) General coverage 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.

(C) Services of two physicians for the same type of service to the same member 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 member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the procedure codes for subsequent hospital care must be used.

(D) Refractions and visual aids.

(E) A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care.

- (F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
- (G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or 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 member 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 member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, 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 in OHCA rules.
- (Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury, or illness related to 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 when the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)
- (R) Night calls ~~or unusual hours~~.
- (S) Speech and Hearing services.
- (T) Mileage.
- (U) A routine hospital visit on the date of discharge unless the member expired.
- (V) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
- (W) Inpatient chemical dependency treatment.
- (X) Fertility treatment.
- (Y) Payment for removal of benign skin lesions unless medically necessary.
- (b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's ~~medical programs~~ SoonerCare program, 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 members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.
    - (A) ~~Effective October 1, 1993, all~~ All residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25, 317:30-5-95.27 and 317:30-5-95.29.
    - (B) Out of state placements ~~will~~ are 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 members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements ~~will be~~ is 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 members 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. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.
  - (4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members 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 made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members 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.
  - (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. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the

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Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency. 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 members 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 member 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 member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the codes for subsequent hospital care must be used.
- (D) A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care.
- (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. (Refer to 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 member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(M) Payment for the services of physicians' assistants except as specifically set out in OHCA rules.

(N) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(P) Night calls or ~~unusual hours~~.

(Q) Mileage.

(R) A routine hospital visit on date of discharge unless the member expired.

(S) Tympanometry.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services. Claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment or within one year of the date of service in order to be considered timely filed.

(1) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment or within one year from the date of service.

(2) If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for the denial.

### PART 69. CERTIFIED REGISTERED NURSE ANESTHETISTS

#### 317:30-5-605. Eligible providers

~~Effective for services provided on or after April 1, 1987 payment~~ Payment is made directly to Certified Registered Nurse Anesthetists (CRNA) for compensable anesthesia services within their scope of practice under state law. The CRNA must be licensed to practice under applicable ~~State~~ Laws state laws. In addition, the CRNA must have a current

Memorandum of Agreement provider contract on file with the Oklahoma Health Care Authority (OHCA).

**317:30-5-607. Billing instructions**

The CRNA is responsible for entering the correct anesthesia procedure code on the appropriate claim form. Anesthesia codes from the Physicians' Current Procedural Terminology or Medicare assigned codes should be used.

- (1) Payment is made only for the major procedure during an operative session.
- (2) All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied. Payment to the CRNA is limited to 80% of the physician allowable for anesthesia services without medical direction using modifier QZ and 50% of the physician allowable when services are provided under the medical direction of an anesthesiologist using modifier QX.
- (3) Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. Additional payment can be made when applicable for extremes of age, total body hypothermia and controlled hypertension.
- (4) All other qualifying circumstances, i.e., physical status, emergency, etc., have been structured into the total allowable for the procedure.
- (5) Hypothermia total body or regional is not covered unless medical necessity is documented and approved through review by the Authority's Medical Consultants.
- (6) 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.

**317:30-5-608. Elective sterilizations [REVOKED]**

(a) ~~Payment is made to certified registered nurse anesthetists for elective sterilizations performed in behalf of eligible individuals if all of the following circumstances are met:~~

- ~~(1) The patient must be at least 21 years of age at the time the consent form is signed,~~
- ~~(2) The patient must be mentally competent,~~
- ~~(3) A properly completed Federally mandated consent for sterilization form is attached to the claim, and~~
- ~~(4) The form is signed and dated at least 30 days, but not more than 180 days prior to the surgery.~~

~~(b) A copy of the consent for sterilization should be obtained from the surgeon or the hospital and attached to the claim form.~~

**317:30-5-609. Hysterectomies [REVOKED]**

~~(a) A hysterectomy performed for purposes of sterilization or family planning is not compensable.~~

~~(b) Payment is made to certified registered nurse anesthetists for therapeutic hysterectomies only when one of the following circumstances is met:~~

- ~~(1) A properly completed hysterectomy acknowledgement is attached to the claim form. The acknowledgement must clearly state that the patient or her representative was informed, orally and in writing, prior to the surgery that~~

~~she would be rendered permanently incapable of reproduction.~~

~~(2) The 30 day waiting period which applies to elective sterilizations does not apply to therapeutic hysterectomies.~~

~~(3) The surgeon must certify in writing that the patient was sterile prior to the surgery. The reason for the sterility, i.e., post-menopausal, previous tubal ligation, etc, must be given.~~

~~(4) The surgeon must certify that the surgery was performed in an emergency, life-endangering situation. The circumstances must be given.~~

~~(e) Documentation to meet one of the situations in (b) of this Section should be obtained from the surgeon or the hospital and attached to the claim form.~~

**317:30-5-610. Abortions [REVOKED]**

~~(a) Payment is made only for abortions in those instances where the abortion is 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 where the pregnancy is the result of an act of rape or incest. Medicaid coverage for abortions to terminate pregnancies that are the result of rape or incest will only be provided as long as Congress considers abortions in cases of rape or incest to be medically necessary services and federal financial participation is available specifically for these services.~~

~~(1) For abortions 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, the physician must certify in writing that the abortion is being performed 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. The mother's name and address must be included in the certification and the certification must be signed and dated by the physician. The certification must be attached to the claim.~~

~~(2) For abortions in cases of rape or incest, there are two requirements for the payment of a claim. First, the patient must fully complete the Patient Certification for Medicaid Funded Abortion. Second, the patient must have made a police report or counselor's report of the rape or incest.~~

~~(b) The Oklahoma Health Care Authority performs a "look behind" procedure for abortion claims paid from Medicaid funds. This procedure will require that this Agency obtain the complete medical records for abortions paid under Medicaid. On a post-payment basis, this Authority will obtain the complete medical records on all claims paid for abortions.~~

~~(c) Claims for spontaneous abortions, including dilation and curettage, do not require certification. The following situations also do not require certification:~~

- ~~(1) If the physician has not induced abortion, counseled or otherwise collaborated in inducing the abortion, and~~

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- (2) ~~If the process has irreversibly commenced at the point of the physician's medical intervention.~~
- (d) ~~Claims for the diagnosis "incomplete abortion" require medical review.~~
- (e) ~~The appropriate diagnosis codes should be used indicating spontaneous abortion, etc., otherwise the procedure will be denied.~~

### **317:30-5-611. Payment methodology**

~~When payment is made directly to a CRNA, such payment will be made at the rate of 80 percent of the allowable for anesthesia services. Payment to the CRNA is limited to 80% of the physician allowable for anesthesia services performed without medical direction and 50% of the physician allowable when services are provided under the medical direction of a licensed physician.~~

## **PART 70. ANESTHESIOLOGIST ASSISTANTS**

### **317:30-5-612. Eligible providers**

Payment is made directly to Anesthesiologist Assistants (AA) for compensable anesthesia services within their scope of practice under state law. The AA must be licensed to practice under applicable state laws. In addition, the AA must have a current provider contract on file with the Oklahoma Health Care Authority (OHCA).

### **317:30-5-613. Coverage by category**

Payment is made to Anesthesiologist Assistants as set forth in this Section.

- (1) **Adults.** Payment is made for the administration of anesthesia to adults within the scope of the Authority's medical programs, provided the services are reasonable and necessary for the treatment of illness or injury, or to improve the functioning of a malformed body member.
- (2) **Children.** Coverage for children is the same as for adults.
- (3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

### **317:30-5-614. Billing instructions**

The AA is responsible for entering the correct anesthesia procedure code on the appropriate claim form. Anesthesia codes from the Physicians' Current Procedural Terminology or Medicare assigned codes should be used.

- (1) Payment is made only for the major procedure during an operative session.
- (2) All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied. Payment is made to an AA for services provided under the direct supervision of a licensed anesthesiologist and is limited to 50% of the physician allowable using modifier QX.

(3) Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. Additional payment can be made when applicable for extremes of age, total body hypothermia and controlled hypertension.

(4) All other qualifying circumstances, i.e., physical status, emergency, etc., have been structured into the total allowable for the procedure.

(5) Hypothermia total body or regional is not covered unless medical necessity is documented and approved through review by the Authority's Medical Consultants.

(6) 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.

### **317:30-5-615. Payment methodology**

Payment to the AA is limited to 50% of the physician allowable for anesthesia services.

*[OAR Docket #09-905; filed 5-14-09]*

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

*[OAR Docket #09-906]*

### **RULEMAKING ACTION:**

EMERGENCY adoption

### **RULES:**

Subchapter 5. Individual Providers and Specialties

Part 1. Physicians

317:30-5-22. [AMENDED]

(Reference APA WF #09-01)

### **AUTHORITY:**

The Oklahoma Health Care Authority Board; the Oklahoma Health Care Authority Act, and Section 5003 through 5016 of Title 63 of Oklahoma Statutes.

### **DATES:**

#### **Adoption:**

April 9, 2009

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

April 28, 2009

#### **Effective:**

July 1, 2009

#### **Expiration:**

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests to limit the number of ultrasounds performed by an active Candidate or Board Certified diplomate in Maternal-Fetal Medicine (MFM). Currently there is an inconsistency in the regular obstetrical care policy and the high risk policy with regards to limitations for ultrasounds. Therefore, for consistency in policy and to increase accurate billing by our MFM SoonerCare providers who submit claims for ultrasounds, rules are revised to allow up to a maximum of 6 follow-up ultrasounds and require a prior authorization thereafter.

**ANALYSIS:**

Physician rules are revised to limit the number of ultrasounds performed by an active candidate or Board Certified diplomate in Maternal-Fetal Medicine (MFM) to a maximum of 6 follow-up ultrasounds and to require a prior authorization thereafter. Currently there is an inconsistency in the regular obstetrical care policy which does not state any limitation on the number of ultrasounds permitted without authorization if performed by a MFM while the high risk policy states a limit of 6 for the same provider type.

**CONTACT PERSON:**

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE JULY 1, 2009:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 1. PHYSICIANS**

**317:30-5-22. Obstetrical care**

(a) Obstetrical (OB) care is billed using the appropriate CPT codes for Maternity Care and Delivery. The date of delivery is used as the date of service for charges for total obstetrical care. Inclusive dates of care should be indicated on the claim form as part of the description. Payment for total obstetrical care includes all routine care, and any ultrasounds performed by the attending physician provided during the maternity cycle unless otherwise specified in this Section. For payment of total OB care, a physician must have provided care for more than one trimester. To bill for prenatal care only, the claim is filed after the member leaves the provider's care. Payment for routine or minor medical problems will not be made separately to the OB physician outside of the ante partum visits. The ante partum care during the prenatal care period includes all care by the OB attending physician except major illness distinctly unrelated to the pregnancy.

(b) Procedures paid separately from total obstetrical care are listed in (1) - (8) of this subsection.

(1) The completion of an American College of Obstetricians and Gynecologist (ACOG) assessment form and the most recent version of the Oklahoma Health Care Authority's Prenatal Psychosocial Assessment are reimbursable when both documents are included in the prenatal record. SoonerCare allows one assessment per provider and no more than two per pregnancy.

(2) Medically necessary real time ante partum diagnostic ultrasounds will be paid for in addition to ante partum care, delivery and post partum obstetrical care under defined circumstances. To be eligible for payment, ultrasound reports must meet the guideline standards published by the American Institute of Ultrasound Medicine (AIUM).

(A) One abdominal or vaginal ultrasound will be covered in the first trimester of pregnancy. The ultrasound must be performed by a board certified

Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with a certification in obstetrical ultrasonography.

(B) One ultrasound after the first trimester will be covered. This ultrasound must be performed by a board certified Obstetrician-Gynecologist (OB-GYN), Radiologist, or a Maternal-Fetal Medicine specialist. In addition, this ultrasound may be performed by a Nurse Midwife, Family Practice Physician or Advance Practice Nurse Practitioner in Obstetrics with certification in obstetrical ultrasonography.

(C) Additional ultrasounds, including detailed ultrasounds and re-evaluations of previously identified or suspected fetal or maternal anomalies must be performed by an active candidate or Board Certified diplomat in Maternal-Fetal Medicine. Up to six repeat ultrasounds are allowed after which, prior authorization is required.

(3) Standby attendance at Cesarean Section (C-Section), for the purpose of attending the baby, is compensable when billed by a physician not participating in the delivery.

(4) Spinal anesthesia administered by the attending physician is a compensable service and is billed separately from the delivery.

(5) Amniocentesis is not included in routine obstetrical care and is billed separately. Payment may be made for an evaluation and management service and amniocentesis on the same date of service. This is an exception to general information regarding surgery found at OAC 317:30-5-8.

(6) Additional payment is not made for the delivery of twins. If one twin is delivered vaginally and one is delivered by C-section by the same physician, the higher level procedure is paid. If one twin is delivered vaginally and one twin is delivered by C-Section, by different physicians, each should bill the appropriate procedure codes without a modifier. Payment is not made to the same physician for both standby and assistant at C-Section.

(7) One non stress test and/or biophysical profile to confirm a suspected high risk pregnancy diagnosis. The non stress test and/or biophysical profile must be performed by an active candidate or Board Certified diplomate in Maternal Fetal Medicine.

(8) Nutritional counseling in a group setting for members with gestational diabetes. Refer to OAC 317:30-5-1076(5).

(c) Assistant surgeons are paid for C-Sections which include only in-hospital post-operative care. Family practitioners who provide prenatal care and assist at C-Section bill separately for the prenatal and the six weeks postpartum office visit.

(d) Procedures listed in (1) - (5) of this subsection are not paid or not covered separately from total obstetrical care.

(1) Additional non stress tests, unless the pregnancy is determined medically high risk. See OAC 317:30-5-22.1.

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- (2) Standby at C-Section is not compensable when billed by a physician participating in delivery.
  - (3) Payment is not made for an assistant surgeon for obstetrical procedures that include prenatal or post partum care.
  - (4) An additional allowance is not made for induction of labor, double set-up examinations, fetal stress tests, or pudendal anesthetic. Providers must not bill separately for these procedures.
  - (5) Fetal scalp blood sampling is considered part of the total OB care.
- (e) Obstetrical coverage for children is the same as for adults with additional procedures being covered due to EPSDT provisions if determined to be medically necessary.

- (1) Services deemed medically necessary and allowable under federal Medicaid regulations are covered by the EPSDT/OHCA Child Health ~~program~~ Program even though those services may not be part of the Oklahoma Health Care Authority SoonerCare program. Such services must be prior authorized.
- (2) 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.

[OAR Docket #09-906; filed 5-14-09]

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

[OAR Docket #09-907]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-41.9. [AMENDED]

317:35-5-42. [AMENDED]

Subchapter 10. Medical Aid to Families with Dependent Children

Part 5. Income

317:35-10-26. [AMENDED]

(Reference APA WF #09-15A)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act and Sections 5003 through 5016 of Title 63 of Oklahoma Statutes; and the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

### DATES:

#### Adoption:

April 9, 2009

#### Effective:

July 1, 2009

#### Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules to disregard as income and resources certain amounts of unemployment compensation for the purpose of determining eligibility for SoonerCare benefits, as authorized and required by the American Recovery and Reinvestment Act of 2009.

### ANALYSIS:

Oklahoma took the option of allowing an additional \$25.00 per week in unemployment compensation for job seeking Oklahomans, as allowed by the American Recovery and Reinvestment Act of 2009. The additional \$25.00 per week of regular unemployment compensation will be paid to unemployed Oklahomans through June 30, 2010, as well as an additional amount of emergency unemployment compensation through May 31, 2010. The bill mandates that the additional compensation shall not be considered in determining eligibility for Medicaid benefits. Eligibility rules are revised to disregard the additional income when determining eligibility for the SoonerCare program.

### CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE JULY 1, 2009:**

## SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

### PART 5. COUNTABLE INCOME AND RESOURCES

#### 317:35-5-41.9. Resource disregards

In determining need, the following are not considered as resources:

- (1) The coupon allotment under the Food Stamp Act of 1977;
- (2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) Education grants (excluding Work Study) scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;
- (4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Loan Verification form, is completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Loan Verification form are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

- (B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide;
- (C) Proceeds of a loan secured by an exempt asset are not an asset;
- (5) Indian payments or items purchased from Indian payments (including judgement funds or funds held in trust) distributed per capita by the Secretary of the Interior (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this Subchapter, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;
- (6) Special allowance for school expenses made available upon petitions (in writing) from funds held in trust for the student;
- (7) Benefits from State and Community Programs on Aging (Title III) are disregarded. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. Both Title III and Title V are under the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;
- (8) Payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Services Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);
- (9) Payment to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;
- (10) The value of supplemental food assistance received under the Child Nutrition Act or the special food services program for children under the National School Lunch Act;
- (11) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;
- (12) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;
- (13) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
- (14) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
- (15) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;
- (16) Interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or the restricted lands are considered as income;
- (17) Resources set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of resources excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;
- (18) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);
- (19) A migratory farm worker's out-of-state homestead is disregarded if the farm worker's intent is to return to the homestead after the temporary absence;
- (20) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;
- (21) Dedicated bank accounts established by representative payees to receive and maintain retroactive SSI benefits for disabled/blind children up to the legal age of 18. The dedicated bank account must be in a financial institution, the sole purpose of which is to receive and maintain SSI underpayments which are required or allowed to be deposited into such an account. The account must be set up and verification provided to SSA before the underpayment can be released;
- (22) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. Payments are not considered as income or resources. A penalty cannot be assessed against the individual if he/she disposes of part or all of the payment. The rules at OAC 317:35-5-41.6 regarding the availability of a trust do not apply if an individual establishes a trust using the settlement payment;
- (23) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);
- (24) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);

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(25) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419); ~~and~~

(26) For individuals with an Oklahoma Long-Term Care Partnership Program approved policy, resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer are disregarded at the time of application for long-term care services provided by Soonercare. The Oklahoma Insurance Department approves policies as Long-term Care Partnership Program policies; ~~and~~

(27) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009.

### 317:35-5-42. Determination of countable income for individuals categorically related to aged, blind and disabled

(a) **General.** The term income is defined as that gross gain or gross recurrent benefit which is derived from labor, business, property, retirement and other benefits, and many other forms which can be counted on as currently available for use on a regular basis. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income.

(1) If it appears the applicant or recipient is eligible for any type of income (excluding SSI) or resources, he/she must be notified in writing by the Agency of his/her potential eligibility. The notice must contain the information that failure to file for and take all appropriate steps to obtain such benefit within 30 days from the date of the notice will result in a determination of ineligibility.

(2) If a husband and wife are living in their own home, the couple's total income and/or resource is divided equally between the two cases. If they both enter a nursing facility, their income and resources are considered separately.

(3) If only one spouse in a couple is eligible and the couple ceases to live together, consider only the income and resources of the ineligible spouse that are actually contributed to the eligible spouse beginning with the month after the month which they ceased to live together.

(4) In calculating monthly income, cents are included in the computation until the monthly amount of each individual's source of income has been established. When the monthly amount of each income source has been established, cents are rounded to the nearest dollar (14 - 494 is rounded down, and 504 - 994 is rounded up). For example, an individual's weekly earnings of \$99.90 are multiplied by 4.3 and the cents rounded to the nearest dollar ( $\$99.90 \times 4.3 = \$429.57$  rounds to \$430). See rounding procedures in OAC 340:65-3-4 when using BENDEX to verify OASDI benefits.

(b) **Income disregards.** In determining need, the following are not considered as income:

(1) The coupon allotment under the Food Stamp Act of 1977;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Educational grants (excluding work study), scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Loan Verification form should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Loan Verification form are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified.

(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide.

(C) Proceeds of a loan secured by an exempt asset are not an asset;

(5) One-third of child support payments received on behalf of the disabled minor child;

(6) Indian payments (including judgement funds or funds held in trust) distributed per capita by the Secretary of the Interior (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are made per capita. For purposes of this Subchapter, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with funds after distribution is considered as any other income;

(7) Special allowance for school expenses made available upon petition (in writing) for funds held in trust for the student;

(8) Title III benefits from State and Community Programs on Aging;

(9) Payment for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service

Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(10) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service program for children under the national School Lunch Act;

(12) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

(13) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training and uniform allowance if the uniform is uniquely identified with company names or logo;

(14) Assistance or services from the Vocational Rehabilitation program such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and any other such complementary payments;

(15) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(16) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;

(17) Governmental rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;

(18) LIHEAP payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

(19) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(20) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(21) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;

(22) Income of a sponsor to the sponsored eligible alien;

(23) The BIA frequently puts an individual's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the worker must contact the BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual member, guardian or conservator, such funds are considered as available income. If the BIA

determines the funds are not available, they are not considered in determining eligibility. Funds held in trust by the BIA and not disbursed are considered unavailable.

(A) In some instances, BIA may determine the account is unavailable; however, they release a certain amount of funds each month to the individual. In this instance the monthly disbursement is considered as unearned income.

(B) When the BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual member, guardian or conservator, these disbursements must be resolved with the BIA. These disbursements indicate all or a portion of the account may be available to the individual member, guardian or conservator. When the county office is unable to resolve the situation with the BIA, the county submits a referral to the appropriate section in OKDHS Family Support Services Division (FSSD). The referral must include specific details of the situation, including the county's efforts to resolve the situation with the BIA. If FSSD cannot make a determination, a legal decision regarding availability will be obtained by FSSD, and then forwarded to the county office by FSSD. When a referral is sent to FSSD, the funds are considered as unavailable with a legal impediment until the county is notified otherwise.

(C) At each reapplication or redetermination, the worker is to contact BIA to obtain information regarding any changes as to the availability of the funds and any information regarding modifications to the IIM account. Information regarding prior disbursements is also obtained at this time. All of this information is reviewed for the previous six or twelve-month period, or since the last contact if the contact was within the last certification or redetermination period.

(D) When disbursements have been made, the worker determines whether such disbursements were made to the member or to a third party vendor in payment for goods or services. Payments made directly from the BIA to vendors are not considered as income to the member. Workers should obtain documentation to verify services rendered and payment made by BIA.

(E) Amounts disbursed directly to the members are counted as non-recurring lump sum payments in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is treated as unearned income in the month received;

(24) Income up to \$2,000 per year received by individual Indians, which are derived from leases or other uses of individually-owned trust or restricted lands;

(25) Income that is set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of income excluded and the period

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of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;

(26) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);

(27) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;

(28) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. However, if the payments are placed in an interest-bearing account, or some other investment medium that produces income, the income generated by the account may be countable as income to the individual;

(29) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);

(30) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183); ~~and~~

(31) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419); ~~and~~

(32) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009.

(c) **Determination of income.** The member is responsible for reporting information regarding all sources of available income. This information is verified and used by the worker in determining eligibility.

(1) Gross income is listed for purposes of determining eligibility. It may be derived from many sources, and some items may be automatically disregarded by the computer when so provided by state or federal law.

(2) If a member is determined to be categorically needy and is also an SSI recipient, any change in countable income, (see OAC 317:35-5-42(d)(3) to determine countable income) will not affect receipt of medical assistance and amount of State Supplemental Payment (SSP) as long as the amount does not cause SSI ineligibility. Income which will be considered by SSI in the retrospective cycle is documented in the case with computer update at the time that SSI makes the change (in order not to penalize the member twice). If the SSI change is not timely, the worker updates the computer using the appropriate date as if it had been timely. If the receipt of the income causes SSI ineligibility, the income is considered immediately with proper action taken to reduce or close the medical assistance and SSP case. Any SSI overpayment caused by SSA not making timely changes will result in recovery by SSI in the future. When the worker becomes aware of income changes which will affect SSI eligibility or

payment amount, the information is to be shared with the SSA office.

(3) Some of the more common income sources to be considered in determining eligibility are as follows:

(A) **Retirement and disability benefits.** These include but are not limited to OASDI, VA, Railroad Retirement, SSI, and unemployment benefits. Federal and State benefits are considered for the month they are intended when determining eligibility.

(i) Verifying and documenting the receipt of the benefit and the current benefit amount are achieved by:

(I) seeing the member's award letter or warrant;

(II) obtaining a signed statement from the individual who cashed the warrant; or

(III) by using BENDEX and SDX.

(ii) Determination of OASDI benefits to be considered (disregarding COLA's) for former State Supplemental recipients who are reapplying for medical benefits under the Pickle Amendment must be computed according to OKDHS Appendix C-2-A.

(iii) The Veterans Administration allows their recipients the opportunity to request a reimbursement for medical expenses not covered by SoonerCare. If a recipient is eligible for the readjustment payment, it is paid in a lump sum for the entire past year. This reimbursement is disregarded as income and a resource in the month it is received; however, any amount retained in the month following receipt is considered a resource.

(iv) Government financial assistance in the form of VA Aid and Attendance or Champus payment is considered as follows:

(I) **Nursing facility care.** VA Aid and Attendance or Champus payment whether paid directly to the member or to the facility, are considered as third party resources and do not affect the income eligibility or the vendor payment of the member.

(II) **Own home care.** The actual amount of VA Aid and Attendance payment paid for an attendant in the home is disregarded as income. In all instances, the amount of VA Aid and Attendance is shown on the computer form.

(v) Veterans or their surviving spouse who receive a VA pension may have their pension reduced to \$90 by the VA if the veteran does not have dependents, is SoonerCare eligible, and is residing in a nursing facility that is approved under SoonerCare. Section 8003 of Public Law 101-508 allows these veterans' pensions to be reduced to \$90 per month. None of the \$90 may be used in computing any vendor payment or spenddown. The \$90 payment becomes the monthly maintenance standard for the veteran. Any vendor payment or

spenddown will be computed by using other income minus any applicable medical deduction(s). Veterans or their surviving spouse who meet these conditions will have their VA benefits reduced the month following the month of admission to a SoonerCare approved nursing facility.

(B) **SSI benefits.** SSI benefits may be continued up to three months for a recipient who enters a public medical or psychiatric institution, a SoonerCare approved hospital, extended care facility, intermediate care facility for the mentally retarded or nursing facility. To be eligible for the continuation of benefits, the SSI recipient must have a physician's certification that the institutionalization is not expected to exceed three months and there must be a need to maintain and provide expenses for the home. These continued payments are intended for the use of the recipient and do not affect the vendor payment.

(C) **Lump sum payments.**

(i) Any income received in a lump sum (with the exception of SSI lump sum) covering a period of more than one month, whether received on a recurring or nonrecurring basis, is considered as income in the month it is received. Any amount from any lump sum source, including SSI (with the exception of dedicated bank accounts for disabled/blind children under age 18), retained on the first day of the next month is considered as a resource. Such lump sum payments may include, but are not limited to, accumulation of wages, retroactive OASDI, VA benefits, Workers' Compensation, bonus lease payments and annual rentals from land and/or minerals.

(ii) Lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded. The dedicated bank account consisting of the retroactive SSI lump sum payment and accumulated interest is excluded as a resource in both the month received and any subsequent months.

(iii) A life insurance death benefit received by an individual while living is considered as income in the month received and as a resource in the following months to the extent it is available.

(iv) Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment.

(D) **Income from capital resources and rental property.** Income from capital resources can be derived from rental of a house, rental from land (cash or crop rent), leasing of minerals, life estate, homestead rights or interest.

(i) If royalty income is received monthly but in irregular amounts, an average based on the previous six months' royalty income is computed and

used to determine income eligibility. Exception: At any time that the county becomes aware of and can establish a trend showing a dramatic increase or decrease in royalty income, the previous two month's royalty income is averaged to compute countable monthly income.

(ii) Rental income may be treated as earned income when the individual participates in the management of a trade or business or invests his/her own labor in producing the income. The individual's federal income tax return will verify whether or not the income is from self-employment. Otherwise, income received from rent property is treated as unearned income.

(iii) When property rental is handled by a leasing agent who collects the rent and deducts a management fee, only the rent actually received by the member is considered as income.

(E) **Earned income/self-employment.** The term "earned income" includes income in cash earned by an individual through the receipt of wages, salary, commission or profit from activities in which he/she is engaged as a self-employed individual or as an employee. See subparagraph (G) of this paragraph for earnings received in fluctuating amounts. "Earned Income" is also defined to include in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. The cash value of the in-kind benefits must be verified by the employer. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in his/her business enterprise. An exchange of labor or services; e.g., barter, is considered as an in-kind benefit. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind but is recorded on the case computer input document for coordination with SoonerCare benefits.

(i) Advance payments of EITC or refunds of EITC received as a result of filing a federal income tax return are considered as earned income in the month they are received.

(ii) Work study received by an individual who is attending school is considered as earned income with appropriate earned income disregards applied.

(iii) Money from the sale of whole blood or blood plasma is considered as self-employment income subject to necessary business expense and appropriate earned income disregards.

(iv) Self-employment income is determined as follows:

(I) Generally, the federal or state income tax form for the most recent year is used for calculating the self-employment income to project

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income on a monthly basis for the certification period. The gross income amount as well as the allowable deductions are the same as can be claimed under the Internal Revenue code for tax purposes.

(II) Self-employment income which represents a household's annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(III) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise is averaged over the period of time the business has been in operation to establish the monthly income amount.

(IV) If a tax return is not available because one has not been filed due to recent establishment of the self-employment enterprise, a profit and loss statement must be seen to establish the monthly income amount.

(V) The purchase price and/or payment(s) on the principal of loans for capital assets, equipment, machinery, and other durable goods is not considered as a cost of producing self-employed income. Also not considered are net losses from previous periods, depreciation of capital assets, equipment, machinery, and other durable goods; and federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation (these expenses are accounted for by the work related expense deduction given in OAC 340:10-3-33(1)).

(v) Countable self-employment income is determined by deducting allowable business expenses to determine the adjusted gross income. The earned income deductions are then applied to establish countable earned income.

(F) **Inconsequential or irregular income.** Inconsequential or irregular receipt of income in the amount of \$10 or less per month or \$30 or less per quarter is disregarded. The disregard is applied per individual for each type of inconsequential or irregular income. To determine whether the income is inconsequential or irregular, the gross amount of earned income and the gross minus business expense of self-employed income are considered.

(G) **Monthly income received in fluctuating amounts.** Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick

leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

(i) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3.

(ii) **Weekly.** Income received weekly is multiplied by 4.3.

(iii) **Twice a month.** Income received twice a month is multiplied by 2.

(iv) **Biweekly.** Income received every two weeks is multiplied by 2.15.

(H) **Non-negotiable notes and mortgages.** Installment payments received on a note, mortgage, etc., are considered as monthly income.

(I) **Income from the Job Training and Partnership Act (JTPA).** Unearned income received by an adult, such as a needs based payment, cash assistance, compensation in lieu of wages, allowances, etc., from a program funded by JTPA is considered as any other unearned income. JTPA earned income received as wages is considered as any other earned income.

(J) **Other income.** Any other monies or payments which are available for current living expenses must be considered.

(d) **Computation of income.**

(1) **Earned income.** The general income exclusion of \$20 per month is allowed on the combined earned income of the eligible individual and eligible or ineligible spouse. See paragraph (6) of this subsection if there are ineligible minor children. After the \$20 exclusion, deduct \$65 and one-half of the remaining combined earned income.

(2) **Unearned income.** The total gross amount of unearned income of the eligible individual and eligible or ineligible spouse is considered. See paragraph (6) of this subsection if there are ineligible minor children.

(3) **Countable income.** The countable income is the sum of the earned income after exclusions and the total gross unearned income.

(4) **Deeming computation for disabled or blind minor child(ren).** An automated calculation is available for computing the income amount to be deemed from parent(s) and the spouse of the parent to eligible disabled or blind minor child(ren) by use of transaction CID. The ineligible minor child in the computation regarding allocation for ineligible child(ren) is defined as: a dependent child under age 18.

(A) A mentally retarded child living in the home who is ineligible for SSP due to the deeming process may be approved for Medical Assistance under the Home and Community Based Waiver (HCBW) Program as outlined in OAC 317:35-9-5.

(B) For TEFRA, the income of child's parent(s) is not deemed to him/her.

(5) **Premature infants.** Premature infants (i.e., 37 weeks or less) whose birth weight is less than 1200 grams

(approximately 2 pounds 10 ounces) will be considered disabled by SSA even if no other medical impairment(s) exist. In this event, the parents income are not deemed to the child until the month following the month in which the child leaves the hospital and begins living with his/her parents.

**(6) Procedures for deducting ineligible minor child allocation.** When an eligible individual has an ineligible spouse and ineligible minor children (not receiving TANF), the computation is as follows:

(A) Each ineligible child's allocation (OKDHS Appendix C-1, Schedule VII. C.) minus each child's gross countable income is deducted from the ineligible spouse's income. Deeming of income is not done from child to parent.

(B) The deduction in subparagraph (A) of this paragraph is prior to deduction of the general income exclusion and work expense.

(C) After computations in subparagraphs (A) and (B) of this paragraph, the remaining amount is the ineligible spouse's countable income considered available to the eligible spouse.

**(7) Special exclusions for blind individuals.** Any blind individual who is employed may deduct the general income exclusion and the work exclusion from the gross amount of earned income. After the application of these exclusions, one-half of the remaining income is excluded. The actual work expense is then deducted from the remaining half to arrive at the amount of countable income. If this blind individual has a spouse who is also eligible due to blindness and both are working, the amount of ordinary and necessary expenses attributable to the earning of income for each of the blind individuals may be deducted. Expenses are deductible as paid but may not exceed the amount of earned income. To be deductible, an expense need not relate directly to the blindness of the individual, it need only be an ordinary and necessary work expense of the blind individual. Such expenses fall into three broad categories:

- (A) transportation to and from work;
- (B) job performance; and
- (C) job improvement.

**SUBCHAPTER 10. MEDICAL AID TO FAMILIES WITH DEPENDENT CHILDREN**

**PART 5. INCOME**

**317:35-10-26. Income**

**(a) General provisions regarding income.**

(1) The income of categorically needy individuals who are related to AFDC or Pregnancy does not require verification, unless questionable. If the income is questionable the worker must verify the income. The worker views all data exchange screens on all individuals included in the household size. If the data exchange screen reveals

conflicting information, the worker must resolve the conflicting information and if necessary, request verification.

(2) All available income, except that required to be disregarded by law or OHCA's policy, is taken into consideration in determining need. Income is considered available both when actually available and when the applicant or member has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an individual's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is counted as income. The member is responsible for reporting all income, the source, amount and how often received.

(A) Income received on behalf of a member of the benefit group by another individual such as, but not limited to, a guardian or conservator, is considered available to the benefit group.

(B) Money received and used for the care and maintenance of a third party who is not included in the benefit group is not counted as income if it can be identified and verified as intended for third party use.

(C) If it appears any member of the benefit group or an individual whose income is considered when determining eligibility is eligible for any type of income or benefits, the benefit group must be notified in writing by the Oklahoma Department of Human Services (OKDHS). The notice must contain the information that failure to apply for and take all appropriate steps to obtain such benefits within 30 days from the date of the notice will result in a determination of ineligibility. An application for Supplemental Security Income (SSI) is not required.

(D) If the member and spouse are living together or they are living apart but there has not been a clear break in the family relationship, income received by either spouse and income received jointly is considered as family income. Income cannot be diverted to a household member who is not included in the household size for health benefits. Consideration is not given to a SSI recipient's income in computing eligibility for the AFDC related unit.

(E) Income which can reasonably be anticipated to be received is considered to be available for the month its receipt is anticipated.

(F) Income produced from resources must be considered as unearned income.

(3) Income that must be verified is verified by the best available information such as pay stubs presented by the member or an interview with the employer. Pay stubs may only be used for verification if they have the member's name and/or social security number indicating that the pay stubs are in fact the member's wages. The stubs should also include the date(s) of the pay period and the amount of income before deductions. If this information is not included, employer verification is required. The worker verifies medical insurance which may be available at the same time that income is verified. When a member of the benefit group accepts employment and has not received

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any wages, verification (if necessary) of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer. Income which is expected to be received during a month is considered available to the benefit group and is counted in determining eligibility for the month of receipt.

(4) Monies received in a lump sum from any source are considered income in the month received. Changing a resource from one form to another, such as converting personal property to cash, is not considered a lump sum payment. Exception: lump sum payments used to establish dedicated bank accounts by representative payees in order to receive and maintain retroactive SSI benefits for disabled/blind children under age 18 are excluded as income. The interest income generated from dedicated bank accounts is also excluded.

(A) A nonrecurring lump sum payment considered as income includes payments based on accumulation of income and payments which may be considered windfall in nature and may include but are not limited to TANF grant diversion, VA or Social Security lump sum payments, inheritance, gifts, worker's compensation payments, cash winnings, personal injury awards, etc. Retirement benefits received in a lump-sum are considered as unearned income. A non-recurring lump sum SSI retroactive payment, made to an AFDC or pregnancy related recipient who is not currently eligible for SSI, is not counted as income.

~~(B) The worker must ask applicants if they have received a lump sum payment during the month of application, any month during the application process or anticipate to receive a lump sum in the future. Members are asked at the time of periodic redetermination if the benefit group has received or is expecting to receive a lump sum. The worker provides an oral explanation, including examples of lump sum payments, how the rule affects other benefits and the importance of reporting anticipated receipt of a lump sum payment. The worker also offers counseling when there is indication of anticipated receipt, including voluntary withdrawal of the application or case closure and availability of free legal advice.~~

(~~C~~B) Lump sum payments (minus allowable deductions related to establishing the lump sum payment) which are received by AFDC/Pregnancy related individuals or applicants are considered as income. Allowable deductions are expenses earmarked in the settlement or award to be used for a specific purpose which may include, but are not limited to, attorney's fees and court costs that are identified in the lump sum settlement, medical or funeral expenses for the immediate family, etc. "Earmarked" means that such expense is specifically set forth in the settlement or award.

(~~D~~C) When a lump sum is received by a stepparent not included in the household size, only the stepparent's contribution is considered in accordance with the stepparent's liability policy.

(~~E~~D) When a third party reveals that a lump sum payment has been received or is expected to be received by the applicant or member, adverse action notification is given or mailed to the applicant/member and appropriate action taken.

(~~F~~E) Recurring lump sum income received from any source for a period covering more than one month, that is received in a lump sum recurrently (such as annual rentals from surface or minerals, Windfall Profits tax refund, etc.) is prorated over a period of time it is intended to cover, beginning with the month of receipt of a lump sum payment.

(~~G~~F) Net income from oil and gas production (gross minus production taxes withheld), received in varying amounts on a regular or irregular basis for the past six months, will be averaged and considered as income for the next six months. In instances where an applicant or a member receives new income from oil and gas production and verification for the past six months is not available, the worker accepts the available verification and averages over the period of time intended to cover. Net income may be verified by seeing the individual's production check stub, or by contacting the oil and gas company.

(5) Income that is based on the number of hours worked, as opposed to income based on regular monthly wages, must be computed as irregular income. The income received irregularly or in varying amounts will be averaged using the past two months to establish the amount to be anticipated and considered for prospective budgeting.

(6) A caretaker relative can only be included in the benefit group when the biological or adoptive parent is not in the home. A stepparent can be included when the ~~natural~~ or biological or adoptive parent is either incapacitated or not in the home.

(A) Consideration is not given to the income of the caretaker relative or the income of his or her spouse in determining the eligibility of the children regardless of whether the caretaker relative's needs are or are not included. However, if that person is the stepparent, the policy on stepparent liability is applicable.

(B) If a caretaker relative is married and living with the spouse who is an SSI or SSP recipient, the spouse or spouse's income is not considered in determining the eligibility of the ~~relative~~ caretaker relative. The income of the caretaker relative and the spouse who is not an SSI or SSP recipient must be considered. Only one caretaker relative is eligible to be included in any one month.

(7) A stepparent can be included when the ~~natural~~ or biological or adoptive parent is either incapacitated or not in the home. The income of the stepparent is counted if the stepparent's needs are being included.

(8) When there is a stepparent or person living in the home with the ~~natural~~ biological or adoptive parent who is not a spouse by legal marriage to or common-law relationship with the own parent ~~but who is acting in the role of a~~

spouse, the worker determines the amount of income that will be made available to meet the needs of the child(ren) and the parent. Only contributions made in cash directly to the benefit group can be counted as income. In-kind contributions are disregarded as income. When the individual and the member state the individual does not make a cash contribution, further exploration is necessary. This statement can only be accepted after clarifying that the individual's contributions are only in-kind.

(b) **Earned income.** The term "earned income" refers to monies earned by an individual through the receipt of wages, salary, commission or profit from activities in which the individual is engaged as self-employed or as an employee. Payments made for accumulated annual leave/vacation leave, sick leave or as severance pay are considered as earned income whether paid during employment or at termination of employment. Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the individual remains employed. Income received as a one-time nonrecurring payment is considered as a lump sum payment. Earned income includes in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages. An exchange of labor or services, e.g., barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee/employer relationship has been established. Income from self-employment also includes in-kind benefits for a work activity or service for which the self-employed person ordinarily receives payment in the business enterprise. Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income. Gross earned income is used to determine eligibility. Gross earned income is defined as the "true wage" prior to payroll deductions and/or withholdings.

(1) **Earned income from self-employment.** If the income results from the individual's activities primarily as a result of the individual's own labor from the operation of a business enterprise, the "earned income" is the total profit after deducting the business expenses (cost of the production). Money from the sale of whole blood or blood plasma is also considered as self-employment income subject to necessary business expense and appropriate earned income exemptions.

(A) Allowable costs of producing self-employment income include, but are not limited to, the identifiable cost of labor, stock, raw material, seed and fertilizer, interest payments to purchase income-producing property, insurance premiums, and taxes paid on income-producing property.

(i) The federal or state income tax form for the most recent year is used for calculating the income, ~~if necessary,~~ only if it is representative of the individual's current situation. The individual's business records beginning the month income became representative of the individual's current situation is used if the income tax information does not represent the individual's current situation.

(ii) If the self-employment enterprise has been in existence for less than a year, the income is averaged over the period of time the business has been in operation to establish the monthly income amount.

(iii) Self-employment income which represents an annual support is prorated over a 12-month period, even if the income is received in a short period of time. For example, self-employment income received by crop farmers is averaged over a 12-month period if the income represents the farmer's annual support.

(B) **Items not considered.** The following items are not considered as a cost of producing self-employed income:

(i) The purchase price and/or payments on the principal of loans for capital assets, equipment, machinery, and other durable goods;

(ii) Net losses from previous periods;

(iii) Depreciation of capital assets, equipment, machinery, and other durable goods; and

(iv) Federal, state and local income taxes, FICA, money set aside for retirement purposes, and other work related personal expenses, such as meals and necessary transportation. These expenses are accounted for by the work related expense deduction.

(C) **Room and/or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as a business expense. If the earned income includes payment for room and board, 50% of the gross amount received is considered as a business expense.

(D) **Rental property.** Income from rental property is to be considered income from self employment if none of the activities associated with renting the property is conducted by an outside-person or agency.

(2) **Earned income from wages, salary or commission.** If the income is from wages, salary or commission, the "earned income" is the gross income prior to payroll deductions and/or withholdings. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as any other earned income.

(3) **Earned income from work and training programs.** Earned income from work and training programs such as the Job Training Partnership Act (JTPA) received by an adult as wages is considered as any other earned income. Also, JTPA earned income of a dependent child is considered when received in excess of six months in any calendar year.

(4) **Individual earned income exemptions.** Exemptions from each individual's earned income include a monthly standard work related expense and child care expenses the individual is responsible for paying. Expenses cannot be exempt if paid through state or federal funds

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or the care is not in a licensed facility or home. Exempt income is that income which by law may not be considered in determining need.

(A) **Work related expenses.** The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is \$240 per each full-time or part-time employed member of the benefit group.

(B) **Child care expenses.** Disregard of child care expense is applied after all other income disregards.

(i) Child care expense may be deducted when:

(I) suitable care for a child included in the benefit group is not available from responsible persons living in the home or through other alternate sources; and

(II) the employed member whose income is considered must purchase care.

(ii) Child care expenses must be verified and the actual amount per month, as paid, up to a maximum of \$200 for a child under the age of two or \$175 for a child age two or older may be deducted. ~~In considering the care expense, only actual work hours and travel time between work and the child care facility or child care home will be allowed.~~

~~(iii) In explaining child care expenses, the worker informs the individual that payment for care is the responsibility of the member and any changes in the plan for care must be reported immediately.~~

~~(iv) Oklahoma law requires all child care centers and homes be properly approved or licensed; therefore, child care expenses can only be deducted if the child is in a properly licensed facility or receiving care from an approved in-home provider. However, in cases where licensed dependent care facilities and/or approved in-home providers are not available (e.g., night employment), and the member arranges for care outside the home, an immediate referral is made by OKDHS Form K-13 to the licensing worker for a licensing decision. The cost of child care can be considered until the worker receives notification from the licensing worker that the home does not meet licensing standards or registration. If licensing or registration is denied, the member will be allowed 30 days after notification to make other child care arrangements, during which time the child care exemption will continue to be allowed.~~

~~(v) Child care provided by another person in the household who is not a member of the benefit group may be considered as child care expenses as long as the ease home meets applicable standards of State, local or Tribal law.~~

~~(vi) Documentation is made of the child care arrangement indicating the name of the child care facility or the name of the in-home provider, and the documentation used to verify the actual payment of child care per month.~~

(5) **Formula for determining the individual's net earned income.** Formulas used to determine net earned income to be considered are:

(A) **Net earned income from employment other than self-employment.** Gross Income minus work related expense minus child care expense equals net income.

(B) **Net earned income from self-employment.** Gross income minus allowable business expenses minus work related expense and child care expense equals net income.

(c) **Unearned income.**

(1) **Capital investments.** Proceeds, i.e., interest or dividends from capital investments, such as savings accounts, bonds (other than U.S. Savings Bonds, Series A through EE), notes, mortgages, etc., received constitute income.

(2) **Life estate and homestead rights.** Income from life estate or homestead rights, constitute income after deducting actual business expenses.

(3) **Minerals.** If the member owns mineral rights, only actual income from minerals, delayed rentals, or production is considered. Evidence is obtained from documents which the member has in hand. When the member has no documentary evidence of the amount of income, the evidence, if necessary, is secured from the firm or person who is making the payment.

(4) **Contributions.** Monetary contributions are considered as income except in instances where the contribution is not made directly to the member.

(5) **Retirement and disability benefits.** Income received monthly from retirement and disability benefits ~~are~~ is considered as unearned income. Information as to receipt and amount of OASDI benefits is obtained, if necessary, from BENDEX, the member's award letter, or verification from SSA. ~~If the individual states that he/she does not receive OASDI, has a pending application or has been denied OASDI, this can be verified, if necessary, by use of TPQYC computer transaction.~~ Retirement benefits received as a lump sum payment at termination of employment are considered as income. Supplemental Security Income (SSI) does not fall under these types of benefits.

(6) **Unemployment benefits.** Unemployment benefits are considered as unearned income.

(7) **Military benefits.** Life insurance, pensions, compensation, servicemen dependents' allowances and the like, are all sources of income which the member and/or dependents may be eligible to receive. In each case under consideration, information is obtained as to whether the member's son, daughter, husband or parent, has been in any military service. Clearance is made with the proper veterans' agency, both state and federal, to determine whether the benefits are available.

(8) **Casual and inconsequential gifts.** Monetary gifts which do not realistically represent income to meet living expenses, e.g., Christmas, graduation and birthday gifts, not to exceed \$30 per calendar quarter for each individual,

are disregarded as income. The amount of the gifts are disregarded as received during the quarter until the aggregate amount has reached \$30. At that time the portion exceeding \$30 is counted as lump sum income. If the amount of a single gift exceeds \$30, it is not inconsequential and the total amount is therefore counted. If the member claims that the gift is intended for more than one person in the family unit, it is allowed to be divided. Gifts between members of the family unit are not counted.

(9) **Grants.** Grants which are not based on financial need are considered income.

(10) **Funds held in trust by Bureau of Indian Affairs (BIA).** The BIA frequently puts an individual's trust funds in an Individual Indian Money (IIM) account. To determine the availability of funds held in trust in an IIM account, the social worker must contact the BIA in writing and ascertain if the funds, in total or any portion, are available to the individual. If any portion of the funds is disbursed to the individual member, guardian or conservator, such funds are considered as available income. If the BIA determines the funds are not available, they are not considered. Funds held in trust by the BIA and not disbursed are considered unavailable.

(A) In some instances, BIA may determine the account is unavailable; however, they release a certain amount of funds each month to the individual. In this instance the monthly disbursement is considered as income.

(B) When the BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual member, guardian or conservator, these disbursements must be resolved with the BIA. These disbursements indicate all or a portion of the account may be available to the individual member, guardian or conservator.

(C) When disbursements have been made, the worker verifies whether such disbursements were made to the member or to a third party vendor in payment for goods or services. Payments made directly from the BIA to vendors are not considered as income to the member. Workers obtain documentation to verify services rendered and payment made by BIA.

(D) Amounts disbursed directly to the members are counted as non-recurring lump sum payments in the month received. Some trusts generate income on a regular basis and the income is sent to the beneficiary. In those instances, the income is counted in the month received.

(d) **Income disregards.** Income that is disregarded in determining eligibility includes:

- (1) Food Stamp benefits;
- (2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (3) Education Grants (including work study), scholarships, etc., that are contingent upon the student regularly

attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) is required to indicate that the loan is bona fide. If the loan agreement is not written, OKDHS Form ~~Adm-103~~—08AD103E, Loan Verification, should be completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Form ~~Adm-103~~ 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(5) Indian payments (including judgement funds or funds held in trust) which are distributed per capita by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with judgement funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) Special allowance for school expenses made available upon petition in writing from trust funds of the student;

(7) Benefits from State and Community Programs on Aging under Title III of the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

(8) Unearned income received by a child, such as a needs based payment, cash assistance, compensation in lieu of wages, allowance, etc., from a program funded by the Job Training and Partnership Act (JTPA) including Job Corps income. Also, JTPA earned income received as wages, not to exceed six months in any calendar year;

(9) Payments for supportive services or reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aids, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(10) Payments to volunteers under the Domestic Volunteer Service Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(11) The value of supplemental food assistance received under the Child Nutrition Act or the special food service

## Emergency Adoptions

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program for children under the National School Lunch Act;

(12) Any portion of payments, made under the Alaska Native Claims Settlement Act to an Alaska Native, which are exempt from taxation under the Settlement Act;

(13) If an adult or child from the family group is living in the home and is receiving SSI, his/her individual income is considered by the Social Security Administration in determining eligibility for SSI. Therefore, that income cannot be considered as available to the benefit group;

(14) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(15) Earnings of a child who is a full-time student are disregarded;

(16) The first \$50 of the current monthly child support paid by an absent parent. Only one disregard is allowed regardless of the number of parents paying or amounts paid. An additional disregard is allowed if payments for previous months were paid when due but not received until the current month;

(17) Government rental or housing subsidies by governmental agencies, e.g., HUD (received in-kind or in cash) for rent, mortgage payments or utilities;

(18) Reimbursements from an employer for out-of-pocket expenditures and allowances for travel or training to the extent the funds are used for expenses directly related to such travel or training, and uniform allowances if the uniform is uniquely identified with company name or logo;

(19) Low Income Home and Energy Assistance Program (LIHEAP) and Energy Crisis Assistance Program (ECAP) payments;

(20) Advance payments of Earned Income Tax Credit (EITC) or refunds of EITC as a result of filing a federal income tax return;

(21) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(22) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(23) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by states, local governments and disaster assistance organizations;

(24) Interests of individual Indians in trust or restricted lands;

(25) Income up to \$2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands;

(26) Any home produce from garden, livestock and poultry utilized by the member and his/her household for their consumption (as distinguished from such produce sold or exchanged);

(27) Any payments made directly to a third party for the benefit of a member of the benefit group;

(28) Financial aid provided to individuals by agencies or organizations which base their payment on financial need;

(29) Assistance or services received from the Vocational Rehabilitation Program, such as transportation expenses to a rehabilitation center, extra clothing, lunches, grooming needed for a training program and an other such complimentary payments; ~~and~~

(30) Payments made by a public or private non-profit child care agency for a child placed in foster care or subsidized adoption;

(31) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-214);

(32) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);

(33) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419); and

(34) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009.

(e) In computing monthly income, cents will be carried at all steps until the monthly amount is determined and then will be rounded to the nearest dollar. These rounding procedures apply to each individual and each type of income. Income which is received monthly but in irregular amounts is averaged using two month's income, if possible, to determine income eligibility. Less than two month's income may be used when circumstances (e.g., new employment, unpaid sick leave, etc.) would indicate that previous income amounts would not be appropriate to use in determining future income amounts. Income received more often than monthly is converted to monthly amounts as follows:

(1) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplies by 4.3.

(2) **Weekly.** Income received weekly is multiplied by 4.3.

(3) **Twice a month.** Income received twice a month is multiplied by 2.

(4) **Biweekly.** Income received every two weeks is multiplied by 2.15.

*[OAR Docket #09-907; filed 5-14-09]*

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

*[OAR Docket #09-908]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**

Subchapter 5. Member Services  
Part 9. Service Provisions  
317:40-5-101. [AMENDED]  
(Reference APA WF # 09-18)

**AUTHORITY:**

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

**DATES:**

**Adoption:**

April 9, 2009

**Approved by Governor:**

May 6, 2009

**Effective:**

July 1, 2009

**Expiration:**

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**FINDING OF EMERGENCY:**

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to specify the criteria for performance of architectural modifications and the requirements and standards thereof. Rule revisions are necessary to comply with recent amendments to the Developmental Disabilities Services Division (DDSD) Home and Community-Based Services (HCBS) Waivers regarding architectural modifications. Revisions will benefit OHCA and OKDHS by complying with legal mandates, providing clear guidance regarding waiver requirements that further benefit persons in need of such services, and providing OHCA, OKDHS, and community contract staff with rules that specify current procedures and the provision of services to persons involved with DDSD HCBS waivers.

**ANALYSIS:**

Rules for the Developmental Disabilities Services Division (DDSD) Home and Community-Based Services (HCBS) Waivers are revised to specify the criteria for performance of architectural modifications. The Oklahoma Health Care Authority administers Home and Community-Based Services Waivers for persons with mental retardation and certain persons with related conditions that are operated by the Oklahoma Department of Human Services DDSD. Recently, the Centers for Medicare and Medicaid has approved changes to these waivers which require revisions to agency rules. Further rule revisions mandate compliance with the Central Purchasing Act and allow for an Oklahoma Department of Human Services Developmental Disabilities Services Division staff with architectural modification experience to make architectural modification recommendations. Revisions are needed to agree with the waiver provisions as well as provide clarification to individuals served through these waivers, placement providers, community contractors, and OKDHS and OHCA staff.

**CONTACT PERSON:**

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE JULY 1, 2009:**

**SUBCHAPTER 5. MEMBER SERVICES**

**PART 9. SERVICE PROVISIONS**

**317:40-5-101. Architectural modifications**

(a) **Applicability.** The rules in this Section apply to architectural modification (AM) services authorized by the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) through Home and Community Based Services (HCBS) Waivers.

~~(#b) **General information.** Architectural modifications are performed by providers who have contractual agreements with the Oklahoma Health Care Authority to provide Home and Community Based Services (HCBS) to the home of an eligible member with accessibility, behavioral, sensory, or environmental difficulties to enhance the member's independence and safety. Modification services:~~

(1) are provided by building contractors who have contractual agreements with the Oklahoma Health Care Authority to provide Home and community Based Services;

(2) are performed on homes of eligible members who have disabilities that limit accessibility;

~~(4 3) Architectural modifications are provided based on the:~~

(A) assessment and Personal Support Team (Team) consideration of the member's unique needs per OAC 317:40-5-101(b);

(B) scope of architectural modifications per OAC 317:40-5-101;

(C) most appropriate and cost effective bid, if applicable, ensuring the quality of materials and workmanship; ~~and~~

(D) ~~availability~~ lack of a less expensive equivalent, such as assistive technology, that meets the member's needs; ~~;~~ and

(E) safety and suitability of the home.

~~(2 4) Necessary architectural are limited to modifications may be provided for each member for no more than of two different residences within any five seven year period beginning with the member's first request for an approved architectural modification service; ;~~

(5) are provided with assurance of plans for the member to remain in the residence for at least five years;

~~(3 6) The Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) may be deny denied authorization for architectural modifications services to the home of a member when DDSD determines the home is unsafe or otherwise unsuitable for architectural modifications.~~

(A) DDSD area office resource development staff with architectural modification experience screens a home for safety and suitability for architectural modifications prior to home acquisition.

(B) Members needing home modification services and provider agencies assisting members to locate rental property recommend identify several homes, when possible, for screening in order that to select a home with ~~minimal~~ the fewest or most cost effective modifications ~~may be selected;~~ ;

(4 7) Architectural modifications are provided; to eligible members with the homeowner's signed permission; to

## Emergency Adoptions

~~eligible members whether the member's home is rented or owned. ;~~

~~(58) Only modifications that are specific to the member's unique needs are authorized. ;~~

~~(69) Architectural modifications are not used authorized to modify homes solely for family or staff convenience or for cosmetic preference. ;~~

~~(710) Modifications are provided on finished rooms complete with wiring and plumbing. ;~~

~~(811) The DDS director or designee may approve written requests for exceptions to requirements of OAC 317:40-5-1-1 in exceptional circumstances. architectural modifications services that do not meet the requirements of OAC 317:40-5-101 may be approved by the DDS division administrator or designee in exceptional circumstances; and~~

~~(912) Authorization of architectural modifications complies are authorized in accordance with requirements of The Oklahoma Central Purchasing Act 74 O.S., §85.1 et. Seq., Chapter 15 of Title 580 of the Department of Central Services, and other applicable statutory provisions.~~

### ~~(b c)~~ **Assessment and Team process.**

~~(1) Architectural modification assessments are performed by:~~

~~(A) DDS area office resource development staff with architectural modification experience, when the requested architectural modification complies with minimum applicable national standards for persons with physical disabilities as applicable to private homes; or~~

~~(B) a licensed occupational therapist or physical therapist, at the request of designated DDS area office resource development staff or area program supervisory staff, when the requested architectural modification does not comply with exceeds or requires a variance to applicable national standards for persons with physical disabilities, as applicable to private homes or when such expertise is deemed necessary by DDS area office resource development staff or area program supervisory staff.~~

~~(2) The Team considers the most appropriate architectural modifications based on the:~~

~~(A) member's present needs;~~

~~(B) member's ability to access his or her environment; and~~

~~(C) possible use of assistive technology instead of architectural modification.~~

~~(3) The Team considers architectural modifications that:~~

~~(A) are needed by the member to achieve an activity that is: are necessary to ensure the health, welfare, and safety of the member; and~~

~~(i) meaningful to the member and requires another person to perform the activity, if the member cannot perform the activity independently, such as self-care, eating, or transfers; and~~

~~(ii) age appropriate, considering the member's level of functioning; and~~

~~(B) enhance the member's ability to: provide the member increased access to the home to reduce dependence on others for assistance in daily living activities.~~

~~(i) improve or maintain health and safety;~~

~~(ii) participate in community life;~~

~~(iii) establish meaningful relationships;~~

~~(iv) express choices; or~~

~~(v) live with dignity.~~

~~(e d) **Requirements and standards for architectural modification contractors and construction.** All contractors must meet applicable state and local requirements.~~

~~(1) Contractors are responsible for:~~

~~(A) obtaining all permits required by the municipality where construction is performed; and~~

~~(B) following all applicable building codes. ; and~~

~~(C) taking and providing pictures to area office resource development staff of each completed architectural modification project within five working days of project completion and prior to payment of the architectural modification claim. Area office resource development staff may take pictures of the completed architectural modification projects when requested by the contractor.~~

~~(2) Any penalties assessed for failure to comply with requirements of the municipality are the sole responsibility of the contractor.~~

~~(3) New contractors must provide three references of previous work completed.~~

~~(4) Contractors must provide evidence of:~~

~~(A) liability insurance;~~

~~(B) vehicle insurance; and~~

~~(C) worker's compensation insurance.~~

~~(d) **Standards for construction of architectural modifications.** All modifications are made in accordance with local and state housing codes, and permits are the sole responsibility of the contractor.~~

~~(45) All modifications meet the applicable national standards for persons with physical disabilities as applicable to private homes unless a variance is required by the assessment.~~

~~(26) Contractors complete construction in compliance with written assessment recommendations and addenda from the:~~

~~(A) DDS area office resource development staff with architectural modification experience, when the requested architectural modification complies with applicable national standards for persons with physical disabilities as applicable to private homes; or~~

~~(B) a licensed professional.~~

~~(37) All architectural modifications must be completed by using high standard materials and workmanship, in accordance with industry standard.~~

~~(48) Ramps are constructed using the standards in (A) through (G) of this paragraph.~~

- (A) All exterior wooden ramps are constructed of number two pressure treated wood.
- (B) Surface of the ramp has a rough, non-skid texture.
- (C) Ramps are assembled by the use of deck screws.
- (D) Hand rails on ramps, if required, are sanded and smooth.
- (E) Ramps can be constructed of stamped steel.
- (F) Support legs on ramps are no more than six feet apart.
- (G) Posts on ramps must be set or anchored in concrete.

(5.9) Roll-in showers are constructed to meet standards in (A) through (E) of this paragraph.

- (A) The roll-in shower includes a new floor that is ~~sloped at least two inches from the outside walls down to the drain, when space permits. When space does not permit, the floor slopes as much as is possible and appropriate~~ slopes uniformly to the drain at not less than one-fourth nor more than one-half inch per foot.
- (B) The material around the drain is flush, without an edge on which water can catch before going into the drain.
- (C) Duro-rock, rather than sheet rock, is installed around the shower area, at least 24 ~~to 36~~ inches up from the floor, with green board above the duro-rock.
- (D) Tile, shower insert, or other appropriate water resistant material is installed to cover the duro-rock and green board.
- (E) The roll-in shower includes a shower pan, or liner if applicable.

(6.10) DDSD area office resource development staff ~~inspects~~ inspect any or all architectural modification work and takes pictures of the final project, prior to payment of an architectural modifications claim, to ensure:

- (A) architectural modifications are completed in accordance with assessments; and
- (B) quality of workmanship and materials used comply with requirements of OAC 317:40-5-101.

(e) **Architectural modifications when members change residences.**

- (1) When two or more members share a home that ~~was has been architecturally modified using state or HCBS Waiver funds, and the member will no longer be sharing the home,~~ the member whose Plan of Care ~~includes~~ authorized the modifications is given the first option of remaining in the residence ~~if the roommates no longer wish to share a home.~~
- (2) Restoration of architectural modifications is performed only for members of the Homeward Bound class; when a written agreement between the homeowner and DDSD director, negotiated before any architectural modifications begin, describes in full the extent of the restoration. If no written agreement exists between the DDSD director and homeowner, OKDHS is not responsible to provide, pay for, or authorize any restorative services.

(f) **Services not covered under architectural modifications.** ~~Architectural modification services make homes accessible according to the member's specific needs.~~ Architectural modifications do not include construction, reconstruction, or remodeling of any existing construction in the home, such as floors, sub-floors, foundation work, roof, or major plumbing.

- (1) ~~No square~~ Square footage is not added to the home as part of ~~the an~~ architectural modification ~~process.~~
- (2) ~~The OKDHS does not authorize payment or provide any architectural modification.~~ Architectural modifications are not performed during construction or remodeling of a home ~~that is owned or being built for the member or his or her family.~~
- (3) Modifications ~~that are not considered architectural modifications and cannot be~~ authorized by the OKDHS include, but are not limited to:

- (A) roofs;
- (B) installation of heating or air conditioning units;
- (C) humidifiers;
- (D) water softener units;
- (E) fences;
- (F) sun rooms;
- (G) porches;
- (H) decks;
- (I) canopies;
- (J) covered walkways;
- (K) driveways;
- (L) sewer lateral lines or septic tanks;
- (M) foundation work;
- (N) room additions;
- (O) carports;
- (P) concrete for any type of ramp, deck, or surface other than a five by five landing pad at the end of a ramp, as described in applicable national standards for persons with physical disabilities as applicable to private homes;
- (Q) non-adapted home appliances;
- (R) carpet or floor covering, ~~unless documented as necessary to aid the member in mobility; and that is not part of an approved architectural modification that requires and includes a portion of the floor to be re-covered such as a roll in shower, a door widening;~~ or
- (S) ~~walk in bathtubs~~ a second ramp or roll in shower in a home.

- (4) A sidewalk is not authorized unless: needed by the member to move between the house and vehicle.
  - (A) ~~needed by the member to move between the house and vehicle; and~~
  - (B) authorized by the DDSD director or designee. The DDSD director or designee may consider other sidewalk needs.

(g) **Approval or denial of architectural modification requests services.** DDSD approval or denial of ~~the an~~ architectural modification ~~request service~~ is determined in accordance with (1) through (3) of this subsection.

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(1) The architectural modification request ~~sent~~ provided by the DDSO case manager to DDSO area office resource development staff includes:

(A) documentation from the member's Team confirming the need and basis for architectural modification, including the architectural modification assessment;

(B) documentation of current Team consensus, including consideration of issues per OAC 317:40-5-101~~(b)~~; ~~and~~

(C) lease, proof of home ownership, or other evidence that the member is able to live in the modified residence for at least 12 months; ~~;~~ and

(D) an assurance by the member or legal guardian, if applicable, that the member plans to reside in the residence for five years.

~~(2) Prior to authorization of architectural modification services, at least three competitive bids are obtained for services costing \$750 or more. The DDSO area office:~~

~~(A) authorizes architectural modification services up to less than \$2500; and~~

~~(B) is responsible for all required documentation; and~~

~~(C) sends~~ provides all ~~necessary~~ required information to the DDSO State Office architectural modification programs manager for authorization of services costing \$2500 or more.

~~(3) If the DDSO area office resource development staff, therapist, or Team determines the service is not appropriate, the DDSO area office resource development staff or DDSO State Office programs manager for architectural Architectural modifications provides a brief report describing the reason for the denial to the DDSO case manager may be denied when the requirements of OAC 317:40-5-101 are not met.~~

(h) **Appeals.** The denial of acquisition of an architectural modification request may be appealed per OAC 340:2-5.

(i) **Resolving problems with services.** If the member, family member, or legal guardian, or Team is dissatisfied with the architectural modification, the problem resolution process per OAC 340:100-3-27 is initiated.

[OAR Docket #09-908; filed 5-14-09]

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

[OAR Docket #09-904]

### RULEMAKING ACTION:

EMERGENCY adoption

### RULES:

Subchapter 11. Insure Oklahoma/O-EPIC IP

Part 5. Insure Oklahoma/O-EPIC Individual Plan IP Member Eligibility  
317:45-11-20. [AMENDED]

(Reference APA WF #09-15B)

### AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act and Sections 5003 through 5016 of Title 63 of Oklahoma Statutes; and the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5.

### DATES:

#### Adoption:

April 9, 2009

#### Approved by Governor:

April 28, 2009

#### Effective:

July 1, 2009

#### Expiration:

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules to disregard as income and resources certain amounts of unemployment compensation for the purpose of determining eligibility for Insure Oklahoma/O-EPIC IP benefits, as authorized and required by the American Recovery and Reinvestment Act of 2009.

### ANALYSIS:

Oklahoma took the option of allowing an additional \$25.00 per week in unemployment compensation for job seeking Oklahomans, as allowed by the American Recovery and Reinvestment Act of 2009. The additional \$25.00 per week of regular unemployment compensation will be paid to unemployed Oklahomans through June 30, 2010, as well as an additional amount of emergency unemployment compensation through May 31, 2010. The bill mandates that the additional compensation shall not be considered in determining eligibility for Medicaid benefits. Eligibility rules are revised to disregard the additional income when determining eligibility for the Insure Oklahoma/O-EPIC IP program.

### CONTACT PERSON:

Tywanda Cox at (405)522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D), AND EFFECTIVE JULY 1, 2009:**

## SUBCHAPTER 11. INSURE OKLAHOMA/O-EPIC IP

### PART 5. INSURE OKLAHOMA/O-EPIC INDIVIDUAL PLAN IP MEMBER ELIGIBILITY

#### 317:45-11-20. Insure Oklahoma/O-EPIC Individual Plan IP eligibility requirements

(a) Employees not eligible ~~for participating to participate~~ in an employer's ~~Qualified Health Plan (QHP)~~ QHP, employees of non-participating employers, self-employed, unemployed seeking work, and workers with a disability may apply for the ~~O-EPIC Individual Plan~~. Applicants cannot obtain ~~O-EPIC IP~~ coverage if they are eligible for ~~O-EPIC PA~~ ESI.

(b) ~~Applications may be found on the World Wide Web or may be requested by calling the O-EPIC helpline. Completed applications are submitted to the TPA.~~

~~(e 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 complete application is received by the TPA. The applicant is notified in writing of the eligibility decision.

~~(e c)~~ In order to be eligible for the IP, the applicant must:

- (1) choose a valid PCP according to the guidelines listed in OAC 317:45-11-22, at the time they make application;
- (2) be a US citizen or alien as described in OAC 317:35-5-25;
- (3) be an Oklahoma resident;
- (4) provide his/her social security number numbers for all household members;
- (5) be not currently enrolled in, or have an open application for, SoonerCare/Medicare;
- (6) be age 19 through 64 or an emancipated minor; and
- (7) make premium payments by the due date on the invoice; and
- (8) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2).

~~(e d)~~ If employed and working for an approved Insure Oklahoma/O-EPIC employer who offers a QHP, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and:

- (1) have household income at or below 200% of the Federal Poverty Level.
- (2) be ineligible for participation in their employer's QHP due to number of hours worked.
- (3) have received notification from Insure Oklahoma/O-EPIC indicating their employer has applied for Insure Oklahoma/O-EPIC and has been approved.

~~(e e)~~ If employed and working for an employer who doesn't offer a QHP, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and: ~~(1) have a countable household income at or below 200% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is \$240 per each full-time or part-time employed member; and (2) have received notification from O-EPIC indicating their employer has applied and has been approved with the attestation that they are not offering a QHP.~~

~~(e f)~~ If self-employed, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and:

- (1) must have household income at or below 200% of the Federal Poverty Level;
- (2) verify self-employment by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms; and
- (3) verify current income by providing appropriate supporting documentation; and
- (4) must not be employed by any full-time employer who meets the eligibility requirements in OAC 317:45-7-1(a)(1)-(2).

~~(e g)~~ If unemployed seeking work, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and:

- (1) Applicant must have household income at or below 200% of the Federal Poverty Level; In determining income, payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, will not be counted, as authorized under the American Recovery and Reinvestment Tax Act of 2009.
- (2) Applicant must verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:

- (A) OESC eligibility letter,
- (B) OESC weekly unemployment payment statement, or
- (C) bank statement showing state treasurer deposit.

~~(f h)~~ If working with a disability, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and:

- (1) must have household income at or below 200% of the Federal Poverty Level based on a family size of one; and
- (2) verify eligibility by providing a copy of their:
  - (A) ticket to work, or
  - (B) ticket to work offer letter.

*[OAR Docket #09-904; filed 5-14-09]*

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

*[OAR Docket #09-1041]*

**RULEMAKING ACTION:**  
EMERGENCY adoption

**RULES:**

- Subchapter 1. General Provisions of Child Welfare Services
- Part 1. Scope and Applicability
- 340:75-1-12.2 [AMENDED]
- Subchapter 6. Permanency Planning
- Part 8. Role of the Child Welfare Worker
- 340:75-6-48 [AMENDED]
- Subchapter 15. Adoptions
- Part 14. Post Adoption Services
- 340:75-15-128.2 [AMENDED]
- 340:75-15-128.5 [AMENDED]
- (Reference APA WF 09-06)**

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; H.R. 6893 - PL 110-351; and H.R. 5403 - PL 109-239.

**DATES:**

**Adoption:**

March 24, 2009

**Approved by Governor:**

April 27, 2009

**Effective:**

June 1, 2009

**Expiration:**

Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

# Emergency Adoptions

## FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as Oklahoma Department of Human Services (OKDHS) finds compelling public interest to bring the rules into compliance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (H.R. 6893 - PL 110-351) and Safe and Timely Interstate Placement of Foster Children Act of 2006 (H.R. 5403 - PL 109-239), and to clarify the appeal process for confirmed findings of child abuse and neglect. If the proposed revisions are not implemented immediately the agency will not be in compliance with federal mandates, children may be placed at risk, and educational stability will not be monitored.

## ANALYSIS:

The proposed revisions to Subchapters 1, 6, and 15 of Chapter 75 amend the rules to bring them into compliance with the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (House Resolution (H.R.) 6893 - Public Law (PL) 110-351) and Safe and Timely Interstate Placement of Foster Children Act of 2006 (H.R. 5403 PL 109-239) to: (1) update-supervision requirements for children in Interstate Compact on the Placement of Children (ICPC) placements; (2) update adoption assistance eligibility requirements; and (3) require assurances that children receiving Title IV-E adoption assistance are enrolled in school. Further revisions to Subchapter 1 clarify the eligibility criteria for an appeal of a confirmed finding of child abuse or neglect.

## CONTACT PERSON:

Dena Thayer at (405)521-4326

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 253(D) AND EFFECTIVE JUNE 1, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS OF CHILD WELFARE SERVICES

### PART 1. SCOPE AND APPLICABILITY

#### 340:75-1-12.2. Appeal process

(a) **Purpose.** The 1996 Child Abuse Prevention and Treatment Act (CAPTA), Section 5101 et seq. of Title 42 of the United States Code, requires the Oklahoma Department of Human Services (OKDHS) Child Welfare (CW) to provide an appeal process for persons who disagree with a confirmed finding of child abuse or neglect. The appeal process:

- (1) provides for the review of any confirmed finding by program staff not directly involved in the investigation; and
- (2) serves as a quality assurance mechanism to assess compliance of staff findings with Child Protective Services (CPS) standards, per OAC 340:75-3.

(b) **Eligibility criteria.** A person may request a review through the appeal process when:

- (1) the person is a person responsible for the child (PRFC), per OAC 340:75-3-2, in an investigation involving abuse or neglect allegations; and
- (2) the investigation results in a finding of confirmed - services recommended or confirmed - court intervention requested regarding the PRFC, and no deprived petition is filed with allegations directly related to the confirmed findings or when a deprived petition is filed, the ~~court~~ deprived case is dismissed prior to adjudication; or

~~(3) no civil proceedings are pending regarding the specific investigation referred for appeal or when civil proceedings are filed, the court case is dismissed prior to a final judgment or results in a favorable judgment for the appellant; and a PRFC is a current party to deprived proceedings and a new investigation results in a finding of confirmed-services recommended or confirmed-court intervention requested; and the district attorney (DA) does not file a new deprived petition, nor amend the current, deprived petition to reflect allegations directly related to the new confirmed findings.~~

~~(4) no criminal proceedings are pending regarding the specific investigation referred for appeal or when criminal charges are filed, the court case is dismissed or the appellant is found not guilty.~~

(c) **Investigations not eligible for appeal.** The appeal process applies only to investigations conducted by OKDHS CW. Investigations that are not eligible for the appeal process include investigations of child abuse or neglect conducted by:

- (1) a tribal representative on tribal land; or
- (2) the OKDHS Office of Client Advocacy.

(d) **Procedures for appeal process.** The procedures for the appeal process are outlined in (1) through (5).

(1) **Notification of PRFC.** Upon confirmation of abuse, neglect, or both, the CW worker notifies the PRFC of the finding by mailing Forms 04KI019E, Notification Concerning Finding(s) of Child Abuse/Neglect, and 04KI020E, Request for Appeal, provided the criteria in OAC 340:75-1-12.2(b)(1) through (5) are met. Forms 04KI019E and 04KI020E are:

(A) mailed within ten calendar days of confirmation of abuse or neglect;

(B) mailed to the PRFC's last known address.

(i) Form 04KI019E informs the PRFC of:

- (I) any confirmed child abuse or neglect finding in an investigation; and
- (II) the date of the abuse or neglect referral, allegation, and finding without identifying the reporting party.

(ii) Form 04KI020E specifies:

- (I) the PRFC may file an appeal by mailing a request to Children and Family Services Division (CFSD) Appeals Section within 15 calendar days from the postmark of Form 04KI020E; and
- (II) failure to submit an appeal request within 15 calendar days from the postmark of Form 04KI020E results in the finding becoming final and the PRFC waives any right to appeal this finding in the future, unless good cause is established per OAC 340:75-1-12.2(d)(2); and

(C) not mailed:

- (i) when ~~a juvenile, civil, or criminal litigation~~ deprived petition is pending with allegations directly related to the confirmed finding of abuse or neglect in the that resulted from an investigation; ~~and or~~

- (ii) to the PRFC when case records reflect that notification may place family members at risk.
- (2) **Conditions of good cause.** A PRFC must be granted a review despite failure to make a timely response, provided good cause is established, such as severe illness or other disabling condition.

~~(3) **Appellant's requirements for requesting a review.**~~

~~(A) When a civil proceeding is dismissed prior to a final judgment or results in a favorable judgment for the appellant, the appellant may request a review by submitting a copy of the court ruling to the CFSD Appeals Section.~~

~~(B) When criminal charges are dismissed without a plea agreement or the appellant is found not guilty, the appellant may request a review by submitting a copy of the court ruling to the CFSD Appeals Section.~~

- (43) **Response to appeal request from PRFC.** If the PRFC requests a review within the required time, the CFSD Appeals Section responds to the PRFC through written notice within ten calendar days following receipt of the PRFC's request for review. The CFSD Appeals Section notifies the PRFC:

- (A) of the right to provide additional information through written statements, that must be submitted within 30 calendar days from the postmark of the notification that the appeal was accepted for review;

- (B) that failure to submit additional information within 30 calendar days results in a waiver of this right, unless good cause is established per OAC 340:75-1-12.2(d)(2); and

- (C) that verification of legal representation must be established if the PRFC desires notification to an attorney of the determination results. Verification is established by a:

- (i) release of information signed by the PRFC; or
- (ii) statement of representation on official letterhead from the attorney.

- (54) **Procedure for conducting the review.** Within 90 days following acceptance of the PRFC's timely request for a review, or a late request in which good cause is established per OAC 340:75-1-12.2(d)(2), the CFSD Appeals Committee determines whether the confirmed finding meets the criteria for confirmation, per OAC 340:75-3.

- (A) The decision to uphold or reverse the original finding is final and reached by reviewing:

- (i) Form 04KI003E, Report to District Attorney (DA), and attachments, and relevant CW information as documented in the Report to DA in the KIDS system; and
- (ii) all written statements submitted by the PRFC.

- (B) If determination establishes that a finding failed to meet the criteria for confirmation, the CFSD Appeals Committee reverses the finding. If the finding is reversed, a new finding is entered in KIDS by the CFSD Appeals Section.

(C) Notification of the final determination of the finding is the responsibility of the CFSD Appeals Section. Notification must be made within 90 days following acceptance of the appellant's request for a review. Written notification is sent to the:

- (i) appellant;
- (ii) county director, CW field liaison, CW supervisor, and CW worker;
- (iii) office of the ~~district attorney~~ DA in the county in which the finding originated; and
- (iv) tribe, if applicable.

**SUBCHAPTER 6. PERMANENCY PLANNING**

**PART 8. ROLE OF THE CHILD WELFARE WORKER**

**340:75-6-48. CW worker contacts with child, placement providers, parents, and service providers**

(a) **Child and placement provider.** The purposes of a Child Welfare (CW) worker's contacts include, but are not limited to, maintaining the child's connections to his or her family, allowing the worker to evaluate the interactions, conditions, and services the child is receiving, particularly those in the home or in placement, and establishing and maintaining a teamwork relationship. CW worker contacts with the child in Oklahoma Department of Human Services (OKDHS) custody and the placement provider are provided in (1) through (78).

(1) **Foster family care and therapeutic foster care.**

(A) The CW worker in the county of placement has face-to-face contact with the child in the foster home within the first two weeks of each placement and a minimum of once every calendar month thereafter, with no more than 31 days between contacts. After initial contact, the CW worker must have contact with the child in the foster home no less than two times per quarter. The CW worker may complete one face-to-face contact per quarter in a location other than the foster home. Once the CW worker makes contact in an alternative location, the next two monthly contacts, at a minimum, must take place in the foster home. This applies to a child placed in:

- (i) paid or non-paid kinship placement;
- (ii) regular foster care;
- (iii) contract foster care; and
- (iv) therapeutic foster care.

(B) When the child is placed in a county other than the county of jurisdiction, the county of jurisdiction worker contacts monthly, either by phone, electronic mail, or in person, the CW worker in the county of placement to discuss and determine responsibility for any pertinent actions that either require follow-up or initiation in order to achieve the permanency plan for the child.

(C) Contacts increase in times of change and stress.

## Emergency Adoptions

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- (D) If there is good cause to believe that a child needs to be interviewed privately during a contact in the foster home, for reasons other than abuse and neglect allegations, the foster parent provides a place in the home where the child can be interviewed outside the foster parent's presence.
- (2) **Shelter.** A CW worker has face-to-face contact with the child at the shelter within 24 hours of the child's entry into the shelter and a minimum of once weekly while the child remains in the shelter. During the shelter stay, when the child's CW worker offices:
- (A) within 60 miles of the shelter, the CW worker visits and provides any identified services to the child; or
  - (B) more than 60 miles from the shelter, the assigned shelter liaison visits and provides any identified services to the child. The child's CW worker contacts weekly, either by phone or in person, the shelter social worker while the child remains in shelter care, per OAC 340:75-10-10.
- (3) **Emergency foster care.** When the child is placed in emergency foster care, the CW worker:
- (A) has face-to-face contact with the child in the emergency foster home once every calendar month, with no more than 31 days between contacts; and
  - (B) attends weekly staffings with the emergency foster care contract agency.
- (4) **Community-based residential care - non-OKDHS operated.** When the child is placed in a group home, specialized community home, or Developmental Disabilities Services Division (DDSD) group home, the CW worker from the county of jurisdiction has face-to-face, private contact with the child and placement provider in the placement once every:
- (A) calendar month, with no more than 31 days between contacts, when the child's placement is 30 miles or less from the county of jurisdiction; and
  - (B) 90 days when the child's placement is over 30 miles from the county of jurisdiction.
    - (i) The facility liaison contacts the child and placement provider during the months the CW worker does not have a face-to-face contact with the child.
    - (ii) Each calendar month the facility liaison completes the required contact with the child, the CW worker contacts the facility liaison to communicate any pertinent actions that either require initiation or follow-up in order to achieve the child's permanency plan.
- (5) **Community-based residential care - OKDHS operated.** When the child is placed in an OKDHS operated group home, the CW worker has phone or personal contact with the child and group home worker once every calendar month, with no more than 31 days between contacts. The group home worker visits with the child and coordinates or completes any applicable permanency planning duties pertaining to the child.
- (6) **Inpatient treatment - acute.** When a child is in acute inpatient treatment, face-to-face contact with the child at the placement location is provided by the facility liaison every calendar month, with no more than 31 days between contacts.
- (A) Daily phone contact is maintained between the mental health facility and the child's CW worker during the first five working days of treatment.
  - (B) If the child remains in acute inpatient treatment in excess of five working days, the CW worker contacts the child's therapist or other mental health professional and facility liaison by phone a minimum of once a week and inquires about the child's progress in order to facilitate the discharge plan, per OAC 340:75-16.
- (7) **Inpatient treatment - residential.** When the child is in inpatient residential treatment, face-to-face contact with the child at the placement location is provided by the facility liaison every calendar month, with no more than 31 days between contacts. Close contact is maintained between the liaison and the child's worker. In addition, the CW worker:
- (A) has on-site interaction with the child every:
    - (i) calendar month, with no more than 31 days between contacts if the child's placement is 30 miles or less from the county of jurisdiction; and
    - (ii) 90 days if the child's placement is over 30 miles from the county of jurisdiction; and
  - (B) contacts the child's therapist or other mental health professional by phone every two weeks and inquires about the child's progress toward the discharge plan, per OAC 340:75-16.
- (8) **Own home.**
- (A) The CW worker has face-to-face private contact with the child a minimum of once every calendar month, with no more than 31 days between contacts. When the child initially returns to the parent(s) or is in the custody of the parent(s) in a supervision only case, the first three contacts are in the child's home. Contact location may then alternate between the home and any other location.
  - (B) Contacts are increased during times of change and stress.
- (b) **Child - special case circumstances.** There are several special case circumstances when minimum required contacts with the child and placement provider may be allowed. The decision to allow the use of the minimum required contact rule requires CW supervisory approval. Reduced contact with the child and family is not considered when concerns are identified that require more intensive contact. The circumstances and the minimum amount of required contact are detailed in (1) through (6).
- (1) **Own home with CHBS.** When there is an open Comprehensive Home-Based Services (CHBS) case for the purpose of reunification of a child in the custody or supervision of OKDHS, the assigned contract case manager (CCM) has face-to-face, private contact with the child in the home per contract specifications and the CW worker

has face-to-face private contact with the child in the home a minimum of once every 90 days. The CW worker contacts the CCM monthly, either by phone or in person, and inquires about case circumstances and identified needs.

(2) **DDSD placement.** When a child in the custody of OKDHS is in a Developmental Disabilities Services Division (DDSD) placement other than a group home, DDSD case management staff provides services to the child, per OAC 317:40-5-57. The CW worker:

(A) in the county of placement has face-to-face, private contact with the child in the home a minimum of once every 90 days;

(B) in the county of placement contacts, either by phone or in person, the DDSD case manager monthly and inquires about case circumstances and identified needs; and

(C) in the county of jurisdiction, when the child is placed outside the county of jurisdiction, contacts monthly, either by phone, electronic mail, or in person, the CW county of placement worker in order for both workers to:

(i) remain actively involved in placement and service planning for the child, through coordination and information sharing with the placement provider and DDSD case management staff; and

(ii) communicate any pertinent actions that require initiation or follow-up in order to achieve the permanency plan for the child.

(3) **Youth, 18 years of age or older, in voluntary placement.** The CW worker's contact with the youth, 18 years of age or older, in placement voluntarily, is determined jointly by the CW supervisor, CW worker, youth, and placement provider.

(A) A minimum of one face-to-face contact with the youth is required in the placement location every six months until case closure.

(B) During the months when the CW worker's contact with the youth is not in the provider's home, the worker contacts the youth and the provider by phone.

(4) **Custody with relative or another person with OKDHS supervision.** The CW worker has face-to-face contact with the child placed in the custody of a relative or another person with OKDHS supervision a minimum of once every calendar month, with no more than 31 days between contacts. The location of the worker's contact may alternate between contact in the home and any other location.

(5) **ICPC placement in Oklahoma residential treatment centers or group homes.** The CW worker has face-to-face contact with the child in the facility at least every 90 days in the facility when placed in Oklahoma and every six months when placed out of state through Interstate Compact on the Placement of Children (ICPC); per OAC 340:75-1-86;

(A) monthly when the child is in the custody of the sending state; or

(B) every 90 days when the child is in the custody of the parent or other legal guardian.

(6) **Sunbeam Family Programs placement.** When the child in out-of-home placement is placed with Sunbeam Family Programs, the assigned Sunbeam Family Programs worker has face-to-face, private contact with the child in the home per contract specifications. This worker's contact meets the minimum monthly requirement for contact with the child. The CW worker maintains responsibility for coordination and completion of Form 04KI009E, Court Report, or 04KI014E, Individualized Service Plan (ISP) Progress Report, and attendance at any court hearing involving the child.

(7) **ICPC placement with parent, relative, or foster home.** The CW worker assures that an agency caseworker of the receiving ~~State~~ state makes a face-to-face contact with the child in the parent, relative, or foster home no less frequently than every month and submits a report on the content of the contact.

(c) **Parents.** The CW worker has face-to-face contact with the parent(s) of the child within the first two weeks of the child's removal and a minimum of once every calendar month thereafter, with no more than 31 days between contacts. The CW supervisor and worker decide the location of the contact based upon case circumstances. The CW worker makes a home visit when assessing the home for reunification purposes. Exceptions to contacts with the parent(s) are made when:

(1) the child has been returned to or has never been removed from the parent(s)' custody and OKDHS has been ordered to provide supervision. The first three contacts by the CW worker are in the parent(s)' home. Contact location may then alternate between the home and any other location;

(2) there is an open CHBS case for the purpose of reunification. The CCM has contact with the parent(s) in the home per contract specifications and the CW worker has contact with the:

(A) parent(s) in the home a minimum of once every 90 days; and

(B) assigned CCM monthly, by phone or in person, to:

(i) staff the case;

(ii) discuss current case circumstances; and

(iii) assess the need for more intensive contact by the CW worker;

(3) the child has been returned for at least six months and OKDHS has been ordered to continue legal custody, supervision, or both. The CW worker has one face-to-face private contact with the parent(s) within two weeks prior to each scheduled court hearing unless more frequent visits are ordered by the court in order to obtain updated information to provide to the court. Contacts are increased during times of change and stress;

(4) the parent(s)' whereabouts are unknown;

(5) parental rights have been terminated; or

(6) other justified reasons exist that are documented in the case record.

(d) **Parents - special circumstances.** Phone contact with the parent(s) of the child is allowed in place of face-to-face contact when the parent(s) is incarcerated or living out-of-state.

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The CW county of jurisdiction worker is responsible for contact unless an exception applies. Appropriate exceptions include, but are not limited to, the:

- (1) parent(s) has had no contact with the child and the child does not wish to have contact;
  - (2) parent(s) is incarcerated for an offense that resulted in the death penalty; or
  - (3) length of the parent(s)' incarceration is expected to surpass the date of the child obtaining the age of majority.
- (e) **Service providers.** The CW worker has phone contact at least quarterly and no later than ten working days prior to each court hearing with any service provider for the child, parent(s), or family in order to obtain current information regarding the client's treatment status and obtain the service provider's recommendation regarding whether services are continued or terminated or additional services are necessary.
- (f) **OCS providers.** The CW worker contacts the Oklahoma Children's Services (OCS) provider and:
- (1) schedules, attends, and presents safety issues and needed changes at the CHBS intake staffing no later than 15 working days from the date the authorized referral is assigned;
  - (2) participates in monthly staffings, in person or by phone, with the assigned CCM or parent aide;
  - (3) reviews at least monthly the CCM or parent aide KIDS contacts and reports; and
  - (4) responds to critical incident reports, faxed or phoned in to the CW worker by the CCM or parent aide, that are risk alerts, per OAC 340:75-1-152.9.

## SUBCHAPTER 15. ADOPTIONS

### PART 14. POST ADOPTION SERVICES

#### 340:75-15-128.2. Eligibility requirements for Title IV-E adoption assistance

(a) **The child.** The requirements for a child to be eligible for Title IV-E adoption assistance are outlined in this subsection. ~~The child is:~~

- (1) To be considered for adoption assistance, the child is:
  - (A) determined to have special needs as outlined in OAC 340:75-15-128.4 prior to the finalization of the adoption; and
  - (B) by way of a voluntary placement, voluntary relinquishment, or a court-ordered removal with a judicial determination that remaining in the home would be contrary to the child's welfare, is at the time of initiation of adoption proceedings, in the care of:
    - (i) OKDHS;
    - (ii) a federally recognized tribal organization;  
or
    - (iii) effective October 1, 2009 a licensed private child placement agency.

~~(2) Title IV E eligible as defined in OAC 340:75-13-13; To be eligible for adoption assistance the child:~~

- ~~(A) is Aid to Families with Dependent Children (AFDC) eligible at the time of removal as defined in OAC 340:75-13-13;~~
- ~~(B) has attained the age listed in (i) through (ix) of this subparagraph in that federal fiscal year (FFY) phased in from October 1, 2009 through October 1, 2017, and an adoption assistance agreement is entered into during that FFY. The schedule for phasing in, based on the child's applicable age which decreases by two years each subsequent FFY year, is:~~
  - ~~(i) FFY 2010 16 years old;~~
  - ~~(ii) FFY 2011 14 years old;~~
  - ~~(iii) FFY 2012 12 years old;~~
  - ~~(iv) FFY 2013 10 years old;~~
  - ~~(v) FFY 2014 8 years old;~~
  - ~~(vi) FFY 2015 6 years old;~~
  - ~~(vii) FFY 2016 4 years old;~~
  - ~~(viii) FFY 2017 2 years old; and~~
  - ~~(ix) FFY 2018 or thereafter any age.~~

~~(C) meets the disability or medical requirements of the Supplemental Security Income (SSI) program;~~

~~(D) is residing with a minor parent in foster care and the minor parent was placed in foster care by way of a voluntary placement agreement, voluntary relinquishment, or court-ordered removal;~~

~~(E) was eligible for Title IV-E adoption assistance in a previous adoption in which all of the child's adoptive parents have died or had their parental rights voluntarily or involuntarily terminated; or~~

~~(F) beginning October 1, 2009, is a child of any age for which an adoption assistance agreement is entered into if the child:~~

- ~~(i) has been in foster care for 60 consecutive months; and~~
- ~~(ii) is a sibling to a child who is eligible due to age or length in foster care and is placed in the same adoptive placement.~~

~~(3) determined to be a child with special needs prior to the finalization of the adoption;~~

~~(4) eligible for Supplemental Security Income (SSI) benefits at the time the adoption petition is filed and meets the definition of a child with special needs prior to finalization of the adoption. How the child was removed from his or her home or whether the state has responsibility for the child's placement and care is not considered;~~

~~(5) eligible as a child of a minor parent and meets the definition of a child with special needs~~

~~(A) This eligibility requirement is met if:~~

- ~~(i) the child's parent is in foster care and receiving Title IV E foster care maintenance payments that cover both the minor parent and the child at the time the adoption petition is initiated; and~~
- ~~(ii) the special needs determination is made prior to finalization of the adoption.~~

~~(B) There is no requirement that the child must have been removed from home as a result of a judicial determination or pursuant to a voluntary placement agreement.~~

~~(C) If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances; and~~

~~(6) eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs:~~

~~(A) When a child is adopted and receives Title IV-E adoption assistance, but the adoption later dissolves or all of the child's adoptive parents are dead, the child may continue eligibility for Title IV-E adoption assistance in a subsequent adoption.~~

~~(B) The manner of a child's removal from the adoptive home is not considered.~~

(b) **The adoptive family.** There is no means test for the prospective adoptive parent(s) to determine eligibility for adoption assistance. ~~A prospective adoptive parent is not eligible for Title IV-E adoption assistance~~ Title IV-E adoption assistance benefits are not available if the person a prospective adoptive parent has a felony conviction:

(1) at any time for child abuse or neglect; spousal abuse; crimes against children, including child pornography; or crimes involving violence, including rape, sexual assault, or homicide; or

(2) in the past five years for physical assault, battery, or a drug related offense.

(c) **School enrollment.** Title IV-E adoption assistance benefits are not available unless the prospective adoptive parent(s) provides written verification at the time the prospective adoptive parent(s) applies for adoption assistance and annually thereafter, that each child who has attained the minimum age for compulsory school attendance under state law is:

(1) enrolled in an institution which provides elementary or secondary education as determined under the law of the state or other jurisdiction in which the institution is located;

(2) instructed in elementary or secondary education at home in accordance with a home school law or other jurisdiction in which the home is located;

(3) in an independent study elementary or secondary education program in accordance with the law of the state or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(4) incapable of attending school on a full-time basis due to a documented medical condition supported by regular updates.

(d) **International adoption.** A child who has special needs but who is not a citizen or resident of the United States and was either adopted in another country or brought to the United States for the purpose of adoption is categorically ineligible for Title IV-E adoption assistance except if the child meets

the eligibility criteria after the dissolution of the international adoption.

**340:75-15-128.5. Adoption assistance application procedures**

(a) **Application process.** To apply for adoption assistance, Form 04AN001E, Adoption Assistance Application, is completed by the prospective adoptive parent(s), custodial agency, or tribe on behalf of the child and family and is submitted to Children and Family Services Division (CFSD), Adoption Assistance Section for approval.

(b) **Interstate adoptive placements.** The provisions of the Adoption Assistance Program of the state in which the application is made govern the terms of an adoption assistance agreement, including, but not limited to, the rates of the adoption assistance payments.

(1) For federally funded adoption assistance in interstate adoptions, application is made to:

(A) Oklahoma, if the child is in the custody of the Oklahoma Department of Human Services (OKDHS) or a tribe and receiving Title IV-E foster care and placed for adoption in another state;

(B) the other state, when an Oklahoma child is placed by any other entity;

(C) the other state, when a child is placed in Oklahoma by the public child welfare agency of another state or a tribal child in Title IV-E foster care of another state; or

(D) Oklahoma, when a child is placed in Oklahoma from another state by any other entity and there is compliance with the provisions of the Interstate Compact on the Placement of Children.

(2) For state funded adoption assistance in interstate adoptions, application is made to Oklahoma only when the child is in the legal custody of OKDHS or an Oklahoma tribe, as defined in OAC 340:75-15-128.3(a)(2), at the time of adoption, regardless of the residence of the adoptive parent(s) by whom the child is adopted. A child placed in Oklahoma from another state is not eligible for state funded adoption assistance in Oklahoma.

(c) **Determination of adoption assistance benefits.**

(1) Each Adoption Assistance Agreement is tailored to the individual situation, not according to a set of predetermined guidelines.

(2) The adoptive parent(s) is advised by the adoption specialist of the different components of adoption assistance, including special services, coverage under Title XIX Medicaid, reimbursement of non-recurring adoption expenses, and a monthly assistance payment.

(A) If the child is eligible for Title IV-E adoption assistance, the amount of assistance payment, if any, is determined through agreement between the adoptive parent(s) and OKDHS on an amount within the range of adoption assistance rates in OKDHS Appendix C-20, Children and Family Services Division Rates Schedule, up to a maximum amount which must not exceed the foster care maintenance payment which would have been paid during the period if the

## Emergency Adoptions

child with respect to whom the adoption assistance payment is made had been in a foster family home. Therapeutic foster care does not constitute a foster family home for which foster care maintenance payment is made.

(i) The adoption specialist works with the adoptive parent(s) to reach agreement on the assistance amount, taking into consideration the circumstances of the adopting parent(s) and the needs of the child.

(ii) If the parties cannot come to an agreement, OKDHS establishes the payment amount.

(B) If the child is eligible for state funded adoption assistance, OKDHS determines the adoption assistance payment amount within the range of rates in OKDHS Appendix C-20 based on the needs of the child and circumstances of the adoptive family. The maximum amount of adoption assistance may not exceed the foster care maintenance payment that would have been paid during the period if the child with respect to whom the payment is made had been in a foster family home. Therapeutic foster care does not constitute a foster family home for which foster care maintenance payment is made.

(C) For federally funded or state funded adoption assistance, a zero payment agreement may be reached at the time Form 04AN002E, Adoption Assistance Agreement, is signed.

(i) The zero payment agreement applies in cases where a risk of physical or mental disease exists but is not manifested, no other special factor or condition exists, and the other two criteria set forth in OAC 340:75-15-128.4(1) and (3) are met.

(ii) If documented symptoms of a physical or mental disease are later manifested, Form 04AN002E may be modified by agreement of the adoptive parent(s) and CFSD.

(D) For federally funded or state funded adoption assistance, if the child is eligible for a Difficulty of Care (DOC) Rate, this rate is the maximum monthly assistance payment.

(E) For federally funded or state funded adoption assistance, updated supporting documentation for continuing eligibility may be required of the adoptive parent(s) by OKDHS at any time.

(d) **Adoption Assistance Agreement.** Form 04AN002E must be signed by the adoptive parent(s) and OKDHS prior to finalization of the adoption for Title IV-E federally funded adoption assistance, state funded adoption assistance, and non-recurring assistance.

(1) Adoption assistance must be approved and the initial agreement signed prior to the child attaining 18 years of age.

(2) When a child has been determined eligible by OKDHS, adoption assistance may commence at the time of adoptive placement or at the time of finalization of the adoption.

(e) **Annual reviews.** When adoption assistance benefits are for more than one year, OKDHS annually reviews Form 04AN002E and mails to the adoptive parent(s) Form 04AN014E, Adoption Assistance Annual Review, to ensure the adoptive parent(s) is fulfilling the obligations of Form 04AN002E. The adoptive parent is required to:

(1) inform OKDHS when circumstances occur that make the child ineligible for assistance payments or eligible for assistance payments in a different amount; and

(2) provide assurance annually that each child, who has attained the minimum age for compulsory school attendance under state law of the child's state of residence is:

(A) enrolled in an institution which provides elementary or secondary education as determined under the law of the state or other jurisdiction in which the institution is located;

(B) instructed in elementary or secondary education at home in accordance with a home school law or other jurisdiction in which the home is located;

(C) in an independent study elementary or secondary education program in accordance with the law of the state or other jurisdiction in which the program is located, which is administered by the local school or school district; or

(D) incapable of attending school on a full-time basis due to a documented medical condition supported by regular updates.

(f) **Application made after finalization of adoption.**

This Subsection applies only to Title IV-E federally funded adoption assistance. The provision for state funded application made after finalization of adoption is found at OAC 340:75-15-128.3(e). Federal regulations require that Form 04AN002E be signed and in effect at the time of, or prior to, the final decree of adoption. [45 CFR 1356.40(b)(1)] If the adoptive parent(s) feels benefits on behalf of an adoptive child were wrongly denied, the adoptive parent(s) may request a fair hearing, even if the adoptive parent(s) applied for adoption assistance after finalization of the adoption. If the adoptive parent(s) prevails in a fair hearing, OKDHS may determine whether the child would have met all eligibility requirements at the time of the placement in the adoptive home and at finalization of the adoption and reverse the earlier decision to deny benefits.

(1) **Eligibility.** A child may be eligible for Title IV-E post adoption assistance only if:

(A) the adoptive parent(s) prevails in a fair hearing and it is determined that the adoptive parent(s) proved an extenuating circumstance exists, such as:

(i) relevant facts regarding the child, the biological family, or the child's background were known and were not presented to the adoptive parent(s) prior to the finalization of the adoption;

(ii) denial of assistance was based upon a means test of the adoptive parent(s);

(iii) erroneous determination by OKDHS that a child was ineligible for adoption assistance; or

- (iv) OKDHS was required and failed to advise the adoptive parent(s) of the availability of the Title IV-E adoption assistance program; and
- (B) at the time of the placement in the adoptive home and at finalization of the adoption, the child met all eligibility requirements per OAC 340:75-15-128.2 and 340:75-15-128.4.
- (2) **Benefits.** The benefits are the same as those listed in OAC 340:75-15-128.1.
- (3) **Payment.** If adoption assistance payments are approved by OKDHS, they begin effective the date of approval. OKDHS considers retroactive payments on a case-by-case basis, but in no event for a period that exceeds five years or the date the initial application for assistance was denied, whichever is less.
- (4) **Procedures.** The procedures for securing Title IV-E post adoption assistance are identified in (A) and (B) of this paragraph.
  - (A) **Application packet.** The application includes:
    - (i) a court order showing the child was removed from the home by a judicial determination

- to the effect that remaining in the home was contrary to the welfare of the child;
- (ii) Form 04AN001E, Adoption Assistance Application;
- (iii) Form 08MA002E, SoonerCare Health Benefits Application;
- (iv) description of child's special needs which meet the eligibility criteria;
- (v) documentation of special needs from physician(s), social worker(s), adoptive parent(s), or other professionals, as required; and
- (vi) criminal background check.
- (B) **Application process.** Application for Title IV-E post adoption assistance is made by the adoptive parent(s) to CFSD, Adoption Assistance Section and reviewed by the Adoption Assistance Review Committee.

*[OAR Docket #09-1041; filed 5-22-09]*

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# Permanent Final Adoptions

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

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

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

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

## TITLE 5. OKLAHOMA ABSTRACTORS BOARD CHAPTER 2. ADMINISTRATIVE OPERATIONS

[OAR Docket #09-893]

**EDITOR'S NOTE:** *The permanent rules in this new Chapter 2 were promulgated by the agency to supersede emergency rules in Chapter 1 that became effective 4-17-08 [see 25 Ok Reg 1499].*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [NEW]

5:2-1-1 through 5:2-1-4 [NEW]

Subchapter 3. Administrative Operations [NEW]

5:2-3-1 through 5:2-3-7 [NEW]

### AUTHORITY:

Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"; Oklahoma Abstractors Board

### DATES:

#### Comment period:

February 2, 2009 through March 5, 2009

#### Public hearing:

March 5, 2009

#### Adoption:

March 12, 2009

#### Submitted to Governor:

March 17, 2009

#### Submitted to House:

March 17, 2009

#### Submitted to Senate:

March 17, 2009

#### Gubernatorial approval:

April 24, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2009

#### Final adoption:

May 12, 2009

#### Effective:

July 15, 2009

### SUPERSEDED EMERGENCY ACTIONS:

See Editor's Note above.

### INCORPORATIONS BY REFERENCE:

None.

### ANALYSIS:

The proposed rules provide for key definition of terms covered under the statute. It further sets forth the general administration of the office and the conduct of its daily business, including its physical address, mailing address, phone number, and business hours. These permanent rules are necessary to establish the office and its accessibility to the public.

### CONTACT PERSON:

Glynda Reppond, Executive Director (405) 522-5019

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED**

**FINALLY ADOPTED AS SET FORTH IN 75 O.S.  
SECTION 380.1(A), WITH AN EFFECTIVE DATE  
OF JULY 15, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 5:2-1-1. Purpose

The Rules of this Title are provided for the purpose of interpreting and implementing the Oklahoma Abstractors Act, as set out in Title 1 of the Oklahoma Statutes, which established the Oklahoma Abstractors Board and conferred upon the Board the responsibility for administering and enforcing the Act.

### 5:2-1-2. Definitions

In addition to the terms defined in the Oklahoma Abstractors Act, the definitions of the following words and terms shall be applied when implementing the Act and rules adopted by the Board:

"Abstractor" means the holder of an abstract license, certificate of authority, temporary certificate of authority, or permit.

"Compile" means to arrange in an orderly and logical manner all recorded instruments relating to a particular chain of title of real property.

"Employee" means a person who is compensated, directly or indirectly, by a holder of a certificate of authority, permit, or temporary certificate of authority, who performs duties regulated by the Act.

"Final title report" means the document resulting from the final title search required to be conducted by an abstractor in the county where the property is located prior to the issuance of a title insurance policy pursuant to the rules of the Oklahoma Insurance Department as set out in Title 365:20-3-3(b) of the Oklahoma Administrative Code and shall include all information as mandated by Section 11-5-3 of these rules.

"Licensee" means a person who holds a current abstract license.

### 5:2-1-3. Authority, interpretation, and severability of rules

These rules are adopted pursuant to the provisions of the Oklahoma Abstractors Act, Title 1 of the Oklahoma Statutes, and the Administrative Procedures Act. Should a court of competent jurisdiction or the Attorney General of Oklahoma find any part of these rules to be inconsistent with the provisions of

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law as they presently exist or are hereafter amended, they shall be interpreted to comply with the statutes as they presently exist or are hereafter amended. The partial or total invalidity of any section of this Chapter shall not affect the valid sections.

## **5:2-1-4. Notification to Governor of Board membership status.**

(a) The minutes of the Board shall reflect the absence of any Board member and the Board determination if the absence is unavoidable.

(b) In the event the Board determines that a member of the Board has ceased to be qualified to serve pursuant to the provisions of subsection H, Section 22 of the Act, the Chair shall be responsible for the notification to the Governor for action. The notification shall reflect the reason for the disqualification with supporting documentation including minutes of meetings applicable to the disqualification.

## **SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS**

### **5:2-3-1. Powers and duties**

The powers and duties of the Oklahoma Abstractors Board are set forth in the Oklahoma Abstractors Act, Title 1 of the Oklahoma Statutes.

### **5:2-3-2. Principal office, hours of operation, and official website**

(a) The principal office of the Oklahoma Abstractors Board is 2401 Northwest 23rd Street, Suite 60B, Oklahoma City, Oklahoma, 73107- 0076, Post Office Box 700076, Oklahoma City, Oklahoma, 73107-0076.

(b) The office is open Monday through Friday from 8:00 A.M. until 5:00 P.M. except Saturday, Sunday, and legal holidays.

(c) The official website of the Oklahoma Abstractors Board is [www.abstract.ok.gov](http://www.abstract.ok.gov) pursuant to assignment from the Oklahoma Office of State Finance.

### **5:2-3-3. Communications**

All communications to the Board which are required to be in writing, shall be:

- (1) either handwritten, typewritten, or submitted by electronic transmission;
- (2) signed by the person submitting the communication; and
- (3) addressed to the Board at the principal office of the Board.

### **5:2-3-4. Availability of records; copies**

(a) Copies of rules, regulations, final orders, decisions, and opinions relating to abstract licenses, certificates of authority,

temporary certificates of authority, and permits will be available for public inspection at the principal office during stated office hours.

(b) Copies of the official records may be made and certified by the Board or by a person designated by the Board to perform such duties upon prepayment of the copying fee as authorized in the Oklahoma Open Records Act, which shall be posted in the office of the Board.

(c) All material in the office of the Board which is protected from publication by either State or Federal law shall not be released.

### **5:2-3-5. Adoption, amendment, or repeal of rule**

(a) In addition to the powers of the Board to adopt, amend, or repeal a rule, any person who is not a member of the Board may ask the Board to promulgate, amend, or repeal a rule.

(b) Such request shall be in writing and filed with the Board. The request shall fully set forth:

- (1) the reasons for its submission;
- (2) the alleged need or necessity for the requested change;
- (3) whether the proposal conflicts with any existing rule; and
- (4) what statutory provisions, if any, are involved.

(c) Such request shall be considered by the Board. If the Board approves further consideration of the proposed change, notice will be given that such proposal will be formally considered for adoption.

(d) In the event the Board initially determines that the proposal or request should not receive further consideration, the decision shall be reflected in the minutes of the Board. Notification of the action taken by the Board shall be sent to the person requesting the change.

### **5:2-3-6. Declaratory rulings**

(a) Any person who may be directly affected by the existence or application of any of the public rules may request an interpretation or ruling regarding the application of such rule to a particular set of facts.

(b) The request shall be in writing and shall state the number and language of the rule and sufficient facts to support the request.

(c) The request shall be reviewed by the Board. The Board shall make a final determination of the interpretation or ruling. The final determination shall be furnished in writing within a reasonable time to the person making the request.

### **5:2-3-7. Website availability of Board actions and activities**

(a) In addition to requirements of the Oklahoma Open Meeting Act and the Administrative Procedures Act, information regarding official or formal orders, rulings, and interpretations by the Board may, upon order, be made available through the official website of the Board. Such information may contain:

- (1) the text of the order, ruling or interpretation;
- (2) the date and location of the meeting at which the order, ruling, or interpretation was made; and

(3) effective date of any ruling, order, interpretation which will change procedures implementing or enforcement of the Act.

(b) Information regarding meetings and special activities of the Board shall be made available through the official website of the Board. Such information shall contain:

- (1) date, time and location of any activity not required to be posted pursuant to the Oklahoma Open Meeting Act and
- (2) the time frame within which comments can be provided to the Board.

[OAR Docket #09-893; filed 5-12-09]

**TITLE 5. OKLAHOMA ABSTRACTORS BOARD**  
**CHAPTER 11. ADMINISTRATION OF ABSTRACTORS ACT**

[OAR Docket #09-895]

**EDITOR'S NOTE:** *The permanent rules in this new Chapter 11 were promulgated by the agency to supersede emergency rules in Chapter 10 that became effective 2-19-08 [see 25 Ok Reg 751].*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions [NEW]
- 5:11-1-1 [NEW]
- Subchapter 3. Abstract Licenses, Certificates of Authority, and Permits [NEW]
- 5:11-3-1 through 5:11-3-9 [NEW]
- Subchapter 5. Regulation of Licensees, Certificate Holders and Permit Holders [NEW]
- 5:11-5-1 through 5:11-5-4 [NEW]
- Subchapter 7. Application for Permit to Develop Abstract Plant [NEW]
- 5:11-7-1 [NEW]
- Subchapter 9. Application for Certificate of Authority [NEW]
- 5:11-9-1 [NEW]
- Subchapter 11. Temporary Certificate of Authority [NEW]
- 5:11-11-1 [NEW]

**AUTHORITY:**

Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"; Oklahoma Abstractors Board

**DATES:**

**Comment period:**

February 2, 2009 through March 5, 2009

**Public hearing:**

March 5, 2009

**Adoption:**

March 12, 2009

**Submitted to Governor:**

March 17, 2009

**Submitted to House:**

March 17, 2009

**Submitted to Senate:**

March 17, 2009

**Gubernatorial approval:**

April 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2009

**Final adoption:**

May 12, 2009

**Effective:**

July 15, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

See Editor's Note above.

**INCORPORATIONS BY REFERENCE:**

None.

**ANALYSIS:**

These rules provide for the general administration of the business activity covered under the statute. It further defines who may hold a license and how such license may be obtained, including testing procedures and application fees. The rules further define the requirements for bonds, errors and omissions policies and other securities required by statute. These rules set fees (not to exceed those fees authorized by statute) and further details the application and renewal processes. The rules further provide for the compliance requirements for an abstract, an abstract plant, indexes, and other components of the abstracting process and certification. It further clearly sets forth the requirements for a holder of a Certificate of Authority and a licensed abstractor to be in good standing and in compliance with the Oklahoma Abstractors Act. These rules are necessary to establish minimum standards and uniformity within the abstracting industry in the State of Oklahoma. The rules further provide for the process by which an interested party may apply to the Oklahoma Abstractors Board for a permit to develop an abstract plant, certificate of authority, or license. These rules also provide for the process by which an interested party may provide information regarding such applications. These permanent rules are necessary to establish minimum standards and uniformity within the abstracting industry in the State of Oklahoma and to provide the public with clear and concise rules for the application and licensing process. This chapter contains provisions relating to fees for applications for and renewals of certificates of authority, permits and abstract licenses. The fees provided for in this chapter are in the same amount as authorized in the previous emergency rules. No fee increase is proposed.

**CONTACT PERSON:**

Glynda Reppond, Executive Director (405) 522-5019

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 380.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**5:11-1-1. Purpose**

The rules of this chapter have been adopted for the purpose of implementing the Oklahoma Abstractors Act, Title 1, of the Oklahoma Statutes to establish criteria, fees, and procedures regarding abstract licenses, certificates of authority, temporary certificates of authority, and permits.

**SUBCHAPTER 3. ABSTRACT LICENSES, CERTIFICATES OF AUTHORITY, AND PERMITS**

**5:11-3-1. Who must hold abstract license**

- (a) A holder of a certificate of authority or permit who is an individual actively engaged in the process of preparing abstracts, shall be required to have an individual abstract license.
- (b) The holder of a certificate of authority or permit shall provide the Board with a list of the names of licensed and unlicensed employees in such form as directed by the Board.

**5:11-3-2. Examinations for abstract license**

- (a) The test for an abstract license shall be given at least quarterly and at such other times and locations as designated

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by the Board. The Board shall set the test dates for the calendar year at the first regular meeting of the Board of each calendar year.

(b) Tests shall be graded either pass or fail. Seventy per cent (70%) of the questions must be answered correctly to pass.

(c) If failed, the test can be taken again in thirty (30) days.

(d) After failure to pass the test, an applicant shall be required to submit a new application and applicable fees if:

(1) The applicant has failed to pass the test three (3) times; or

(2) A twelve month period within which the applicant has taken the test one or more times expires.

### **5:11-3-3. Bonds required for permits and certificates of authority**

#### **(a) County records bond.**

(1) Each application for a certificate of authority or permit shall be accompanied by a bond in such form clarifying the separate assumption of risks as to county records.

(2) The bond shall be valid for one (1) year and extend coverage to the various county offices for damages by reason of mutilation, injury, or destruction of any record or records of the several county offices to which the applicant may have access.

(3) If a surety bond is provided it shall be issued by a surety company licensed to do business in the State of Oklahoma.

(4) The original bond shall be filed in the office of the Board. The Board or a person designated by the Board to perform such duties shall mail a certified copy of the bond to the County Clerk's office for filing.

(5) The amount of the county records bond shall be at least in the amount set forth in section 27(c) of the Act.

#### **(b) Errors and omissions bond or insurance.**

(1) Each application for a certificate of authority shall be accompanied by a bond or policy for insurance to pay damages for possible errors in abstracts prepared by the holder of the certificate of authority.

(2) If coverage for damages for possible errors in abstracts prepared by the holder of a certificate of authority will be by bond, then the bonds shall be on forms either prescribed by or approved in advance by the Board.

(3) The Board shall accept either a personal or surety bond by issuing a written statement of acceptance.

(4) A personal bond shall provide that the certificate of authority or permit holder be the obligor and that the Board be the obligee. The personal bond, conditioned on the obligor performing its duties without error, shall be accompanied by either cash or a certificate of deposit delivered to the Board.

(5) A certificate of deposit shall be issued by a federally insured financial institution in the State of Oklahoma and shall have a maturity term of a minimum of one (1) year.

(A) The certificate of deposit shall show on its face either the Board as its holder or it shall be endorsed in favor of the Board.

(B) The original certificate of deposit shall be delivered to the Board with an executed personal bond form.

(6) Interest on such certificate of deposit shall be paid to the obligor. Payment to a third party will be allowed on a personal bond upon presentation of either a final order of a District Court of the State of Oklahoma finding that the conditions of the bond have not been met, or upon written settlement with the obligor. Prior to payment unless the obligor presents to the Board either a surety bond or an alternative method of securing the personal bond equal to the amount of the claim against the bond the Board shall take action to suspend the certificate of authority of the obligor.

(7) The personal bond, a facsimile of the certificate of deposit, or copy of a cash receipt issued shall become part of the Board file of the holder of the certificate of authority or permit for whom they are given. These documents shall be available for examination and copying by the public.

(8) The amount of the errors and omissions bond or insurance shall be at least in the amount set forth in section 27(c) of the Act.

### **5:11-3-4. Application fees for permits, certificates of authority, and renewals**

(a) For each calendar year each initial application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars (\$150.00).

(b) For each calendar year each renewal application for an individual abstract license shall be accompanied by a fee of One Hundred Fifty Dollars (\$150.00).

(c) For each calendar year a separate application and fee shall be submitted for each certificate of authority, permit, and renewal for each county in which the applicant desires to do business. The fee shall be as follows:

(1) County Population of less than 10,000 - \$400.00

(2) County Population of 10,000 but less than 30,000 - \$800.00

(3) County Population of 30,000 but less than 60,000 - \$1,200.00

(4) County Population of 60,000 but less than 100,000 - \$1,600.00

(5) County Population of 100,000 but less than 200,000 - \$2,400.00

(6) County Population of 200,000 or more - \$3,200.00

### **5:11-3-5. Licensing associations, corporations, partnerships**

An applicant for certificate of authority or permit issued to an association, partnership, corporation, or other entity shall be required to comply with the same laws, rules, regulations, and orders as individuals. Such entities shall designate in writing an individual as service agent to receive service of summons and notice of hearings.

**5:11-3-6. Transfer of certificate of authority**

(a) An applicant for a transfer of a certificate of authority by an individual, association, partnership, corporation, or other entity shall be required to comply with the same laws, rules, regulations, and orders applicable to the previous holder of the certificate of authority.

(b) The applicant shall also provide an affidavit as to due diligence efforts made to determine that the abstract plant acquired meets all the requirements of the Act.

**5:11-3-7. Licensing nonresidents**

(a) Anyone who is not a resident of the State of Oklahoma who obtains an abstract license, certificate of authority, or permit shall:

(1) give written consent that actions, suits at law, and administrative proceedings may be commenced against such nonresident in any county in this state where any cause of action may arise or be claimed to have arisen out of any actions occurring as a result of alleged activities under the Act. Such consent shall be applicable to a non-resident, his agents, or employees; and

(2) appoint, in writing, a service agent in the State of Oklahoma to receive service of summons or notice of hearing.

(b) A nonresident shall designate a service agent in accordance with provisions of Section 2004 of Title 12 of the Oklahoma Statutes.

**5:11-3-8. Change of employment**

Upon change of employment, regardless of reason or place of relocation, a licensee shall report such change to the Board within ten (10) days of the effective date of the change.

**5:11-3-9. Forms**

The forms prescribed by the Board shall include but not be limited for the following:

(1) **Certificate of authority.** The Board shall establish separate forms for the initial application for a certificate of authority, a temporary certificate of authority, annual renewal of a certificate of authority, and transfer of ownership of certificate of authority.

(2) **Permit.**

(A) The Board shall establish separate forms for the initial application for a permit and for the annual renewal of a permit.

(B) The form shall include an affidavit prepared by the appropriate District Court Clerk and County Clerk certifying the status and availability of the county records.

(C) Each form regarding an initial application for a permit shall include a general statement of the law and instructions directing how the forms should be completed.

(D) The applicant for a permit shall provide the Board a list of all employees.

(3) **License.** The Board shall establish separate forms for the initial application for an abstract license and for the annual renewal of a license.

(4) **Uniform Abstract Certificate.** The Board shall establish a form which will provide to the consumer information including but not limited to:

(A) the authority for providing an abstract of title;

(B) the items being certified;

(C) beginning page and ending page;

(D) if the abstract certification excepts oil, gas, and other minerals, in which case substantial compliance with the following language shall be used: Except instruments of any kind and character relating to all oil, gas, and other minerals, including but not limited to deeds, grants, leases, assignments and releases thereof, all of which instruments are omitted and excepted entirely from this abstract.

(E) the period covered; and

(F) the signature and license number of the abstractor.

(G) certificate of authority number; and

(H) date of issuance.

(5) **Abstract Rates filing.** The Board shall establish a form to be used to file annually the statutorily mandated list of abstracting fees.

(6) **Public Complaint.** The Board shall create a sample form for use by an individual filing a written complaint with the Board. Substantial compliance with the requirements set out in the form shall be sufficient for the Board to accept the complaint. The information required shall include but not be limited to:

(A) the name, address, and phone number of the individual filing the complaint;

(B) the name, address, and phone number of the person against whom the complaint is being filed;

(C) the date of the preparation of the complaint; and

(D) an outline of the complaint.

(7) **Effective date of changes.** Any change in a form shall become effective thirty (30) days after adoption by the Board. If the change is declared an emergency, the Board shall specify the shorter effective date.

**SUBCHAPTER 5. REGULATION OF LICENSEES, CERTIFICATE HOLDERS, AND PERMIT HOLDERS**

**5:11-5-1. Inspections**

(a) A certificate or permit holder shall make the premises and records utilized within the performance of activities regulated by the Act available for an inspection. Inspections shall be conducted at the direction of the Board for purposes of determining compliance with the Act.

(b) Failure to provide access as required for the inspection in a timely manner shall constitute an offense subject to fine, suspension, revocation, or such other sanction as may be available to the Board.

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(c) Certificate holders shall maintain a copy of the certificate page and if the legal description is not included on the certificate page, a copy of the caption page of each abstract, final title report, evidence of research, and billing information for five (5) years from the date of issuance.

(d) The premises and records of each certificate and permit holder shall be inspected at least once every three (3) years.

### **5:11-5-2. Penalties for failure to pay renewal fees**

(a) The Board shall assess and collect penalties against licensees and certificate holders for failure to pay renewal fees when they are due.

(b) Annually, due dates and penalties shall be posted in the Board office. If a due date or the amount of the penalty is changed, thirty (30) days notice shall be given before the change shall be effective.

### **5:11-5-3. Preparation of abstracts**

(a) **Type of abstract.** A certificate of authority holder shall cause the preparation of an abstract of title on real property which shall cover:

- (1) a fee simple estate, less and except oil, gas and other mineral interests; or
- (2) upon the request of a customer, a fee simple estate including oil, gas, and other mineral interests; or
- (3) oil, gas and other mineral interests.

(b) **Abstract certificate.** The abstract certificate and caption sheet shall reflect an appropriate disclaimer regarding that which is excluded.

(c) **Contents of abstract.** For the time period covered by the certification, an abstract of title shall include but not be limited to the following:

- (1) all instruments that have been filed for record and have been recorded in the office of the county clerk for the county in which the property is located which:
  - (A) legally impart constructive notice of matters affecting title to the subject property, any interest therein or encumbrances thereon;
  - (B) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said real estate; and
  - (C) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.
- (2) the records of the court clerk for the county in which the subject property is located which:
  - (A) disclose executions, court proceedings, pending suits, and liens of any kind affecting the title to said subject property; and
  - (B) judgments or transcripts of judgments against any of the parties appearing within the chain of title.
- (3) all ad valorem tax liens due and unpaid against said real estate, tax sales thereof unredeemed, tax deeds, unpaid special assessments certified to the office of the

county treasurer for the county in which the subject property is located due and unpaid, tax sales thereof unredeemed, and tax deeds given thereon, and unpaid personal property taxes which are a lien on said real estate.

(d) **Federal court certificate.** Upon request of a consumer, a holder of a certificate of authority in Muskogee, Okmulgee, Oklahoma, and Tulsa counties shall certify to the records of the Clerk of the United States District Court and the Clerk of the United States Bankruptcy Court for such federal judicial districts located in such counties for the time period covered by the certification, that disclose:

- (1) executions, court proceedings, pending suits and bankruptcy proceedings in said courts affecting title to the subject property; and
- (2) judgments or transcripts of judgments filed against any of the parties appearing within the chain of title.

(e) **Final certification for title insurance.** For purposes of a title insurance policy, an abstractor in the county where the insured property is located shall prepare either of the following:

- (1) an extension of the abstract or supplemental abstract; or
- (2) a final title report after a final title search has been conducted. The final title report shall include all information required for an abstract of title pursuant to the Act and these rules, and shall be certified up to and including the effective date of the title insurance policy.

(f) **Other services.** Any service performed or product produced by the holder of a certificate of authority that does not qualify as an abstract of title shall not be designated as an abstract of title and shall not include an abstract certificate.

(g) **Statement of abstracting charges.** All charges for abstracts, abstract extensions, supplemental abstracts, or final title reports shall be separately stated and shall not be combined with title insurance, closing fees, or examination charges on invoices, statements, settlement statements, and consumer estimates.

### **5:11-5-4. Minimum standards for preparation of abstracts**

Copies of documents included in an abstract of title prepared by a holder of a certificate of authority shall be as legible as the source document on file in the offices of the County Clerk or the District Court Clerk except for source documents larger than 8  $\frac{1}{2}$ " x 14".

## **SUBCHAPTER 7. APPLICATION FOR PERMIT TO DEVELOP ABSTRACT PLANT**

### **5:11-7-1. Application for permit to develop abstract plant**

(a) **Form.** The application shall be on a form prescribed by the Board.

(b) **Notice and review.** The chairman or designee shall review the application for compliance with applicable laws and rules. Additional information from the applicant or other persons may be requested by the reviewer as deemed appropriate.

Within ten (10) days of receipt of the application, the Board shall:

- (1) notify the court clerk, the county clerk, and all holders of a certificate of authority in the county wherein such business is to be conducted; and
- (2) post notice of the receipt of the application for a permit on the official website of the Board and provide an address where written information relative to the application can be sent.
- (c) **Comment period.** Any person desiring to provide information pertaining to the application shall submit the information in writing to the Board within twenty (20) days of the notice provided for in subsection (b) of this section. Additional information may be received upon approval of the Board or the Chairman. Comments shall include specific facts and specific legal authority, if known, supporting the request for approval or disapproval of the application.
- (d) **Board action on application.** The application for a permit to develop an abstract plant shall be considered by the Board at the next meeting after completion of the review provided for in subparagraph (b) of this section.
  - (1) In the event an adverse comment is filed, the applicant and any person providing adverse comments shall be notified of the receipt of the adverse comment not more than ten (10) days from the date of receipt of such comment. Notice of the date, time, and place of the meeting at which the application and information will be considered by the Board shall be provided to all interested parties not less than ten (10) days before the date of the meeting at which the application will be considered is to be held.
  - (2) **Presentation before the Board.**
    - (A) At the meeting where the application is being considered the applicant shall be limited to thirty (30) minutes to present information in support of the application. All persons wanting to provide adverse comments regarding the application collectively shall be limited to thirty (30) minutes to present adverse comment or information. Additional time may be granted by the chairman upon good cause shown.
    - (B) The order of presentation of information regarding the application and opposition shall be established by the chairman.
- (3) **Criteria.**
  - (A) The Board shall consider the following factors in arriving at its decision:
    - (i) compliance with the Act and Rules;
    - (ii) payment of applicable fees; and
    - (iii) adequacy of county records bond.
  - (B) The Board may consider other factors deemed relevant to the consideration of the application including additional information not obtained during the review.
- (4) **Decision of the Board.** After consideration and action by the board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant and any person submitting adverse comments.

**SUBCHAPTER 9. APPLICATION FOR CERTIFICATE OF AUTHORITY**

- 5:11-9-1. Application for certificate of authority**
- (a) **Form.** The application shall be on a form prescribed by the Board.
  - (b) **Notice and review.** The chairman or designee shall review the application for compliance with applicable laws and rules. Additional information from the applicant or other persons may be requested by the reviewer as deemed appropriate. Within ten (10) days of receipt of the application, the Board shall:
    - (1) notify the court clerk, the county clerk, and all holders of a certificate of authority in the county wherein such business is to be conducted;
    - (2) post notice of the receipt of the application for the certificate of authority on the official website of the Board and provide an address where written information relative to the application can be sent.
  - (c) **Comment period.** Any Person desiring to provide information pertaining to the application shall submit the information in writing to the Board within twenty (20) days of the notice provided for in subsection (b) of this section. Additional information may be received upon approval of the Board or the Chairman. Comments shall include specific facts and specific legal authority, if known, supporting the request for approval or disapproval of the application.
  - (d) **Board action on application.** The application for a certificate of authority shall be considered by the Board at the next meeting after completion of the review provided for in subparagraph (b) of this section.
    - (1) In the event an adverse comment is filed, the applicant and any person providing adverse comments shall be notified of the receipt of the adverse comment not more than ten (10) days from the date of receipt of such comment. Notice of the date, time, and place of the meeting at which the application and information will be considered by the Board shall be provided to all interested parties not less than ten (10) days before the date of the meeting at which the application will be considered is to be held.
    - (2) **Presentation before the board.**
      - (A) At the meeting where the application is being considered the applicant shall be limited to thirty (30) minutes to present information in support of the application. All persons wanting to provide adverse comments regarding the application collectively shall be limited to thirty (30) minutes to present adverse comment or information. Additional time may be granted by the chairman upon good cause shown.
      - (B) The order of presentation of information regarding the application and opposition shall be established by the chairman.
  - (3) **Criteria.**
    - (A) The Board shall consider the following factors in arriving at its decision:
      - (i) compliance with the Act and Rules;
      - (ii) payment of applicable fees;

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(iii) adequacy of errors and omissions insurance, corporate surety, or personal bond for possible errors in abstracts of title prepared by the applicant;

(iv) adequacy of county records bond; and

(v) adequacy of abstract plant available for use.

(B) The Board may consider any other factors deemed relevant to the consideration of the application including additional information not obtained during the review or inspections.

(4) **Decision of the Board.** After consideration and action by the Board on an application, the chairman shall issue an order reflecting the decision of the Board. A copy of the order shall be mailed to the applicant and any person submitting adverse comments.

## **SUBCHAPTER 11. TEMPORARY CERTIFICATE OF AUTHORITY**

### **5:11-11-1. Procedures for the Board to issue a temporary certificate of authority**

In the event the Board determines that a temporary certificate of authority needs to be issued pursuant to the provisions of Section 33 of the Act, the Board shall:

(1) suspend the certificate of authority of the subject holder pursuant to this chapter;

(2) declare the necessity for issuing a temporary certificate of authority;

(3) provide notice of the intent to issue a temporary certificate of authority to the office of the county clerk and each holder of a certificate of authority located in the county;

(4) accept applications for the issuance of the temporary certificate of authority; and

(5) issue a temporary certificate of authority pursuant to the terms and conditions determined by the Board.

[OAR Docket #09-895; filed 5-12-09]

## **TITLE 5. OKLAHOMA ABSTRACTORS BOARD CHAPTER 21. COMPLAINTS AND ENFORCEMENT**

[OAR Docket #09-894]

**EDITOR'S NOTE:** *The permanent rules in this new Chapter 21 were promulgated by the agency to supersede emergency rules in Chapter 20 that became effective 4-17-08 [see 25 Ok Reg 1500].*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. General Provisions [NEW]

5:21-1-1 through 5:21-1-5 [NEW]

Subchapter 3. Complaint Investigation Procedures [NEW]

5:21-3-1 through 5:21-3-2 [NEW]

Subchapter 5. Formal Complaint Procedures [NEW]

5:21-5-1 through 5:21-5-9 [NEW]

### **AUTHORITY:**

Title 1, Oklahoma Statutes, Section 22 *et seq.*, "Oklahoma Abstractors Act"; Oklahoma Abstractors Board

### **DATES:**

#### **Comment period:**

February 2, 2009 through March 5, 2009

#### **Public hearing:**

March 5, 2009

#### **Adoption:**

March 12, 2009

#### **Submitted to Governor:**

March 17, 2009

#### **Submitted to House:**

March 17, 2009

#### **Submitted to Senate:**

March 17, 2009

#### **Gubernatorial approval:**

April 24, 2009

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 12, 2009

#### **Final adoption:**

May 12, 2009

#### **Effective:**

July 15, 2009

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

See Editor's Note above.

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

None.

#### **ANALYSIS:**

These rules set forth the general procedures for the filing of a complaint, the investigation of a complaint, resolution of complaints, instituting a formal complaint, and the hearings process, including due process. These rules are necessary to establish the procedures for the public and other licensees to file a complaint, and the process for prosecution of same. These are necessary to establish the basic investigation, administrative hearing and resolution procedures.

#### **CONTACT PERSON:**

Glynda Reppond, Executive Director (405) 522-5019

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 380.1(A), WITH AN EFFECTIVE DATE OF JULY 15, 2009:**

## **SUBCHAPTER 1. GENERAL PROVISIONS**

### **5:21-1-1. Administrative Procedures Act**

The procedure for complaints, notice, hearing procedures, and regulation of matters covered by the rules of this Chapter shall be governed by the Administrative Procedures Act, and any conflict between the provisions of this Chapter and the Act, the Act shall govern.

### **5:21-1-2. Filing complaints**

(a) Any person having a complaint, which alleges violation or noncompliance with the Oklahoma Abstractors Act or the rules of the Board implementing that act, may address the complaint to the Board at its principal office.

(b) The complaint shall be in writing and signed by the complainant. It shall contain:

(1) a clear and concise statement of the facts,

- (2) the names, addresses significant to the complaint, and
- (3) sufficient information to reveal the alleged violations with the facts on which the alleged violations are based.

(c) When a complaint is the result of information contained in a published source, an original or copy of the publication with date published and full name of the publishing entity shall be filed with the Board.

(d) In the event a complaint is received by an individual member of the Board or any member of the Board staff, the information shall be forwarded to the Board office for referral to the Enforcement Committee in accordance with the procedures adopted by the Board for processing other complaints received.

(e) The person against whom the complaint has been filed shall be notified of the complaint.

- (1) The notice shall include a copy of the complaint.
- (2) The person against whom the complaint has been filed may file a response within twenty-one (21) days from the delivery of such complaint by mail, fax, or e-mail by the Board.
- (3) The response shall be forwarded to the Enforcement Committee and shall become a part of the official complaint file.

(f) The Enforcement Committee shall provide a quarterly report to the Board regarding the status of each pending complaint.

(g) Any person who has filed a complaint shall be notified of the final disposition of the matter.

**5:21-1-3. Investigators**

(a) The Board may appoint one or more individuals to investigate complaints received alleging violations of the Act or the rules of the Board.

(b) An individual appointed as an investigator may be a volunteer who serves without pay or an individual hired to conduct the investigation. Any individual serving as an investigator shall serve at the pleasure of the Board.

(1) Individuals who are holders of an abstract license, certificate of authority, or permit shall be eligible to serve as Investigators. Any such individual shall provide sufficient information to the Board to assure no conflict of interest exists in the conduct of an investigation the individual is conducting.

(2) Other individuals may be appointed as investigators subject to review of their qualifications as they may be significant to the particular type of investigation being conducted.

**5:21-1-4. Special prosecutors**

(a) The Board may appoint a special prosecutor to work with the Enforcement Committee on a complaint under investigation.

(b) The Board may utilize lawyers licensed to practice law in Oklahoma to serve as special prosecutors in formal proceedings before the Board.

(c) An individual serving as special prosecutor shall not serve as legal counsel to the Board in the same formal proceeding.

**5:21-1-5. Cost of investigations**

(a) Investigators and Special Prosecutors may be compensated at a rate established by the Board on a case by case basis.

(b) Investigators and Special Prosecutors may be reimbursed for expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

**SUBCHAPTER 3. COMPLAINT INVESTIGATION PROCEDURES**

**5:21-3-1. Enforcement committee procedures**

(a) All complaints received by the Board, shall be referred to the Board Enforcement Committee for recommendation for action.

(b) The Enforcement Committee shall be comprised of at least two (2) members of the Board appointed by the Chairman. In the absence of the Chairman of the Board appointing a Chairman of the Enforcement Committee, the members of the Enforcement Committee shall choose their Chairman.

(c) Upon receipt of the complaint and information pertaining to the complaint, the Enforcement Committee may make appropriate inquiry to verify the information received.

(d) The Board may obtain a criminal record check of any person against whom a complaint has been filed from the Oklahoma State Bureau of Investigation or other law enforcement sources.

(e) Upon completion of the preliminary inquiry, the Enforcement Committee shall take one (1) or more of the following actions:

(1) Recommend to the Board that the investigation should be terminated because it appears:

- (A) there has been no violation of the law or rules, or
- (B) there is insufficient evidence to support any allegation of a violation.

(2) Attempt an informal resolution of the allegations of violations contained in the information received.

(3) Require further investigation.

(4) Hold the file in abeyance pending receipt of information as a product of an investigation or hearing by another state or federal agency.

(5) Recommend a specific action by the Board.

**5:21-3-2. Responsibility of investigators**

(a) Upon referral from the Enforcement Committee, an investigator shall determine whether there exists sufficient cause to believe that misconduct has occurred which justifies the institution of formal proceedings. Such determination shall be presented to the Enforcement Committee in a report written and signed by the investigator.

(b) Such report shall contain a summary of the evidence, including any material provided by the accused, conclusions of

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fact, specific reference to applicable laws and rules, and recommendation with respect to institution of formal proceedings.

- (c) All investigations shall be conducted in a timely manner.
- (d) Upon conclusion of any investigation, the investigators shall promptly report the results to the Enforcement Committee.

## **SUBCHAPTER 5. FORMAL COMPLAINT PROCEDURES**

### **5:21-5-1. Filing of formal complaint**

- (a) The Enforcement Committee and the special prosecutor shall determine if a formal complaint should be filed.
- (b) In the event the Enforcement Committee and the special prosecutor do not agree on whether a formal complaint should be filed, the Chairman of the Enforcement Committee shall prepare a report for the Board. The Board shall make the final determination regarding further action.
- (c) The formal complaint shall be signed by the special prosecutor or the Chairman of the Enforcement Committee. In the event the special prosecutor and the Enforcement Committee do not agree, the Chairman of the committee shall sign the formal complaint.
- (d) The formal complaint shall include a concise statement of the allegations and particular sections of the Act or rules of the Board which are involved.

### **5:21-5-2. Violations by holders of a certificate of authority, abstract license, or permit**

- (a) In the event the investigation of an allegation against a holder of a certificate of authority, abstract license, or permit concludes that the individual against whom the complaint has been filed is in violation of the Act or the rules of the Board, the Board shall take any authorized action to protect the public from the unauthorized or illegal action of the license, certificate, or permit holder.
- (b) The Chairman of the Board shall set a time and place for the hearing of the formal complaint. Notice of the hearing shall be sent to the individual against whom the complaint has been filed not less than twenty (20) days from the date of the hearing at the last known address as shown in the official records of the Board.
- (c) The person against whom the complaint has been filed shall be provided with any material information including any staff memoranda or data to be relied on by the Board.
  - (1) At the hearing, the person against whom the formal complaint has been filed shall be afforded an opportunity to contest the reports and other materials referenced.
  - (2) The experience, technical competence, and specialized knowledge of the members of the Board may be utilized in the evaluation of the evidence.

### **5:21-5-3. Formal complaint hearing procedures**

- (a) Hearings will be conducted by one of the following methods, determined by the Board before the hearing begins:
  - (1) By the Board;

(2) By any member of the Board or a designee of the Board acting as a hearing examiner or Administrative Law Judge; or

(3) By an attorney licensed to practice law in this state appointed by the Board to act as a hearing examiner or Administrative Law Judge.

- (b) All oral proceedings shall be electronically recorded.
  - (1) The electronic record shall be transcribed upon request of any party to the proceeding.
  - (2) All costs of such transcription shall be paid in advance by the requesting party.
  - (3) The accused may use a licensed court reporter to report and transcribe the hearing. The cost of such reporter shall be paid by the accused.
- (c) The hearing record of any formal proceeding shall be open to the public.

### **5:21-5-4. Standards for making decision**

- (a) The Board may take notice of:
  - (1) Judicially cognizable facts, and
  - (2) Generally recognized technical or scientific facts within the specialized knowledge of one or more members of the Board.
- (b) The standard of proof in all hearings shall be clear and convincing evidence.
- (c) The Board shall consider past disciplinary action taken against any accused found guilty in any present proceeding. Such past conduct shall not be evidence of guilt in the present proceeding but will be considered only in determining appropriate sanctions to be imposed by the Board in the present proceeding.
- (d) Unless precluded by law, the accused may waive any right granted in the law and proceed by stipulation, agreed settlement, consent order, or default. No provision of this section shall be construed as prohibiting the Board from suspending, or holding in abeyance, any formal proceeding pending the outcome of informal negotiation or informally agreed upon terms.
- (e) All orders shall be in writing and state findings of fact, conclusions of law, and actions to be taken. Final orders shall state their effective date.

### **5:21-5-5. Subpoena of witness, documents, or things**

- (a) In all cases the Board may issue subpoena or subpoena *duces tecum* where a party desires to compel the attendance of witnesses after a complaint has been filed.
- (b) When the party or the attorney for the party desires to have witnesses subpoenaed to appear before the hearing examiner, a request in writing shall be made by such party or the attorney, giving the name and correct address of any such witness.
- (c) The requesting party shall pay the cost of service.

### **5:21-5-6. Discipline for violations by applicants**

- (a) An applicant for an abstract license who is alleged to have violated the Act, the rules of the Board, or who subverts

or attempts to subvert the examination process shall be subject to disciplinary action by the Board.

(b) Failure of any applicant to cooperate with an investigation conducted by the Board shall result in denial of the application.

(c) Upon the determination that the applicant is guilty of the allegations, the Board may impose one (1) or more of the following disciplinary measures on the applicant:

- (1) withhold the grades on the examination;
- (2) declare the scores on the examination invalid;
- (3) disqualify the applicant from obtaining a license for a specified period of time; or
- (4) impose other authorized penalties.

**5:21-5-7. Violations by individuals who do not hold a certificate of authority, license or permit**

(a) In the event the investigation of an allegation against an individual who is not a holder of a certificate or abstract license concludes that the accused is in violation of the Act or rules of the Board and that action should be taken to stop the violation, the Board may designate a member of the Board, staff member, or other individual acting for the Board to:

- (1) Provide notice by:
  - (A) Sending written notice of the accusation, supporting documentation and a copy of the Complaint and Notice of Hearing, to be held not later than sixty (60) days following such notice, to the accused by certified mail, restricted delivery, return receipt requested; or
  - (B) Personal service upon the person of the accused in a manner authorized by the statutes of the State of Oklahoma for service of process in a civil proceeding;
- (2) Provide the accused with a copy of the Act and rules of the Board along with its notification of the accusation and Complaint and Notice of Hearing.

(b) The Board, at a full and formal hearing, shall make a final determination of the accusations against the accused and issue such permanent cease and desist order, fine, penalty, or other action as authorized by the Act and the rules of the Board.

**5:21-5-8. Final orders**

(a) A final order shall be in writing and shall include separate statements of the findings of fact and conclusions of law.

(b) Findings of fact shall be accompanied by a concise and explicit statement of the evidence supporting the findings. The order shall include a ruling on proposed findings of fact submitted by a party to the proceeding.

(c) A copy of the final order shall be delivered or mailed to each party or to their attorney of record as soon as practicable.

**5:21-5-9. Rehearings**

(a) An application for rehearing may be made in writing within ten (10) days of the date of the final order. The petitioner shall set forth one (1) or more of the following as grounds in the rehearing request:

(1) newly-discovered or newly-available evidence relevant to the issues;

(2) need for additional evidence to adequately develop the facts essential to a proper decision;

(3) probable error committed by the agency in the proceeding or in its decision such as would be ground for reversal on judicial review of the order;

(4) need for further consideration of the issues and the evidence in the public interest; or

(5) showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(b) Nothing in this Subchapter shall prohibit the Board from rehearing, reopening, or reconsidering a matter at any time on the grounds of fraud practiced by the prevailing party, procurement of perjured testimony, or fictitious evidence, and in accordance with other statutory provisions applicable to the Board.

[OAR Docket #09-894; filed 5-12-09]

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

[OAR Docket #09-1070]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Fee Schedules  
35:2-3-2.2 [AMENDED]  
35:2-3-2.3 [AMENDED]  
35:2-3-2.4 [AMENDED]  
35:2-3-2.6 [AMENDED]

**AUTHORITY:**  
Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4(20) and 14-83; Article 6, Section 31, Constitution of the State of Oklahoma

**DATES:**  
**Comment period:**  
January 15, 2009 through February 17, 2009

**Public hearing:**  
February 17, 2009

**Adoption:**  
March 18, 2009

**Submitted to Governor:**  
March 24, 2009

**Submitted to House:**  
March 24, 2009

**Submitted to Senate:**  
March 24, 2009

**Gubernatorial approval:**  
April 27, 2009

**Legislative approval:**  
Failure of the Legislature to disapprove the rules resulted in approval on May 16, 2009

**Final adoption:**  
May 16, 2009

**Effective:**  
July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATIONS BY REFERENCE:**  
N/A

**ANALYSIS:**  
The proposed rules amend certain fees contained in Subchapter 3 pertaining to feed and fertilizer, elemental analysis, meat chemistry, dairy,

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food, water, and microbiological. These rules allow the Oklahoma Department of Agriculture, Food, and Forestry's Laboratory Services Division to recoup some of the costs associated with conducting the specific tests addressed by the amendments.

## 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 JULY 1, 2009:**

## SUBCHAPTER 3. FEE SCHEDULES

### 35:2-3-2.2. Schedule of feed and fertilizer testing fees

- (a) Feeds and grains testing fees.
- (1) Proximate analysis:
- (A) Ash - ~~\$15.00~~ \$5.00.
  - (B) Fat, dry pet foods (Mojonnier) - \$25.00.
  - (C) Fat, all feeds (Soxtec) - ~~\$20.00~~ \$15.00.
  - (D) Fiber, acid detergent (ADF) - ~~\$30.00~~ \$8.50.
  - (E) Fiber, crude - ~~\$20.00~~ \$10.00.
  - (F) Moisture - ~~\$15.00~~ \$5.00.
  - (G) Non-protein nitrogen - ~~\$30.00~~ \$15.00.
  - (H) Protein - ~~\$20.00~~ \$10.00.
- (2) Other feed analysis:
- (A) Aflatoxins - ~~\$30.00~~ \$35.00.
  - (B) ~~Feed microscopy~~ Fumonisin - ~~\$99.00~~ \$35.00.
  - (C) Salt, from chloride - ~~\$10.50~~ \$19.00.
  - (D) Salt, from sodium - \$16.00.
  - ~~(D) Sulfur - \$15.00~~ \$18.00.
  - ~~(E) Sugar, brix - \$15.00.~~
  - (F) Sugar, total as invert - \$50.00.
  - (G) Vitamin A - \$60.00.
- (3) Drugs in feeds:
- (A) Amprolium - \$50.00.
  - (B) Chlortetracycline - \$50.00.
  - (C) Decoquinatate - \$65.00.
  - (D) Lasalocid - \$65.00.
  - (E) Oxytetracycline - \$50.00.
  - (F) Sulfamethazine - \$65.00.
  - (G) Sulfathiazole - \$65.00.
  - (H) Tylosin - \$65.00.
- (b) Fertilizer testing fees.
- (1) Major nutrients:
- (A) Total Nitrogen - \$20.00.
  - (B) ~~Phosphoric acid~~ Available Phosphorus - \$20.00.
  - (C) Soluble Potash - \$20.00.
- (2) Micro nutrients:
- (A) ~~Chlorine~~ Total Sulphur - ~~\$11.00~~ \$35.00.
  - (B) Combined Sulfur - ~~\$15.00~~ \$30.00.
  - (C) Free Sulphur - \$75.00.
- (c) Lime analysis, sieve, and effective calcium carbonate equivalent (ECCE) - ~~\$25.00~~ \$40.00.
- (1) Calcium in Lime - \$10.00.

### (2) Magnesium in Lime - \$10.00

(d) Elemental analysis testing fees by atomic absorption (AA) or inductively coupled plasma (ICP) spectrometry, each element - \$20.00.

### 35:2-3-2.3. Schedule of meat chemistry testing fees

- (a) ~~Antibiotics~~ - ~~\$50.00~~.
- ~~(b) Benzoate~~ - ~~\$20.00~~.
- ~~(c) Cereal (Starch Qualitative)~~ - \$20.00.
- ~~(d) Corn syrup solids~~ - \$32.00.
- ~~(e) Fat, screening~~ - ~~\$14.00~~.
- ~~(f) Fat, total~~ - \$30.00.
- ~~(g) Imidazole~~ - ~~\$20.00~~.
- ~~(h) Maximum internal temperature~~ - \$10.00.
- ~~(i) Non-fat dry milk~~ - \$32.00.
- ~~(j) Phosphate~~ - \$20.00.
- ~~(k) Protein, total~~ - ~~\$20.00~~ \$25.00.
- ~~(l) Salt~~ - \$20.00.
- ~~(m) Sodium nitrite, quantitative~~ - \$20.00.
- ~~(n) Soy protein~~ - ~~\$18.00~~ \$30.00.
- ~~(o) Species determination~~ - ~~\$25.00~~.
- ~~(p) Sulfite, qualitative~~ - ~~\$9.00~~.
- ~~(q) Water, total~~ - ~~\$10.00~~ \$13.00.

### 35:2-3-2.4. Schedule of dairy, food, water, and microbiological testing fees

- (a) Aerobic plate count - \$12.00.
- (b) Bacillus cereus, confirmed - \$61.00.
- (c) Bacillus cereus, presumptive - \$14.00.
- (d) Campylobacter - \$25.00.
- (e) Clostridium perfringens - \$20.00.
- (f) Coliform (PA or MF) - ~~\$12.00~~ \$18.00.
- (g) Confirmed membrane filter (MF), lauryl sulfate tryptose (LST) and brilliant green bile (BGB) - \$10.00.
- (h) E. coli - \$25.00.
- (i) E. coli O157 - ~~\$25.00~~ \$30.00.
- (j) Enterococcus - ~~\$12.00~~ \$25.00.
- (k) Fecal coliform, membrane filter (MF), or most probable number (MPN) - \$10.00.
- (l) Filth and adulteration of foods, gross examination - \$10.00.
- (m) Gram stain - \$10.00.
- (n) Listeria - ~~\$25.00~~ \$30.00.
- (o) pH food products - \$10.00.
- (p) Plate count, coliform - \$12.00.
- (q) Residual bacteria count - \$12.00.
- (r) Residual coliform count - \$12.00.
- (s) Ribotyping, individual bacteria - \$105.00.
- (t) Salmonella - ~~\$25.00~~ \$40.00.
- (u) Shigella - \$25.00.
- (v) Staphylococcus - \$25.00.
- (w) Staphylococcus, confirmation of coagulase + - \$10.00.
- (x) Swab or utensil count - \$12.00.
- (y) Thermometer check - \$15.00.
- (z) Water activity - 30.00.
- (aa) Yeast and mold count - \$18.00.

- (bb) Antibiotics in dairy products (non-permitted dairies) - \$15.00.
- (cc) Sulfa and tetracycline drugs in milk - \$20.00.
- (dd) Fat (percent) in milk and milk products (raw) - \$6.00.
- (ee) Direct microscopic somatic cell count - \$8.00.
- (ff) Electronic somatic cell count - \$8.00.
- (gg) Added water in milk - \$12.00.
- (hh) Fat, protein, and lactose (pasteurized milk and retail products) - \$6.00.

**35:2-3-2.6. Schedule of water and sediment inorganic testing fees**

- (a) Alkalinity, total - \$15.00.
- (b) Biochemical oxygen demand, 5-day (BOD5) - \$37.00.
- (c) Biochemical oxygen demand, 20-day (BOD20) - \$47.00.
- (d) Biochemical oxygen demand, 30-day (BOD30) - \$52.00.
- (e) Carbonate/Bicarbonate - \$20.00.
- (f) Chloride - \$20.00.
- (g) Electrical conductivity (EC) - \$10.00.
- (h) Hardness - \$25.00.
- (i) Ion balance, cation/anion balance - \$85.00.
- (j) Ion screen, anions (chloride, sulfate, nitrate-nitrogen, and nitrite-nitrogen) - \$40.00.
- (k) Ion screen, cations (sodium, potassium, calcium, and magnesium) - \$40.00.
- (l) Kjeldahl nitrogen, total (TKN) - ~~\$20.00~~\$24.00.
- (m) Monochromatic chlorophyll a and pheophytin - \$40.00.
- (n) Monochromatic chlorophyll a and pheophytin, pre-extracted and ground - \$10.00.
- (o) Nitrogen from ammonia - \$20.00.
- (p) Nitrogen from nitrates - \$20.00.
- (q) Nitrogen from nitrites - \$20.00.
- (r) pH - \$10.00.
- (s) Phosphorus from ortho-phosphorus - ~~\$15.00~~\$20.00.
- (t) Phosphorus, total (TP) - \$24.00.
- (u) Solids, total dissolved (TDS) - \$22.00.
- (v) Solids, total suspended (TSS) - \$22.00.
- (w) Sulfate - \$20.00.
- (x) Trichromatic chlorophyll a, b, and c - \$35.00.
- (y) Turbidity - \$15.00.
- (z) LMFO assessment for licensed managed feeding operations pursuant to the Oklahoma Concentrated Animal Feeding Operations Act, Title 2 of the Oklahoma Statutes, Section 20-12 (electrical conductivity, pH, ammonia-nitrogen, nitrate-nitrogen and total phosphorus) - \$45.00.
- (aa) Water well assessment (non-potable) (anion screen, hardness, pH, total alkalinity, and TDS) - \$90.00.

[OAR Docket #09-1070; filed 5-26-09]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 10. AGRICULTURAL PRODUCTS**

[OAR Docket #09-1071]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions [AMENDED]  
35:10-1-3 [AMENDED]  
35:10-1-4 [NEW]

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 14-31 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

**DATES:**

**Comment period:**

February 2, 2009 through March 4, 2009

**Public hearing:**

March 4, 2009 and March 12, 2009

**Adoption:**

March 18, 2009

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March 25, 2009

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March 25, 2009

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March 25, 2009

**Gubernatorial approval:**

April 29, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 19, 2009

**Final adoption:**

May 19, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

National Institute of Standards and Technology (NIST)

**Incorporating rules:**

35:10-1-3

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday at the Oklahoma Department of Agriculture, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma, 405-522-4576

**ANALYSIS:**

The proposed rules update the dates of NIST Handbook incorporations by reference and adds a section for fees. No fee changes are proposed. The purpose of the fee rule is to bring all fees relating to the weights and measures program into a single rule.

**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 JULY 1, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

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## 35:10-1-3. Handbook and publication editions

References to a Handbook or publication in these rules shall mean the following edition of the National Institute of Standards and Technology (NIST), unless a different reference is made in the text of the rule:

- (1) Handbook 44 "Specifications, Tolerances and Other Technical Requirements for Commercial Weighing & Measuring Devices" (2008 2009 Edition).
- (2) Handbook 130 "Uniform Laws and Regulations" (2008 2009 Edition), excluding Section G "Uniform Engine Fuels and Automotive Lubricants Regulation."
- (3) Handbook 133 "Checking the Net Contents of Packaged Goods" (2005 Edition).
- (4) Handbook 105-1 "Specifications and Tolerances for Field Standard Weights" (1990 Edition).
- (5) Handbook 105-2 "Specifications and Tolerances for Field Standard Measuring Flasks" (1996 Edition).
- (6) Handbook 105-3 "Specifications and Tolerances for Graduated Neck Type Volumetric Field Standards" (2004 Edition).
- (7) Publication 14 (2008 2009 Edition).
- (8) Publication 12 (1991 Edition).
- (9) Federal Grain Inspection Service Moisture Handbook (2006 Edition).

## 35:10-1-4. Fee schedule for weights and measures

(a) Owners or users requesting tests of weighing and measuring devices shall pay the following fees:

- (1) VEHICLE SCALES (per indicator): \$200.00
- (2) RANCH AND ANIMAL SCALES (per indicator): \$200.00
- (3) PORTABLE PLATFORM SCALES (up to 1,000 lbs.): \$50.00
- (4) PLATFORM SCALES (more than 1,000 lbs.): \$150.00
- (5) COUNTER AND COMPUTING:
  - (A) Up to 40 lbs.: \$30.00
  - (B) More than 40 lbs.: \$50.00
- (6) GRAIN HOPPER SCALES: \$400.00
- (7) HANGING SCALES: \$50.00
- (8) OVERHEAD TRACK: \$150.00
- (9) PACKING SCALES:
  - (A) Up to 30 lbs.: \$30.00
  - (B) Over 30 lbs.: \$50.00
- (10) OVER AND UNDER SCALES: \$30.00

(b) The following license fees shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry:

- (1) A fee of One Hundred Dollars (\$100.00) for issuance or renewal of a service agency license.
- (2) A fee of Twenty-five Dollars (\$25.00) for issuance or renewal of a service technician license for each category of weights and measures serviced.
- (3) A fee of Ten Dollars (\$10.00) for the issuance of an apprentice service technician license.
- (4) A fee of Ten Dollars (\$10.00) for the issuance of a duplicate license.
- (5) Any license renewal applications received thirty (30) or more days after the renewal date shall result in the

Board charging a penalty equal to and in addition to the cost of the license.

*[OAR Docket #09-1071; filed 5-26-09]*

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

*[OAR Docket #09-1076]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [AMENDED]  
35:15-1-2 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. §§ 2-4 and 6-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

### DATES:

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#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2009

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May 14, 2009

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July 1, 2009

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

Subchapter 1. General Provisions  
35:15-1-2 [AMENDED]

#### Gubernatorial approval:

January 13, 2009

#### Register publication:

26 Ok Reg 607

#### Docket number:

09-125

### INCORPORATIONS BY REFERENCE:

N/A

### ANALYSIS:

The proposed rules amend the definitions to use the term "official identification" rather than "official eartag." In addition, the rule requires that any owner that participates in a federal animal disease program through the Department must have a premise identification number.

### 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 JULY 1, 2009:**

SUBCHAPTER 1. GENERAL PROVISIONS

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.

"**Backtag**" means a USDA approved identification system consisting of a tag of special tough paper, bearing identification codes relating to origin of animals, which are stuck to the back of animals with very strong glue. The backtag is designed for easy reading in sale barns, short life and to help with traceback during investigation of the origin of disease outbreaks.

"**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"~~ "**Official identification**" means any official method of identification approved by USDA or the State Veterinarian, including but not limited to 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 and electronic identification or radio frequency identification (RFID). Backtags shall not be considered an official ear tag, unless the animal is shipped directly to slaughter. Animals identified by the approved veterinarian for a livestock auction market as too debilitated to enter the identification chutes may be officially identified by a backtag or any other form of official identification. The term "official eartag" is synonymous with "official identification."

"**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.

[OAR Docket #09-1076; filed 5-26-09]

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

[OAR Docket #09-1072]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets

35:15-13-1. Definitions [AMENDED]

35:15-13-2. Brucellosis classification-cattle and bison [REVOKED]

35:15-13-3. General requirements for ~~the~~ livestock auction market [AMENDED]

35:15-13-4. Approval of livestock auction market laboratory to conduct diagnostic tests [AMENDED]

35:15-13-5. Approval and responsibilities of veterinarians in auction markets [AMENDED]

35:15-13-6. Movement of livestock through auction markets [AMENDED]

35:15-13-7. Specific approval of livestock auction markets [AMENDED]

Subchapter 17. Bovine and Bison Brucellosis

Part 3. Rules Adopted from Usda Uniform Methods and Rules (Um&r) for Brucellosis Eradication

35:15-17-43. ~~Immediate slaughter of reactors, "B" branded exposed animals in herd depopulation, and exposed animals consigned to immediate slaughter.~~ Slaughter requirements [AMENDED]

Part 9. Change of Ownership Testing [REVOKED]

35:15-17-69. Change of ownership of cattle and bison within Oklahoma [REVOKED]

Subchapter 40. Bovine Tuberculosis

Part 1. Definitions

35:15-40-1. Definitions [AMENDED]

Part 3. Rules Adopted from Usda Uniform Methods and Rules for Bovine Tuberculosis Eradication

35:15-40-38. Classification of cattle and bison tested

35:15-40-40. Reporting of tests [AMENDED]

35:15-40-41. Procedures in affected herds [AMENDED]

35:15-40-43. Disposition of tuberculin responding cattle, bison and goats [AMENDED]

35:15-40-46. Quarantine procedures [AMENDED]

35:15-40-47. Retest schedules for high-risk herds [AMENDED]

35:15-40-49. Identification [AMENDED]

Part 5. Herd Status Requirements

35:15-40-71. Minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle or bison herds [AMENDED]

35:15-40-72. Minimum standards for accreditation and reaccreditation of tuberculosis accredited goat herds [AMENDED]

Part 7. Import Requirements

35:15-40-90. Requirements for cattle entering Oklahoma from a tuberculosis free state or zone [AMENDED]

35:15-40-90.1. Requirements for cattle entering Oklahoma from a modified accredited advanced state or zone [NEW]

35:15-40-92. Importation of Mexican origin steers and spayed heifers [AMENDED]

35:15-40-93. Rodeo bulls [AMENDED]

# Permanent Final Adoptions

## AUTHORITY:

Oklahoma State Board of Agriculture and the Oklahoma Agricultural Code; 2 O.S. §§ 2-4 and 6-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

## DATES:

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February 2, 2009 through March 4, 2009

### Public hearing:

March 4, 2009 and March 12, 2009

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March 25, 2009

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### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 19, 2009

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May 19, 2009

### Effective:

July 1, 2009

## SUPERSEDED EMERGENCY ACTIONS:

### Superseded rules:

Subchapter 13. Testing and Inspection for Disease and Release of Livestock at Auction Markets

35:15-13-1 [AMENDED]

35:15-13-2 [REVOKED]

35:15-13-3 through 35:15-13-7 [AMENDED]

Subchapter 17. Bovine and Bison Brucellosis

Part 9. Change of Ownership Testing

35:15-17-69 [AMENDED]

### Gubernatorial approval:

January 13, 2009

### Register publication:

26 Ok Reg 607

### Docket number:

09-125

### Superseded rules:

Subchapter 40. Bovine Tuberculosis

Part 7. Import Requirements

35:15-40-90 [AMENDED]

35:15-40-90.1 [NEW]

### Gubernatorial approval:

September 15, 2008

### Register publication:

26 Ok Reg 165

### Docket number:

08-1369

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

The proposed rules provide cleanup and amendments to both the Brucellosis program and the Tuberculosis program. Emergency rules were approved to prepare for the impending loss of federal funding for Brucellosis at sale barns and to prepare for the potential loss of Tuberculosis free status for several states. In addition to making these changes permanent, neither program's rules have been fully cleaned up in a number of years. This cleanup will result in consistency between requirements in the programs and consistency in terminology.

## 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 JULY 1, 2009:**

## SUBCHAPTER 13. TESTING AND INSPECTION FOR DISEASE AND RELEASE OF LIVESTOCK AT AUCTION MARKETS

### 35:15-13-1. 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 facility used in conducting necessary diagnostic tests, and is constructed, equipped, and maintained in accordance with Board regulations.

**"Approved veterinarian"** means a licensed accredited veterinarian who has complied with all Board regulations, and who has been approved by the Board to conduct necessary tests, vaccinations, inspections, and other duties of an Auction Market Veterinarian.

**"Board"** means the Oklahoma State Board of Agriculture.

**"Drive-in"** means a written record of livestock in a single consignment. Information on a drive-in shall include name and address of the consignor, license tag number of vehicle used to haul livestock, list and brief description of livestock and corresponding backtags applied, and any special notes or instructions concerning the livestock.

**"Official forms"** means a form furnished or approved by the State Board of Agriculture or Animal and Plant Health Inspection Service, United States Department of Agriculture.

**"Test eligible cattle"** means all cattle eighteen (18) months of age, as determined by the loss of first pair of temporary incisor teeth, except exposed cattle which have been "S" branded, steers, spayed heifers, official vaccinates of dairy breeds under twenty (20) months of age, and official vaccinates of beef ~~brands~~ breeds under twenty four (24) months of age which are not parturient or postparturient.

### 35:15-13-2. Brucellosis classification-cattle and bison [REVOKED]

(a) ~~**Negative.** Cattle and bison are classified as brucellosis negative when their blood serums have been subjected to official serologic tests and the test results fail to disclose evidence of Brucella infection, and if blood, milk or tissues are subjected to bacteriologic methods for cultivating field strain brucella and none are recovered. In short, for an animal to be classified as negative, all procedures that are performed must fail to disclose evidence of brucellosis.~~

(b) ~~**Suspect.** Cattle and bison are classified as suspects when their blood serums have been subjected to official serologic tests and the test results are suggestive of infection but are inconclusive. Bacteriologic methods to cultivate brucella, from blood, milk, or tissues, if used, did not yield field strain brucella.~~

(c) ~~**Reactor.** Cattle and bison are classified as reactors when their blood serums have been subjected to official serologic~~

tests and the test results indicate that the animal has been exposed to and infected with Brucella. Cattle and bison are also classified as reactors in the absence of significant serologic test results when other diagnostic methods, such as bacteriologic methods, result in the recovery of field strain Brucella organisms, or a significant rise in the serologic titer occurs, or when other epidemiologic evidence of infection is demonstrated.

(d) ~~Designated epidemiologist.~~ The evaluation of titer responses for all animals shall be the responsibility of a trained, experienced epidemiologist who has been designated to perform this function, taking into consideration the animal and herd history and other epidemiologic considerations. The selection of the epidemiologist shall be made jointly by the brucellosis staff, Veterinary Services (VS), Regional Epidemiologist, and state and federal animal health officials. Deviations from the reactor criteria set forth in this Subchapter are acceptable when made by the designated epidemiologist.

**35:15-13-3. General requirements for ~~an~~ livestock auction market**

(a) ~~In order for a~~Any person owning, operating, conducting, or maintaining a livestock auction market to be licensed to operate in Oklahoma, it ~~is~~shall be required thatto:

- (1) ~~Application~~Submit an application for a license prior to operation ~~be made~~to the Board on an official form.
- (2) ~~The Bond the market be bonded according~~pursuant to 2 O.S., Section 9-132, as amended or according to the provisions of the Federal Packers and Stockyards Act as amended.
- (3) ~~An~~Employ an approved veterinarian ~~be employed~~.
- (4) ~~The license shall expire on December 31, of each year, and shall cost \$25.00.~~

(b) The livestock auction market license shall cost Twenty Five Dollars (\$25.00) per year and shall expire each December 31.

(bc) Both the buyer's and seller's invoices ~~must shall~~ be complete as to name, address of the owner and description of the cattle as to breed, sex and age. Invoices for swine shall show the predominate breed and shall show them to be feeding, breeding or slaughter swine.

(ed) The veterinarian or sale company shall not be responsible for results of any tests that are made properly, or any reactor or responder animals found in the market. All reactor or responder animals shall revert back to the consignor.

(de) No cattle or swine shall be allowed to leave the market until an approval for release is secured from an approved veterinarian or an agent of the Board. The market shall be responsible to see that no cattle or swine are removed without first being released by an approved veterinarian or an agent of the Board.

(ef) Each market ~~must shall~~ have a quarantine pen or pens for yarding reactor or responder animals. Said pen is to be identified by painting the top of the gate either red or yellow and the word "Quarantine" spelled out on said gate. The pen shall be constructed so as to make it easily cleaned and disinfected after each sale. Any watering troughs or feed bunks in the

quarantine pen shall be located so that livestock in adjoining pens will not have access to them.

(fg) All reactor or responder animals shall be yarded in the quarantine pen and shall be sold last. Such animals ~~must shall~~ be identified as reactors or responders on the invoices of both the buyer and seller.

(gh) Refusal or failure to comply with the Board ~~regulations~~rules shall be just cause for the revocation or suspension of the Livestock Auction Market License.

(i) No person owning, operating, conducting, or maintaining a livestock auction market shall allow any animal identified below to leave the livestock auction market unless it is individually identified by an official identification:

- (1) All beef cattle eighteen (18) months of age or older;
- (2) All dairy cattle two (2) months of age or older; and
- (3) All "M" branded cattle.

(j) The owner or operator of the livestock auction market shall keep records of each animal consigned or delivered to the livestock auction market for a period of two (2) years sufficient for disease traceback purposes, including but not limited to the following:

- (1) "Drive-in" or any other documents identifying the backtag, owners name and address, and license tag of mode of transportation;
- (2) Any records kept pursuant to the Livestock Auction Market Act;
- (3) Records of any official identification applied to the animal or already existing with the animal; and
- (4) Any records available regarding the purchaser of the animals.

**35:15-13-4. Approval of livestock auction market laboratory to conduct diagnostic tests**

All Auction Market Laboratories shall meet the following requirements before approval is granted to conduct diagnostic tests, and no veterinarian shall conduct any test until said laboratory has been approved.

- (1) Constructed and equipped so as to be maintained at room temperature (70° to 78°) both winter and summer.
- (2) Contain a sink with running water.
- (3) Be equipped with a refrigerator in working condition.
- (4) Constructed so that the veterinarian shall have sufficient space and maintain privacy in conducting tests and filling out records and forms.
- (5) Constructed so that it can be kept clean easily and locked at all times when not in use.
- (6) Contain a work counter and sufficient shelf, locked cabinet, or storage space to store forms, ~~ear tags~~official identification, etc., required by the veterinarian in performing the tests and releasing animals.
- (7) Be supplied with adequate artificial light. The electric wiring ~~must shall~~ be adequate to carry a minimum of a centrifuge, electrical refrigerator, cooling facility, and have a minimum of two electrical outlets.
- (8) Be located so as to be convenient for the veterinarian and the public while conducting his duties as an Auction Market Veterinarian.

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### 35:15-13-5. Approval and responsibilities of veterinarians in auction markets

- (a) The veterinarian shall make application for approval to the Board and shall be examined as to his ability to function as an Auction Market Veterinarian.
- (b) The veterinarian shall examine each animal at the livestock market auction for the purposes of determining the condition of health and freedom from infectious or contagious diseases.
- (bc) The veterinarian ~~must~~shall arrive at the market in sufficient time to do all required testing, official identification, and inspection prior to the beginning of the sale.
- (ed) The veterinarian is responsible for completion of state and federal forms necessary for the release of livestock from markets and other state and federal forms required for disease control and eradication programs.
- (de) In the event that an eartag official identification is already present in the animal being tested, the veterinarian shall use this tag instead of retagging, and include all prefixes and numbers in recording said tag on test charts.
- (ef) The veterinarian shall use separate bleeding needle or separate syringe for each animal. The use of the same syringe or needle for all animals is prohibited.
- (fg) If the veterinarian cannot determine the class of livestock to be shipped by the description on the purchaser's invoice, then it will be necessary for him to look at each shipment before releasing them.
- (gh) All reactor or responder cattle received for sale ~~must~~ shall be examined as to ~~eartag numbers~~ official identification by the Auction Market Veterinarian prior to sale.
- (hi) Copies of all forms ~~must~~ shall be forwarded to the office of the State Veterinarian by the veterinarian immediately after sale. All blood samples ~~must~~ shall be forwarded to the State-Federal Brucellosis Laboratory for confirmation of test immediately after sale.
- (ij) All official forms, certificates, or documents and official stamps and signature stamps, shall be kept in the exclusive possession of the veterinarian and shall be dated and signed by him only at the time it is filled out and issued. Under no circumstances shall any official document be presigned or prestamped by the veterinarian. Use of any official stamp by persons other than the approved veterinarian or a state or federal employee is expressly prohibited. The approved veterinarian shall be solely responsible for the unauthorized or improper issuance of any official document or the use of any official stamp or signature stamp.
- (jk) The veterinarian shall be responsible to replace himself with another approved veterinarian in the event he finds it necessary to be absent from the market.
- (kl) The veterinarian shall not resign his duties without written notice to the sale company and State Veterinarian's Office at least ten (10) days prior to resignation.
- (lm) The veterinarian's failure or neglect to perform any of the functions in this Section shall be cause for disapproval and immediate removal from the market.

### 35:15-13-6. Movement of livestock through auction markets

- (a) All certificates permits, and other documents, including out-of-state documents accompanying livestock into Oklahoma markets that are incomplete or have been altered in any way are void and are not to be accepted. This includes documents that are incomplete as to ~~eartag~~official identification number and description of animal it represents. In order to be accurate and acceptable, the prefix of each ~~eartag~~official identification number ~~must~~ shall be recorded.
- (b) Cattle reacting to the required tests ~~must~~ shall be tagged and branded immediately unless a retest is requested by the owner prior to the sale of the animals.
- (c) Cattle consigned directly from an out-of-state farm of origin to an approved livestock market in Oklahoma will not need a permit prior to entry. Out of state test eligible cattle moving through an Oklahoma market ~~must~~ shall be identified by market management at the time of sale.
- (d) ~~Cattle bought by the sale company (catch cattle) eligible for test, must be tested immediately.~~
- (e) All reactor or responder cattle received for sale ~~must~~ shall be examined as to ~~eartag~~official identification number by the Auction Market Veterinarian prior to sale.
- (fe) The market ~~must~~ shall maintain the identity of reactor or responder animals and restrict their sale to slaughtering establishments approved for the purpose of slaughtering reactors or responders. Reactors or responders are not be returned to the country or be transported from market to market.
- (gf) All cattle, regardless of age, weight, sex, or breed, ~~must~~ shall be approved for release by an approved veterinarian or an agent of the Board and are not to be released unless they meet the importation and transportation requirements of the state of destination including the State of Oklahoma.
- (hg) All cattle shipped or exported from the State of Oklahoma, regardless of "purpose of movement", ~~must~~ shall be accompanied by an official Oklahoma health certificate. This includes slaughter, feeding, breeding, and dairy animals. In addition to this health certificate, they ~~must~~ shall meet the state of destination importation requirements as they pertain to permits, test requirements, and the like.
- (ih) ~~All swine released or consigned from a market to points within the State of Oklahoma must be accompanied by Oklahoma Form AID-23.~~
- (j) All swine destined for interstate shipment shall be accompanied by an official health certificate.
- (k) ~~Feeder swine shall be treated and released according to regulations pertaining to the Hog Cholera Program.~~

### 35:15-13-7. Specific approval of livestock auction markets

- (a) No market shall be specifically approved until proper application is made and a determination is made by the State Veterinarian that the Board regulations and standards are met.
- (b) Each market ~~must~~ shall have a packer buyer present at each sale.
- (c) All animals received at the market shall be considered in Interstate Commerce and be handled in accordance with the Interstate Regulations.

(d) All livestock shall be visually inspected by the approved veterinarian prior to sale for diseased conditions such as cattle scab, sheep scab, Actinomycosis (lump jaw), Carcinomas (cancer eye), ~~Bovine Virus Diarrhea, Infectious Bovine Rhinotracheitis~~, Infectious Rhinitis (bull nose) or any other infectious, contagious, or communicable disease.

(e) Any animal found to be diseased by the veterinarian shall be sold direct to slaughter or quarantined for treatment according to the judgement of the veterinarian.

(f) Each market ~~must~~ shall furnish and maintain in good repair sufficient equipment suitable for restraining animals for careful inspection, testing, tagging, branding, and other treatments and procedures ordinarily required in providing livestock sanitary service at markets. Said equipment is to be covered or housed so that necessary work can be taken care of during inclement weather.

(g) The appointment and termination of the approved veterinarian by the auction market is subject to approval of both state and federal officials.

(h) Failure or neglect to perform any of the functions in this Section shall be cause for removal of approval.

**SUBCHAPTER 17. BOVINE AND BISON BRUCELLOSIS**

**PART 3. RULES ADOPTED FROM USDA UNIFORM METHODS AND RULES (UM&R) FOR BRUCELLOSIS ERADICATION**

**35:15-17-43. ~~Immediate slaughter of reactors, "B" branded exposed animals in herd depopulation, and exposed animals consigned to immediate slaughter Slaughter requirements~~**

(a) Reactor ~~or responder~~ animals and "B" brand exposed animals ~~must~~ shall be sold for immediate slaughter and removed from the premises under state or federal permit within ~~fifteen~~ (15) days of the date of identification. The time may be extended ~~fifteen~~ (15) days for reasons mutually acceptable to the cooperating state and federal officials in charge. Reactors ~~or responders~~ and "B" branded exposed animals in herd depopulations shall remain on the premises where disclosed until a state or federal permit for movement to slaughter ~~has been~~ is obtained. Movement for immediate slaughter ~~must~~ shall be to a slaughtering establishment where federal or state inspection is maintained or to a state or federal approved market for sale to ~~such~~ the slaughtering establishment. There shall be no diversion from the permitted destination.

(b) Exposed animals consigned for immediate slaughter or to a quarantined feedlot shall remain on the premise of origin until an "S" brand permit for movement to slaughter or quarantined feedlot has been prepared. Movement for immediate slaughter ~~must~~ shall be to a slaughtering establishment where state or federal inspection is maintained or to a state or federal approved market for sale to ~~such~~ a slaughtering establishment

or quarantined feedlot. There shall be no diversion from the permitted destination.

~~(c) All test eligible animals shall have a blood sample collected at slaughter and all man-made identity shall be properly collected and submitted with each blood sample.~~

**PART 9. CHANGE OF OWNERSHIP TESTING [REVOKED]**

**35:15-17-69. Change of ownership of cattle and bison within Oklahoma [REVOKED]**

~~(a) All test eligible animals must be tested within 30 days prior to movement from sale premise. On all country sales, i.e., any sale other than through an approved market, both the seller and the buyer will be equally and individually responsible for meeting the testing and/or vaccination requirements prior to all changes of ownership.~~

~~(b) Test eligible animals from Certified Brucellosis Free herds are exempt from test requirements provided identity to the Certified Brucellosis Free herd is maintained.~~

~~(c) All test eligible animals moving directly from the farm of origin to a slaughter establishment are exempt from test requirements prior to movement provided they are identified and the identity to the farm of origin is maintained until slaughtered. All test eligible animals must have a blood sample collected at slaughter and all man-made identity must be properly collected and submitted with each blood sample.~~

**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.

"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

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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 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 any person who buys or sells cattle, bison, or dairy goats as a part of 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 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.

**"Herd"** means 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.

**"Mexican origin"** means cattle that originate or have ever resided in Mexico.

**"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 in charge" means any manager, superintendent, secretary, or other person responsible for an exhibition.

"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 ~~ear~~ ear tag identification 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 shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.

"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.

"Rodeo bulls" means sexually intact male cattle kept for performances at rodeos, bucking events, or for exhibition purposes.

"Routine Screening Tuberculin Test" means a caudal fold tuberculin test, or any other test 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.

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

#### 35:15-40-38. Classification of cattle and bison tested

(a) **Official caudal fold tuberculin test.** All responses shall be recorded and the animal classified as suspect and quarantined for retest unless, in the professional judgement of the testing veterinarian, the reactor classification is indicated.

(b) **Single cervical test.** All animals with a response shall be classified as reactors. Responses shall be recorded in millimeters.

(c) **Comparative cervical test.** Responses shall be recorded and plotted on the CCT scattergram. Classification shall be according to the zone in which the animal is plotted on the scattergram. Animals plotting in the negative zone may be reclassified as negative. Animals plotting in the reactor zone may be classified as suspect provided that there has been no known association of the herd with *M. bovis*. The suspect ~~must~~ shall be moved directly to slaughter under permit. The post mortem examination shall be witnessed by a regulatory veterinarian, and specimens ~~must~~ shall be submitted for laboratory examination. If the animal fails to disclose gross or microscopic evidence of bovine tuberculosis and a complete epidemiological investigation, including a herd test of all eligible animals, fails to disclose evidence of bovine tuberculosis or exposure thereto, the herd may be considered free of bovine tuberculosis.

(d) **Animals classified.** Responding animals classified as reactors shall not be retested or reclassified.

(e) **Reclassification of animals.** Animals responding to the caudal fold tuberculin test that were found negative or suspect to the comparative cervical test shall be reclassified as reactors when included in a herd test that results in the confirmation of bovine tuberculosis in the herd.

(f) **New technology.** In the event new technology and advancements provide alternative testing procedures, which are approved by the USDA, the State Veterinarian may alter testing procedures listed above to conform and utilize the new approved methods and tests.

#### 35:15-40-40. Reporting of tests

A report of all tuberculin tests, including the individual identification of each animal by ~~ear~~ ear tag identification number, individual permanent numerical brand, or ~~registration~~ registration tattoo, age, sex, and breed and a record of the size of the response and test interpretation, shall be submitted to the Oklahoma Department of Agriculture, Animal Industry Services Division, within ten (10) days of the date the test is read.

#### 35:15-40-41. Procedures in affected herds

Disclosure of tuberculosis in any herd shall be followed by a complete epidemiologic investigation and written report. All cattle ~~and~~ and/or bison in herds from which tuberculosis cattle ~~and~~ and/or bison originate, and all cattle ~~and~~ and/or bison that are known to have been associated with affected cattle ~~and~~ and/or bison, shall be tested or an approved herd plan ~~must~~ shall be on file within thirty (30) days of the date disclosed. These procedures shall apply to adjacent and contact herds as well as to the evaluation and testing of possible source herds for the affected herd. Herds that have received exposed animals shall be tested

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following the slaughter or testing of exposed animals. Every effort shall be made to insure the immediate elimination of the disease from all species of domestic livestock on the premise. The first consideration in affected herds is the depopulation of the entire herd. If depopulation cannot be accomplished, the herd shall be handled as outlined under 35:15-40-46.

### 35:15-40-43. Disposition of tuberculin responding cattle, bison and goats

- (a) Reactors shall remain on the premises where they were disclosed until a state or federal permit for movement has been obtained. Movement for immediate slaughter will be directly to a slaughtering establishment where approved state or federal inspection is maintained within fifteen (15) days of classification. Alternatively, the animals may be destroyed under the direct supervision of a regulatory veterinarian to insure that a proper post mortem examination can be conducted and that the carcass is either cooked or condemned.
- (b) Herds containing suspects to the caudal fold tuberculin test shall be quarantined until the suspect animals are:
  - (1) Retested by the comparative cervical tuberculin test within ten (10) days of the caudal fold injection, or
  - (2) Retested by the comparative cervical tuberculin test after sixty (60) days, or
  - (3) Shipped under permit directly to slaughter in accordance with state and federal laws and regulations.
- (c) Suspects to the comparative cervical test shall remain under quarantine until they are:
  - (1) Retested by the comparative cervical test in sixty (60) days, or
  - (2) Shipped under permit directly to slaughter.
- (d) An animal in the suspect zone on two successive comparative cervical tests will be classified as a reactor and branded. The testing veterinarian ~~must~~ shall justify exceptions in writing to the state and federal animal health officials.

### 35:15-40-46. Quarantine procedures

- (a) All herds in which reactor animals are disclosed shall be quarantined. Exposed animals ~~must~~ shall remain on the premises where disclosed unless a state or federal permit has been obtained. Movement for immediate slaughter ~~must~~ shall be directly to an approved slaughtering establishment where state or federal inspection is administered. Animals ~~must~~ shall be identified by official ~~ear tags~~ identification. Use of "S" brand is required on cattle and bison or animals ~~must~~ shall be shipped in a sealed vehicle.
- (b) Sale of feeder calves from quarantined herds shall be restricted. Feeder calves under twelve (12) months of age that have passed a caudal fold tuberculin test within sixty (60) days may be permitted to move intrastate to a quarantine feedlot.
- (c) Herds in which mycobacterium bovis infection has been confirmed shall remain under quarantine if not depopulated and ~~must~~ shall pass two tuberculin tests of intervals of at least sixty (60) days and one (1) additional test after one hundred eighty (180) days. All animals moved from the farm shall be shipped directly to slaughter and shall be accompanied by slaughter permit issued by a state or federal representative.

(d) Herds in which only NGL reactor(s) occur and in which no evidence of mycobacterium bovis infection has been disclosed may be released from quarantine after a sixty (60)-day negative caudal fold retest of the entire herd.

(e) Suspects in herds where only suspect animals are disclosed shall be quarantined on the premises until retested and classified negative or shipped directly to slaughter under permit. If an animal is slaughtered as a comparative cervical test reactor (following two (2) CCT tests as a suspect) and shows no gross lesions, then the entire herd may be retested at sixty (60) days by caudal fold test and released from quarantine as in 35:15-40-46(d). If animals are slaughtered as suspects, but show no gross lesions, a sixty (60)-day herd retest is recommended.

(f) Herds indicated as the source(s) of slaughter trace back case investigations shall be placed under quarantine within thirty (30) days of notification, and a herd test shall be scheduled.

(g) The issuance of a quarantine may be waived if the State Board of Agriculture or the State Veterinarian enters into a formal cooperative agreement with the affected party that will control and eradicate bovine tuberculosis.

### 35:15-40-47. Retest schedules for high-risk herds

- (a) In herds with a history of lesions suspicious of bovine tuberculosis (but not confirmed), two (2) complete annual herd tests shall be given after release from quarantine - the first test to be applied not less than ten (10) months nor more than fourteen (14) months after release from quarantine.
- (b) In a newly assembled herd on premises where a tuberculosis herd has been depopulated, two (2) annual herd tests shall be applied to all cattle and/or bison. The first test ~~must~~ shall be applied not less than four (4) months nor more than eight (8) months after assembly of the new herd. If the premises are vacated for one (1) year, these requirements may be waived by the designated epidemiologist or State Veterinarian.
- (c) Exposed animals previously sold from a known infected herd shall be depopulated if at all possible. If the exposed animal(s) is not depopulated, only the single cervical test shall be used. All responding animals shall be classified as reactors. If negative to the test, the exposed animal(s) will subsequently be handled as if a part of the infected herd of origin for purposes of testing, quarantine release and the five (5) annual high-risk tests. The remainder of the herd shall be retested in one (1) year with the caudal fold test. The balance of the receiving herd shall be retested as follows:
  - (1) If lesions of tuberculosis (based on histopathologic examination) are found in ~~the~~ an exposed animal(s), the remainder of the herd shall be tested with the single cervical test.
  - (2) In all other cases, the remainder of the herd shall be tested by the caudal fold test. The responding animals may be classified as suspects and retested with the comparative cervical test.
- (d) The testing of source herds of regular kill animals having lesions of tuberculosis shall be done by full-time state or federal regulatory veterinarians. If the herd of origin is positively identified, all animals responding to the caudal fold test shall

be classified as reactors. Only when the herd of origin is not positively identified should the comparative cervical test be used to classify animals that respond to the caudal fold test.

(e) Testing of source herds of reactors shall be by full-time state or federal regulatory veterinarians using the caudal fold test procedure. Responding animals may be classified as reactors or, if classified as suspects, may be retested by the comparative cervical test.

(f) In herds where mycobacterium bovis infection has been confirmed, but the herd has not been depopulated, five (5) annual tests on the entire herd shall be given following the release from quarantine.

(g) In the event new technology and advancements provide alternative testing procedures, which are approved by the USDA, the State Veterinarian may alter testing schedules listed above to conform and utilize the new approved methods and tests.

**35:15-40-49. Identification**

(a) All animals tested shall be individually identified by official ~~ear~~tag identification, individual tattoo, individual permanent numerical brand or any other identification method approved by the State Veterinarian at the time of injection. Devices easily removed and transferred are not satisfactory.

(b) Animals moved in channels of trade shall be identified and recorded as to origin and destination at the first point of concentration including, but not limited to, dealers, livestock auction markets and stockyards.

(c) Animals over two (2) years of age that are returned to farms or ranches shall be identified by official ~~ear~~tag identification or any other method approved by the State Veterinarian.

**PART 5. HERD STATUS REQUIREMENTS**

**35:15-40-71. Minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle or bison herds**

The minimum standards for accreditation and reaccreditation of tuberculosis accredited cattle and bison herds are as follows:

(1) All test eligible cattle and bison shall pass two (2) consecutive negative official tuberculin tests not less than ten (10) months nor more than fourteen (14) months apart. Test eligible animals shall include all cattle or bison twenty-four (24) months of age and older.

(2) All cattle and bison in the herd shall be individually identified by an official ~~ear~~tag identification, registration tattoo, or individual permanent numerical brand.

(3) Any cattle or bison added to an accredited herd shall either:

(A) Test negative to an official tuberculin test sixty (60) days prior to entering the premises, be kept in isolation, and test negative sixty (60) days following entry, or

(B) Be from one of the following:

(i) An accredited herd,

(ii) A herd from an accredited free state, or

(iii) A herd in a modified accredited area that passed a herd test of all cattle and bison over twenty-four (24) months of age within the previous twelve (12) months and the added cattle and bison test negative to an official tuberculin test within sixty (60) days of entering the herd.

(4) Any cattle or bison added to an accredited herd that did not originate from an accredited herd shall not receive new herd status for sale purposes until they have been a herd member for at least sixty (60) days and are included in a complete herd test.

(5) All additions, both purchased and natural, shall be identified as herd members for the herd retest.

(6) The owner shall keep records individually identifying each animal, including all natural or other additions, and shall also keep records of the death or other disposition of each animal.

(7) Accreditation is valid for a twenty-four (24) month period. The original date of accreditation shall be the herd's official accreditation date.

(8) Reaccreditation shall require a negative test of all test eligible herd members not less than twenty-two (22) nor more than twenty-six (26) months from the official accreditation date. All cattle or bison shall be bona fide members of the herd.

(9) Any evidence of bovine tuberculosis in a herd shall result in a denial of accreditation or reaccreditation.

**35:15-40-72. Minimum standards for accreditation and reaccreditation of tuberculosis accredited goat herds**

Minimum standards for accreditation and reaccreditation of tuberculosis accredited goat herds are as follows:

(1) Testing of herds for accreditation or reaccreditation shall include all goats over six (6) months of age and any animals other than natural additions under six (6) months of age. All natural additions shall be individually identified and recorded on the test report as members of the herd at the time of the annual test.

(2) Herd additions ~~must~~ shall originate directly from one of the following:

(A) Accredited herd, or

(B) Herd in an accredited free state, or

(C) Herd in a modified accredited area that has passed a herd test of all animals over six (6) months of age within 12 months, and the individual animals for addition were negative to the official tuberculin test conducted within 60 days, or

(D) Herd in a modified accredited area not meeting requirements of 35:15-40-72(2)(A)(B) or (C). Individual animals for addition ~~must~~ shall pass a negative test within sixty (60) days prior to entering the premises of the accredited herd and ~~must~~ shall be kept in isolation from all members of the accredited herd until negative to a test conducted after sixty (60) days of date of entry.

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- (3) Animals added under 35:15-40-72(2)(B)(C) and (D) shall not receive accredited herd status for sale purposes until they have been members of the herd at least sixty (60) days and are included in a herd retest.
- (4) Reaccreditation shall require a negative test of all test eligible herd members not less than ten (10) nor more than fourteen (14) months from the official accreditation date. All animals ~~must~~ shall be bona fide members of the herd.
- (5) No evidence of bovine tuberculosis may be disclosed in the herd for the purposes of accreditation or reaccreditation.

## PART 7. IMPORT REQUIREMENTS

### **35:15-40-90. Requirements for cattle entering Oklahoma from a tuberculosis free state or zone**

- (a) Cattle that test positive for tuberculosis shall not enter Oklahoma.
- (b) Cattle from herds quarantined for tuberculosis shall not enter Oklahoma.
- (c) All dairy steers and spayed heifers shall be accompanied by a certificate of veterinary inspection.
- (d) All sexually intact dairy cattle under six (6) months of age shall be individually identified by an official ~~ear-tag~~ identification and accompanied by a certificate of veterinary inspection.
- (e) All sexually intact dairy cattle six (6) months of age and older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:
  - (1) Originate from a tuberculosis free herd; or
  - (2) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection.
- (f) Beef cattle under the age of eighteen (18) months and all spayed heifers or steers shall be accompanied by a certificate of veterinary inspection.
- (g) All other beef cattle eighteen (18) months or older shall be accompanied by a certificate of veterinary inspection that individually identifies each animal and shall meet one of the following:
  - (1) Originate from a tuberculosis free state;
  - (2) Originate from a tuberculosis free herd; or
  - (3) Test negative no more than sixty (60) days prior to entry with the results recorded on the certificate of veterinary inspection.
- (h) Any cattle that do not meet these testing requirements shall be tagged as slaughter-only and sent either directly to slaughter or to a designated feedlot.

### **35:15-40-90.1. Requirements for cattle entering Oklahoma from a modified accredited advanced state or zone**

- (a) Cattle that test positive for tuberculosis shall not enter Oklahoma.

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

(c) All cattle shall be accompanied by a permit number and a certificate of veterinary inspection that was approved by the Oklahoma State Veterinarian prior to entry into Oklahoma.

(d) Cattle or bison may move directly to slaughter at an approved slaughtering facility.

(e) Sexually intact heifers may move to an approved feedlot.

(f) Steers or spayed heifers may move into Oklahoma so long as they meet one of the following:

(1) Cattle or bison are individually identified by an official identification and the cattle or bison:

(A) are accompanied by the original certificate of veterinary inspection at all times;

(B) are placed at a single location for grazing; and

(C) are only removed from the single location directly to an approved feedlot or directly to slaughter;

(2) Cattle or bison enter on a NAIS Premise Identification Number for the premise of origin and premise of destination with an approved Group Lot Number and the group lot:

(A) is accompanied by the original certificate of veterinary inspection at all times;

(B) is placed at a single location for grazing;

(C) remains as a group lot;

(D) does not commingle with other cattle or bison; and

(E) is only removed from the single location directly to an approved feedlot or directly to slaughter; or

(3) Cattle or bison are individually identified by an official identification and test negative to an official tuberculosis test conducted within sixty (60) days prior to movement into Oklahoma.

(g) Cattle or bison from an accredited herd may enter Oklahoma with a certificate of veterinary inspection that includes complete herd tuberculosis negative test results within one (1) year prior to entry.

(h) Sexually intact cattle or bison, not from an accredited herd, shall be individually identified and accompanied by a certificate of veterinarian stating the cattle or bison tested negative to an official tuberculin test conducted within sixty (60) days prior to the date of movement.

### **35:15-40-92. Importation of Mexican origin steers and spayed heifers**

(a) Mexican origin steers and spayed heifers imported as stocker, feeder, slaughter animals may enter Oklahoma provided they test negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within sixty (60) days prior to entry into Oklahoma and they obtain a telephone entry permit prior to entering Oklahoma providing the following information:

- (1) a certificate of veterinary inspection containing the individual identification and all tag numbers, tuberculosis testing information, statement that the animals are "Mexican Origin Cattle," and complete consignor or consignee information including telephone numbers; and

- (2) a VS Form 17-30.
  - (b) Mexican origin steers and spayed heifers and any commingled cattle shall not be diverted from the stocker, feeder, slaughter channel.
  - (c) Mexican origin steers and spayed heifers shall not be commingled with any cattle other than stocker, feeder, slaughter cattle.
  - (d) Holstein and Holstein-cross steers and spayed heifers from Mexico shall not enter Oklahoma regardless of test history.
  - (e) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock prior to entry into Oklahoma shall obtain an entry permit, provide individual identification and all tag numbers, and be accompanied by a negative tuberculosis test that meets one of the following:
    - (1) Performed by an accredited veterinarian within the previous 365 days; or
    - (2) Performed in accordance with the Norma Oficial Mexicana (NOM), the animal is accompanied by a VS 17-30, and the animal is quarantined upon entry into Oklahoma until retested by an accredited veterinarian within sixty (60) to one hundred twenty (120) days of the original tuberculosis test.
  - (f) Mexican origin steers and spayed heifers and U.S. origin Corriente cattle utilized as rodeo stock moving within the state shall meet the following requirements:
    - (1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days;
    - (2) Be identified with an official ~~ear~~ ear tag identification; and
    - (3) There is no change of ownership since the date of the last official test.
  - (g) No sexually intact Mexican origin rodeo stock shall enter Oklahoma.
  - (h) The official in charge shall be responsible for verifying that all Mexican origin cattle utilized as rodeo stock entering any exhibition meet all testing requirements.
    - (1) The official in charge shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.
    - (2) Any person providing erroneous or fictitious information shall be in violation of these rules.
  - (i) Any official in charge who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.
- 35:15-40-93. Rodeo bulls**
- (a) Rodeo bulls may move into the State of Oklahoma provided:
    - (1) The rodeo bull is accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days and the test was performed in the name of the current owner;
    - (2) The bull is identified with an official ~~ear~~ ear tag identification;

- (3) A certificate of veterinary inspection accompanies each interstate movement of the bull; and
- (4) A permit for entry is issued for each interstate movement of the bull.
- (b) Rodeo bulls moving within the state shall meet the following requirements:
  - (1) Be accompanied by a negative tuberculosis test performed by an accredited veterinarian within the previous 365 days and the test was performed in the name of the current owner; and
  - (2) Be identified with an official ~~ear~~ ear tag identification.
- (c) The official in charge shall be responsible for verifying that all rodeo bulls entering any exhibition meet all testing requirements.
  - (1) The official in charge shall not be held responsible for recording or accepting falsified or erroneous information provided by an owner.
  - (2) Any person providing erroneous or fictitious information shall be in violation of these rules.
- (d) Any official in charge who knowingly, negligently, or willfully allows an untested or positive animal to enter an exhibition shall be in violation of these rules and the official in charge and the owner of the positive or untested animal shall be equally and individually in violation of these rules.

[OAR Docket #09-1072; filed 5-26-09]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 30. CONSUMER PROTECTION**

[OAR Docket #09-1074]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 13. Imported Fire Ant Quarantine  
35:30-13-3 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 3-2 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

**DATES:**

**Comment period:**

February 2, 2009 through March 4, 2009

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March 18, 2009

**Submitted to Governor:**

March 20, 2009

**Submitted to House:**

March 20, 2009

**Submitted to Senate:**

March 20, 2009

**Gubernatorial approval:**

April 21, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2009

**Final adoption:**

May 14, 2009

**Effective:**

July 1, 2009

# Permanent Final Adoptions

## SUPERSEDED EMERGENCY ACTIONS:

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

The proposed rule adds twelve new counties that are quarantined for fire ants. The new counties added to the rule mirror those that are already under federal quarantine for fire ants.

## 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 JULY 1, 2009:**

## SUBCHAPTER 13. IMPORTED FIRE ANT QUARANTINE

### 35:30-13-3. Regulated area

Imported Fire Ant regulated areas are the Oklahoma counties of:

(1) ~~ALABAMA: Counties of Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Calhoun, Chambers, Cherokee\*, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert\*, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, Dallas, Dekalb\*, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Greene, Hale, Henry, Houston, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Lowndes, Macon, Madison\*, Marengo, Mario Marshall\*, Mobile, Monroe, Montgomery, Morgan Perry, Pickens, Pike, Randolph, Russell, St. Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wileox, and Winston. Bryan Jefferson, and McCurtain (1-15-86);~~

(2) ~~ARKANSAS: Counties of Ashley, Bradley, Calhoun, Chicot, Cleveland\*, Columbia, Desha\*, Drew, Lafayette, Miller, Ouachita, and Union. Marshall (Additional Infested Area 2-5-87);~~

(3) ~~FLORIDA: The entire state. Carter, Choctaw, Comanche, Johnston, and Love; and~~

(4) ~~GEORGIA: Counties of Appling, Atkinson, Bacon, Baker, Baldwin, Barrow\*, Bartow\*, Ben Hill, Berrien, Bibb, Bleckley, Brantley, Brooks, Bryan, Bulloch, Burke, Butts, Calhoun, Camden, Chandler, Carroll, Charlton, Chatham, Chattahoochee, Chattooga\*, Cherokee\*, Clarke\*, Clay, Clayton, Clinch, Cobb, Coffee, Colquitt, Columbia, Cook, Coweta, Crawford, Crisp, Deatur, DeKalb, Dodge, Dooly, Dougherty, Douglas, Early, Echols, Effingham, Emanuel, Evans, Fayette, Floyd, Forsyth\*, Fulton, Glascocock, Glynn, Grady, Greene, Gwinnett, Hall, Hancock, Haralson, Harris, Heard, Henry, Houston, Irwin, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Lanier, Laurens, Lee, Liberty, Lincoln, Long, Lowndes, Macon, Marion, McDuffie, McIntosh, Meriwether, Miller, Mitchell, Monroe, Montgomery, Morgan, Muscogee, Newton, Oconee,~~

~~Oglethorpe, Paulding, Peach, Pierce, Pike, Polk, Pulaski, Putnam, Quitman, Randolph, Richmond, Rockdale, Seley, Screven, Seminole, Spalding, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Teffell, Thomas, Tift, Toombs, Treutien, Troup, Turner, Twiggs, Upson, Walton, Ware, Waffin, Washington, Wayne, Webster, Wheeler, Wileox, Wilkinson, Wilkes\*, and Worth. LeFlore, Pushmataha, Atoka, Coal, Pontotoc, Garvin, Murray, Stephens, Jefferson, Cotton, Tillman, and Jackson.~~

(5) ~~LOUISIANA: The entire state.~~

(6) ~~MISSISSIPPI: Counties of Adams, Alcorn, Amite, Attala, Benton\*, Bolivar\*, Carroll, Calhoun, Chickasaw, Choctaw, Claiborne, Clarke, Clay, Copiah, Covington, Forrest, Franklin, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena, Itawamba, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Kemper, Lafayette, Lamar, Lauderdale, Lawrence, Leake, Lee, LeFlore, Lincoln, Lowndes, Madison, Marion, Monroe, Montgomery, Neshoba, Newton, Noxubee, Oktibbeha, Panola\*, Pearl River, Perry, Pike, Pontotoc, Prentiss, Rankin, Scott, Sharkey, Simpson, Smith, Stone, Sunflower\*, Tallahatchie\*, Tippah\*, Tishomingo, Union, Walthall, Warren, Washington, Wayne, Webster, Wilkinson, Winston, Yalobusha, and Yazoo.~~

(7) ~~NORTH CAROLINA: Counties of Anson\*, Beaufort\*, Bladen\*, Brunswick, Carterat, Columbus, Craven\*, Duplin\*, Jones, Lenoir\*, New Hanover, Onslow, Pamlico, Pender, Robeson\*, and Sampson'.~~

(8) ~~OKLAHOMA: Counties of:~~

(A) ~~Bryan Jefferson, and McCurtain. (1-15-86)~~

(B) ~~Marshall (Additional Infested Area 2-5-87)~~

(C) ~~Carter, Choctaw, Comanche, Johnston, and Love~~

(9) ~~PUERTO RICO: The entire territory.~~

(10) ~~SOUTH CAROLINA: Counties of Aiken, Allendale, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Clarendon, Colleton, Darlington, Dillon, Dorchester, Edgefield\*, Fairfield, Florence, Georgetown, Hampton, Horry, Jasper, Kershaw, Lancaster, Lee, Lexington, Marion, Marlboro', McCormick\*, Newberry\*, Orangeburg, Richland, Sumter, and Williamsburg.~~

(11) ~~TEXAS: Counties of Anderson, Angelina, Aransas, Atascosa, Austin, Bandera\*, Barnwell, Bastrop, Bee\*, Bell, Bexar, Blanco, Bowie\*, Brazoria, Brazos, Burleson, Caldwell, Calhoun, Camp\*, Cass\*, Chambers, Cherokee, Collin, Colorado, Comal, Dallas, Denton, De Witt, Ellis\*, Falls, Fayette, Fort Bend, Freestone, Frio\*, Galveston, Gillespie, Goliad, Gonzales, Grayson\*, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill\*, Houston, Jackson, Jasper, Jefferson, Jim Wells\*, Johnson, Kendall, Kerr, Kleberg, Lavaca, Lee, Leon, Liberty, Limestone, Madison, Marlboro\*, Marion, Matagorda, McLennan, Medina\*, Milan, Montgomery, Nacogdoches, Navarro', Newberry, Newton, Nueces, Orange, Panola, Polk, Rains\*, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Tarrant, Travis, Trinity, Tyler,~~

Upshur', Victoria, Walker, Waller, Washington, Wharton, Williamson, Wilson, and Wood\*.  
\*Portion of county.

[OAR Docket #09-1074; filed 5-26-09]

**TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY  
CHAPTER 30. CONSUMER PROTECTION**

[OAR Docket #09-1073]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 17. Combined Pesticide  
Part 5. Prerequisites for Licensing  
35:30-17-10 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4, 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

**DATES:**

**Comment period:**

February 2, 2009 through March 4, 2009

**Public hearing:**

March 4, 2009 and March 12, 2009

**Adoption:**

March 18, 2009

**Submitted to Governor:**

March 24, 2009

**Submitted to House:**

March 24, 2009

**Submitted to Senate:**

March 24, 2009

**Gubernatorial approval:**

April 27, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 16, 2009

**Final adoption:**

May 16, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed rule cleans up the provisions related to insurance for licensed applicators and changes the terminology to use current insurance terminology.

**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 JULY 1, 2009:**

**SUBCHAPTER 17. COMBINED PESTICIDE**

**PART 5. PREREQUISITES FOR LICENSING**

**35:30-17-10. Application insurance requirements**

(a) The Board shall not issue an applicator's license until the applicant or agent has furnished evidence of financial responsibility. A liability insurance policy or certification shall protect persons who may suffer legal damages as a result of the pesticide operations of the applicant. The policy need not apply to damages or injury to agricultural crops, plants, or land being worked on by the applicant.

(b) ~~The liability insurance shall provide for not less than \$50,000 per occurrence and \$100,000 aggregate bodily injury and not less than \$50,000 per occurrence and \$100,000 aggregate for property damage. Liability insurance shall be maintained at all times during the licensed period. The Board shall be notified by the insurer fifteen (15) days prior to any applicant's request for a reduction or cancellation of the liability insurance. The total and the aggregate of the insurer for all claims shall be limited to the face amount of the liability insurance policy. The Board may accept a liability insurance policy with a deductible clause in an amount not exceeding \$5,000 for all applicators. If the applicant has not satisfied the requirement of the deductible amount in any prior legal claim, the deductible clause shall not be accepted by the Board unless the applicant has furnished the Board with additional liability insurance which satisfies the amount of the deductible. With the exception of aerial pesticide applicators, pesticide applicators obtaining liability insurance pursuant to this section shall file a certificate of insurance with the Department, verifying insurance in an amount of not less than \$50,000 bodily injury, \$100,000 bodily injury per occurrence, and \$50,000 property damage. The provisions of this section with regard to "per occurrence" are specifically intended to be interpreted per occurrence, rather than per claimant. The insurance obtained pursuant to this section shall insure against liability for damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the application of any pesticide. A current certificate of insurance must be filed with each initial and subsequent renewal registration.~~

(c) Aerial pesticide applicators obtaining liability insurance pursuant to this section shall file a certificate of insurance with the Department, verifying insurance in an amount of not less than \$100,000 bodily injury, \$300,000 bodily injury per occurrence, and \$100,000 property damage. The provisions of this section with regard to "per occurrence" are specifically intended to be interpreted per occurrence, rather than per claimant. The insurance obtained pursuant to this section shall insure against liability for damage, loss, or injury, including chemical drift or trespass, suffered by any person or persons, resulting from the application of any pesticide. A current certificate of insurance must be filed with each initial and subsequent renewal registration.

(d) Liability insurance shall be maintained at all times during the licensed period. The Board shall be notified by the insurer fifteen (15) days prior to any applicant's request for a reduction or cancellation of the liability insurance. The total and the aggregate of the insurer for all claims shall be limited to the face amount of the liability insurance policy. The Board may accept a liability insurance policy with a deductible clause in an amount not exceeding \$5,000 for all applicators. If the

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applicant has not satisfied the requirement of the deductible amount in any prior legal claim, the deductible clause shall not be accepted by the Board unless the applicant has furnished the Board with additional liability insurance which satisfies the amount of the deductible.

(ee) If the furnished liability insurance becomes unsatisfactory, the applicant shall upon notice immediately provide a new liability insurance. Upon failure to do so, the Board shall cancel the license and give notice. It shall be unlawful to engage in the business of applying pesticides until the insurance is brought into compliance and the license is reinstated by the Board.

(ef) Application of a pesticide specifically excluded on the insurance policy shall be considered working without a license.

[OAR Docket #09-1073; filed 5-26-09]

## TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 40. MARKET DEVELOPMENT

[OAR Docket #09-1075]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Agriculture Enhancement and Diversification Program

Part 1. Definitions

35:40-5-1 [AMENDED]

Part 3. Applicant Eligibility

35:40-5-31 [AMENDED]

Part 5. Evaluation and Funding Criteria

35:40-5-51 [AMENDED]

Part 7. Procedure for Loan or Grant Requests

35:40-5-71 [AMENDED]

Part 9. Supplemental Program Information

35:40-5-91 [AMENDED]

Part 11. Terms of Loans or Grants

35:40-5-111 [AMENDED]

Part 13. Marketing and Utilization Loans

35:40-5-131 [AMENDED]

Part 15. Cooperative Marketing Loans

35:40-5-151 [AMENDED]

Part 17. Farm Diversification Grants

35:40-5-171 [AMENDED]

Part 18. Basic and Applied Research Loans or Grants

35:40-5-181 [AMENDED]

Part 19. Disbursements

35:40-5-191 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Agriculture; 2 O.S. §§ 2-4 and 5-3.1; Article 6, Section 31, Constitution of the State of Oklahoma

### DATES:

#### Comment period:

January 15, 2009 through February 17, 2009

#### Public hearing:

February 17, 2009

#### Adoption:

March 18, 2009

#### Submitted to Governor:

March 20, 2009

#### Submitted to House:

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#### Submitted to Senate:

March 20, 2009

#### Gubernatorial approval:

April 21, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2009

#### Final adoption:

May 14, 2009

#### Effective:

July 1, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

The purpose of the proposed rules is to revise the processes for obtaining a loan or a grant through the Department's Agriculture Enhancement and Diversification Program. The program currently operates pursuant to rules developed when the statutory authority was originally passed by the Oklahoma Legislature. Since that time, many lessons have been learned by the Department regarding the processes identified in those original rules that may need to be modified.

#### 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 JULY 1, 2009:**

## SUBCHAPTER 5. AGRICULTURE ENHANCEMENT AND DIVERSIFICATION PROGRAM

### PART 1. DEFINITIONS

#### 35:40-5-1. Definitions

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

**"Advisory board Board"** means the Oklahoma Agriculture Enhancement and Diversification Advisory Board.

**"Agricultural commodity product"** means a product of cultivating the soil, growing crops, or raising livestock, horticultural commodity, silvicultural commodity, or agricultural product, horticultural product, viticulture, or silvicultural product, or bees and honey, planting seed, rice, livestock or livestock product, or poultry or poultry product, produced in this state, either in its natural state or as processed by the producer.

**"Agricultural producer"** means a person engaged in the business of cultivating, growing, raising, or processing for commercial purposes an agricultural commodity.

**"Agritourism"** means a working farm or ranch that is open to the public for purposes of purchasing products, public learning opportunities, recreational activities and stimulate economic growth and viability in rural communities by promoting and fostering agritourism ventures in Oklahoma.

**"Applicant"** means a person who is requesting loans or grants from the Oklahoma Agriculture Enhancement and Diversification Program.

"Application" means a form provided by the ~~Oklahoma Agriculture Enhancement and Diversification Advisory Board~~, that is used to request funds in the form of a loan or grant. ~~Applications are not to exceed twenty typed, single spaced or double spaced eight and one half inch by eleven inch pages.~~

"Board" means the Oklahoma State Board of Agriculture or its designee.

"Borrower" means an individual, group of individuals, or an individual acting on behalf of a group or a corporation, which have been lent funds, as a loan.

"Contract" means a signed agreement between the Board ~~of Agriculture~~ and the borrower or grantee outlining the terms and conditions of the loan or grant, including ~~any~~ repayment ~~schedule or schedules~~ and other guidelines.

"Cooperative" means a group of individuals working together, who have an informal or formal agreement.

"Family farm" means a single family unit or multiple family members of the same lineage engaged in the business of producing or causing to be produced for commercial purposes an agriculture commodity.

"Grant" means funds awarded to an entity by the Advisory Board of Agriculture ~~under the provisions of the Oklahoma Agriculture Enhancement and Diversification Program and the recommendation of the Oklahoma Agriculture Enhancement and Diversification Advisory Board~~, with no reimbursement required.

"Grantee" means an individual, group of individuals, or an individual acting on behalf of a group or a corporation, ~~which have that has~~ been awarded funds, as a grant.

"Loan" means funds provided by the Advisory Board of Agriculture ~~under the provisions of the Oklahoma Agriculture Enhancement and Diversification Program and recommendations of the Oklahoma Agriculture Enhancement and Diversification Advisory Board~~. Terms and conditions of the loan shall be outlined in a contract between the State Board of Agriculture and the borrower.

"Nontraditional crops" ~~and~~ "nontraditional livestock" means any crops, livestock or agricultural products except wheat, corn, soybeans, milo, peanuts, cotton, hay, oats, beef cattle, dairy cattle, swine, poultry, and equine.

"Proposal" means a portion of the ~~typewritten~~ application that includes the executive summary, project narrative, list of funding sources and a breakdown of planned expenditures by those sources and the project budget.

**PART 3. APPLICANT ELIGIBILITY**

**35:40-5-31. Applicant eligibility**

- (a) All applicants shall be at least 21 years of age and shall reside and be a legal resident of the state of Oklahoma.
- (b) Eligibility ~~shall~~ may be given to those applicants whose:
  - (1) Projects demonstrate a shared commitment for funding or in kind services from the applicant and other private or public sources, if any;
  - (2) Industrial and nonfood production processes utilize agricultural products;

- (3) Food, feed and fiber products and their uses are innovative and add to the value of agricultural products;
- (4) Applications demonstrate a high feasibility of job creation and return-on-investments;
- (5) Proposals demonstrate a high feasibility of rapid commercialization;
- (6) Proposals center efforts on non-urban locales;
- (7) Principals are individuals, a group of individuals, ~~and an~~ individual acting on behalf of a group, or corporations which meet the criteria set forth in Section 951 of Title 18 of the Oklahoma Statutes, to market a product or formulate or implement a marketing plan for products which have not been marketed through existing marketing cooperatives;
- (8) Proposals contain the potential to create additional income for the farm unit;
- (9) Proposals provide for new innovative plans for marketing the product; ~~and~~
- (10) Proposals feature research that is innovative as well as commercially feasible; or
- (11) Proposals shall result in creation or expansion of viable agritourism venues.

- (c) Consideration shall not be given to applications for:
  - (1) Research or marketing plans which do not clearly meet the stated objectives of the Oklahoma Agriculture Enhancement and Diversification Program;
  - (2) Proposals which are aimed solely at business expansion or creation without regard to agricultural products utilization; and
  - (3) Research or marketing plans that cannot reasonably be expected to result in a viable commercial application, or that are or have been duplicated by other research efforts.

**PART 5. EVALUATION AND FUNDING CRITERIA**

**35:40-5-51. Evaluation and funding criteria**

The State Board of Agriculture delegates the evaluation of applications for loans or grants to the Advisory Board. The Advisory Board shall evaluate each proposal. ~~Recommendations for The Advisory Board shall provide a report to the State Board of Agriculture of funding of loan or grant proposals shall be presented to the Board of Agriculture and discussed at the next scheduled meeting.~~ Each Advisory Board member's evaluation shall be based upon one hundred possible points, according to the following criteria:

- (1) ~~Likelihood of each proposal's success. Up to 10 points may be awarded on this criterion. An evaluation of the likelihood of the proposal's success.~~
- (2) ~~Probability and extent of new wealth creation. Preference shall be given to applications that demonstrate Demonstration of a high probability of job and wealth creation. While the Advisory Board does not make any specific requirements for jobs created per dollar granted, a close review shall be made of return on investment. Up to thirty points may be awarded on this criterion.~~

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(3) ~~**Credibility and merit.** The Advisory Board shall A review of each proposal as to its credibility, merit, technical, and commercial feasibility. Proposals that feature research that is innovative as well as and commercially plausible research shall receive preference. A final criterion shall focus on the; and relative competence and technical qualifications of project principals. Up to thirty points may be awarded on these criteria.~~

(4) ~~**Timeliness.** Preference shall be given to proposals Demonstration that the proposal can be implemented quickly and demonstrating has a high probability of rapid commercialization. Up to fifteen points may be awarded on this criterion.~~

(5) ~~**Matching funds.** Priority shall be given to projects that demonstrate Demonstration of a shared commitment for funding from other private or public sources, or from the applicant. Matching funds may be in the form of cash, in-kind services, or both. Approved indirect Indirect costs may qualify as matching funds. Preference shall be given to the applications with shared cash funding. Disbursement however, disbursement of funds shall be contingent upon evidence that matching funds have been allocated to the proposal. Up to ten points may be awarded on this criterion.~~

(6) ~~**Geographic consideration.** Preference shall be given to the proposals that center Centering of efforts on non-urban or rural locales. When except when the proposal requires specific research that cannot possibly be carried out in rural Oklahoma, consideration shall be given to the ultimate development and commercialization of the results of the proposal, with the same rural preference. Up to five points may be awarded on this criterion.~~

### PART 7. PROCEDURE FOR LOAN OR GRANT REQUESTS

#### 35:40-5-71. Procedure Applications for loan or grant requests

~~Initially contact Contact~~ the Market Development Services Division at of the Oklahoma Department of Agriculture, Food, and Forestry for application guidelines. Applications are limited to twenty (20) typed, single-spaced or double-spaced eight and one-half inch by eleven inch pages including any attachments. Fifteen (15) copies of the proposal shall be delivered or mailed to the Oklahoma Agriculture Enhancement and Diversification Advisory Board in care of the Oklahoma Department of Agriculture, Food, and Forestry, P.O. Box 528804 Oklahoma City, OK 73152.

### PART 9. SUPPLEMENTAL PROGRAM INFORMATION

#### 35:40-5-91. Supplemental program information

(a) ~~**Funding level.** Proposals are not limited to a specific dollar amount. However, the Advisory Board's loan or grant moneys are finite. The Advisory Board reserves the rights right~~

to increase or decrease the amount of requested funding based on its findings and on its level of available funds.—Requests shall be justified with respect to the scope of the project.

(b) ~~**Funding period.** Proposals may be submitted at any time. Deadline dates for submissions are January 1st, April 1st, July 1st, and October 1st, January 1st, and April 1st. Reviews for loan and grant requests shall be made on a quarterly basis. With respect to the funding criteria, multiyear project requests shall be accepted and funded, subject to annual review and funding renewal.~~

(c) ~~**Multiple proposals.** Multiple proposals from the same applicant shall be considered if each proposal covers distinctly different projects. Proposals that have been submitted under other state loan or grant programs may be considered simultaneously by the Advisory Board. Proposals that contain matching funds from other loan or grant programs shall demonstrate contingent approval from appropriate sources prior to release of funds by the Advisory Board.~~

(d) ~~**Evaluation process.** The Oklahoma Department of Agriculture, Food, and Forestry shall complete initial screening for completeness and eligibility of all proposals upon receipt. Should revisions or corrections be deemed necessary, the applicant may withdraw and resubmit without penalty or delay so long as they submit the revision by the deadline dates. Each proposal shall be considered individually, and according to the stated criteria, by the entire Advisory Board. A decision to accept, modify, or deny each shall then be made, by majority vote of at least a quorum of the Advisory Board. Should the process produce Advisory Board adopt a funding level less than the amount requested in the proposal, the Advisory Board staff shall confer with the applicant to determine whether the amount recommended would alter the project's feasibility. No member of the Advisory Board may participate in, or vote on, a decision of the Advisory Board relating to an organization in which that individual has a direct personal financial interest.~~

(e) ~~**Loan or grant administration and reporting.** Successful applicants shall adhere to the conditions outlined in this Subchapter and Oklahoma law. Following approval of the loan or grant request, a formal loan or grant contract shall be executed between the Board and the borrower or grantee. This agreement shall specify the agreed upon objectives, tasks to be performed, time line and budget, fund release schedule, and any other conditions specific to the individual proposal. Under the terms of all loan or grant contracts, the borrower or grantee shall submit an interim report to the Advisory Board for approval that outlines the projects progress, time lines, and budget compliance prior to the Department issuing each of the subsequent payments. In most cases, the entire loan or grant amount shall not be released at the time of the Advisory Board's decision. The release of funds shall be tied to the loan or grant contract, and any insufficiencies with the contract may result in withholding of further funding. Borrowers and grantees shall submit a comprehensive final written report describing the work performed and the results obtained no later than sixty (60) days after completion of the contract. This comprehensive report shall be supplemented by the financial report of all expenses actually incurred and income generated by the project.~~

(f) ~~Audit.~~ To protect the investment of the Board and of the people of Oklahoma, those financial documents, books, receipts, orders, expenditures, electronic data, and accounting procedures and practices of the borrower or grantee necessary to evaluate the use of loan or grant funds are subject to examination by or for the Advisory Board at any time for three years following the termination of the project.

(g) ~~Eligible uses of funds.~~ Oklahoma Agriculture Enhancement and Diversification loan or grant funds may be used to pay salaries, buy supplies, and cover day-to-day expenses of the project.

(h) ~~Confidentiality.~~ To the extent allowed under Oklahoma law, the Advisory Board may limit the dissemination of information concerning a proposal, but in any event, does not assume any liability for inadvertent disclosure.

(i) ~~Ownership.~~ Subject to the policies, if any, of participating public programs and entities, rights to use products, processes, or services developed under this loan or grant program shall remain with the borrower or grantee. Subject to the same policies, all rights to project outcomes may revert to the Advisory Board if the borrower, grantee or assignee fails to market the product, process, or service in accordance with individually negotiated funding contracts. In such cases, the Advisory Board shall provide notice and the opportunity to others to assume control of research projects. In these cases, priority shall be given to any licensee under such property or others who benefit Oklahoma commercially, with first priority being given to small firms in non-urban areas of the state.

(j) ~~Royalty agreements.~~ In certain cases, the Advisory Board may receive royalties on the sale or lease of any product, process, or service developed under the Advisory Board loan or grant. Royalty agreements shall be negotiated at the time of the loan or grant contract and shall be structured so that the Advisory Board can recover a portion of its investment of public funds. Repaid funds shall be used to make new investments in other Oklahoma Agriculture Enhancement and Diversification Program projects.

(k) In the event that a grantee or loan recipient fails to comply with the terms of the agreement, including but not limited to failure to pay back loans pursuant to the terms outlined in the Agreement or failure to submit reports in a timely manner, the grantee or loan recipient shall not participate in any events sponsored by any program of the Oklahoma Department of Agriculture, Food, and Forestry related to market development.

(l) Failure to complete the terms of the agreement shall result in an audit and collection activities by the Oklahoma Department of Agriculture, Food, and Forestry.

**PART 11. TERMS OF LOANS OR GRANTS**

**35:40-5-111. Terms of loans or grants**

(a) ~~Initially, funds~~ Funds shall be provided in the form of a zero interest loan with repayment terms determined by the Board. Repayment of loans in an amount of \$20,000.00 or less shall begin three (3) years from the date funds are initially issued to the borrower and shall be completed in not more

than three (3) years. Repayment of loans in an amount over \$20,000.00 shall begin three (3) years from the date funds are initially issued to the borrower and shall be completed in not more than five (5) years. Loan repayments shall be in equal installments as specified in the loan contract.

(b) In the event the facility or project fails to succeed, the borrower ~~shall may~~ submit in writing, a petition to the Advisory Board to convert the balance from a loan to a grant. Petitions to convert loans to grants ~~shall may~~ be considered by the Advisory Board at the next available quarterly meeting following receipt of the petition. Petitions ~~approved~~ recommended for approval by the Advisory Board shall be submitted to the State Board of Agriculture for final ~~disposition~~ determination.

(c) Farm Diversification, agritourism venue development and expansion, and Basic and Applied Research projects may be awarded specifically as grants of up to \$10,000.

(1) Grants awarded for less than \$2,500 shall not be required to provide matching funds.

(2) Grants awarded for \$2,500 to \$5,000 shall require a matching contribution of funds or in-kind.

(3) Grants awarded in excess of \$5,000 shall require a dollar for dollar ratio of matching dollars.

(d) ~~The borrower or grantee and the Board shall agree to all terms and conditions of individual contracts.~~

**PART 13. MARKETING AND UTILIZATION LOANS**

**35:40-5-131. Marketing and utilization loans**

~~To A~~ A marketing and utilization loan may be used to assist in the development or implementation of sound domestic or foreign marketing plans for Oklahoma agricultural products, by-products, agritourism venues, or new or better uses for existing agricultural products by the financing of marketing feasibility studies, business plans, and test marketing.

(1) Proposals ~~should~~ shall encourage the creation of jobs and industry within the agricultural sector of the state.

(2) Applicants ~~should~~ shall encourage the use of funds to seek new markets and marketing ideas, both domestically and internationally.

**PART 15. COOPERATIVE MARKETING LOANS**

**35:40-5-151. Cooperative marketing loans**

Cooperative marketing loans or grants are to be available to entities or individuals wishing to work together to develop or establish production, processing or marketing of agricultural products and to establish or expand agritourism ventures. The purpose of this category is to provide funding for promoting productivity, providing added value to agricultural products, stimulating and fostering agricultural diversification and encouraging processing innovations.

(1) Preference shall be given to principals who are individuals rather than existing corporations.

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- (2) Proof of a cooperative agreement, either formal or informal, shall be provided to the Advisory Board.
- (3) Proposals should provide an outlet for products normally not marketed through existing marketing cooperatives.
- (4) A well-researched, feasible marketing plan for the specific crop, livestock, or on-farm, value-added processing shall be included in the proposal.

## PART 17. FARM DIVERSIFICATION GRANTS

### 35:40-5-171. Farm diversification grants

Farm diversification grants are to be used for projects dealing with the diversification of family farms or ranches ~~to or agritourism venues, nontraditional crops, livestock, or on-farm, value-added processing of agricultural commodities, or development of an agritourism venue that will promote access to a new market.~~ Proposals for a farm diversification grant shall be evaluated as follows:

- (1) ~~Proposals shall be judged on traditional and non-traditional grant request guidelines, but the proposal does not necessarily need to be a new crop, livestock, or value-added processing venture;~~
- (2) Proposals shall have the potential to create additional income for the farm unit;
- (2) Proposals shall demonstrate a well-researched plan. This includes exploration and research of possible markets for the product and probable income; and
- (3) Proposals shall contain new and innovative plans for marketing the product.

## PART 18. BASIC AND APPLIED RESEARCH LOANS OR GRANTS

### 35:40-5-181. Basic and applied research loans or grants

~~For business~~ Business creation, expansion, or research which shall likely lead to a marketable product, ~~including shall include~~ but not limited to:

- (1) Focused research which enhances the value of an agricultural product or by-product;
- (2) Feasibility studies;
- (3) Product development costs; ~~and~~
- (4) Projects that are driven by an entrepreneur or the industry; ~~and~~
- (5) Agritourism.

## PART 19. DISBURSEMENTS

### 35:40-5-191. Disbursements

- (a) Upon approval of the proposal by the Board and completion of a mutually agreed upon contract and issuance of a purchase order, applicants shall receive one-third (1/3) of the total loan or grant amount for the proposed project.

- (b) The grantee or borrower shall submit an invoice and documents supporting expenditures with each interim report for approval to the Advisory Board prior to the disbursement of each subsequent payment.

(e) ~~Grants shall not exceed \$5,000 per application.~~

[OAR Docket #09-1075; filed 5-26-09]

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

[OAR Docket #09-948]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

Part 3. Definitions

165:25-1-11. Definitions [AMENDED]

Part 9. Notification and Reporting Requirements

165:25-1-42. New tank systems [AMENDED]

Part 11. Recordkeeping

165:25-1-53. Availability of records [AMENDED]

Part 19. Operator training

165:25-1-124. Frequency and proof of training [AMENDED]

Subchapter 2. General Requirements for Underground Storage Tank Systems

Part 1. Codes and Standards

165:25-2-2. Incorporated codes and standards [AMENDED]

Part 3. Design and Installation

165:25-2-36. Tank system installation [AMENDED]

165:25-2-40. Installation testing [AMENDED]

Part 6. Piping

165:25-2-55.1 Underground storage tank piping materials [AMENDED]

Part 7. Dispensers

165:25-2-75. Required signs [AMENDED]

Subchapter 3. Release Prevention and Detection Requirements

Part 2. Release Detection Requirements and Methods

165:25-3-6.21. General release detection methods and devices [AMENDED]

### AUTHORITY:

Oklahoma Corporation Commission

Article IX, Section 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

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INCORPORATIONS BY REFERENCE:

None

ANALYSIS:

Recently enacted federal and state legislation and need to condense the rules in an easily readable and logical format necessitated these changes be made.

CONTACT PERSON:

Jeffrey Southwick 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, 2009:

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:

"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 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.

"ATG" means automatic tank gauge.

"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, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, 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.

"Commission" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

"Construction tank" means a fuel tank used for twelve months or less at a construction site.

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is

not limited to fish hatcheries, rangeland, and nurseries with growing operations.

"Fleet and Commercial" means any facility as defined in this Chapter that uses underground storage tanks to store regulated substances for use in its own vehicles or equipment. This definition extends to facilities that provide oil change and lube services to consumers.

"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.

"Marina" means any fuel storage facility located by the water for the purpose of fueling watercraft.

"Out of Order tag" means tag, device or mechanism on the tank fill pipe that clearly identifies an underground storage tank as ineligible for delivery of product.

"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.

"PSTD" means Petroleum Storage Tank Division.

"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.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Retail facility" means a service station, convenience store or any other facility that is open to the general public.

"Secondary containment" means an underground storage tank and/or piping with inner and outer barriers which provide a space for interstitial (the space between the inner and outer walls of a double walled tank or piping) monitoring.

"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

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underground piping, dispensers, and ancillary equipment or transport truck connected to the storage tank system.

"Used Motor Oil" is any spent oil removed from a motor vehicle.

## PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

### 165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the OCC scheduling notification form. If events require a change in the date of installation, PSTD shall be given 48 hours notice of the new date.

(b) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the OCC registration form must be submitted to PSTD with copies within 30 days in order to receive a tank permit.

(c) Owners and Commission-licensed UST Installers must certify on the registration form that the installation of tanks and piping meet the requirements of this Chapter.

(d) If observation wells are the selected method of leak detection, the plans for their placement must be pre-approved by PSTD.

## PART 11. RECORDKEEPING

### 165:25-1-53. Availability of records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must cooperate with PSTD requests for submission of records.

(b) Each owner/operator must provide written notice of any address change within 30 days to the PSTD office.

(c) All leak detection records, including but not limited to, sampling, testing, inventory and monitoring records, must be available on site for each tank for the preceding 12 months. Emergency generator tanks at unmanned locations are not subject to leak detection requirements, and may forward any required records to the PSTD office or upon request to the PSTD Fuel Specialist.

(d) Copies of the following records must be readily available to the PSTD Fuel Specialist:

(1) Tank tightness tests, monthly inventory reconciliation, statistical inventory reconciliation, vapor or groundwater monitoring, automatic tank gauge tests, and interstitial monitoring results that demonstrate compliance with release detection for tanks.

(2) Line tightness tests, electronic line tests, all sensor and alarm history results, and line leak detector function tests that demonstrate compliance with release detection for lines.

(3) Installation and repair records for spill containment, overfill prevention, tank and piping construction.

(4) Cathodic protection records specified in 25-1-56, tank lining certificates, and any other records that demonstrate compliance with corrosion protection for the tank system.

(5) Current owner and tank system registration and current permit for all tanks located at the facility.

(6) Certificate(s) of training for all classes of operators.

(be) Failure to have the required records available upon request by PSTD may result in enforcement action.

(ef) Release detection records must be maintained on forms specified by the Commission.

## PART 19. OPERATOR TRAINING

### 165:25-1-124. Frequency and proof of training

(a) Each operator class must obtain initial certification from a PSTD-approved training provider no later than July 1, ~~2009~~ 2011. A Class A or Class B operator may train a Class C operator.

(b) Class A and Class B operators must be trained within 30 days after assuming operation and maintenance responsibilities for an underground storage tank system. Class C operators must be trained before assuming responsibility for responding to emergencies.

(c) Class B operators must be retrained in any areas (e.g. spill, overfill, corrosion protection) that are determined to be out of compliance with EPA and PSTD requirements for release prevention and/or release detection.

(d) Owners or operators must provide PSTD with documentation for all operator classes.

## 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 are made in this Chapter. Each of these documents or part thereof is included by reference as a standard. New editions of codes and standards supersede all previous editions. Commission rules will supersede in all conflicts between PSTD rules and any industry standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

(1) National Fire Protection Association Standards:

(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".

(B) Standard Number 329, 1992, "Underground Leakage of Flammable and Combustible Liquids".

(C) Standard Number 385, 1990, "Tank Vehicles for Flammable and Combustible Liquids".

- (D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".
- (E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers".
- (F) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".
- (2) American Petroleum Institute Standards:
  - (A) Recommended Practice 1615, 1996, "Installation of Underground Petroleum Storage Systems".
  - (B) Recommended Practice 1632, 1996, "Cathodic Protection of Underground Storage Tank and Piping Systems".
  - (C) Recommended Practice 1604, 1987, "Removal and Disposal of Used Underground Service Station Tanks".
  - (D) Recommended Practice 1631, 1992, "Interior Lining of Underground Storage Tanks".
  - (E) Recommended Practice 1621, 1993, "Bulk Liquid Stock Control at Retail Outlets".
  - (F) Recommended Practice 1626, 1993, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations".
  - (G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations".
  - (H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".
  - (I) Publication 2200, 1994, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines".
  - (J) Publication 2015, 1994, "Cleaning Petroleum Storage Tanks".
  - (K) Recommended Practice 1637, "Using the API Color Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals".
- (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:
  - (A) RP 100 "Recommended Practices for Installation of Underground Liquid Storage Systems".
  - (B) RP 400-02, "Recommended Procedure for Testing Electrical Continuity of Fuel Dispensing Hardware".
  - (C) RP 500-05, "Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment".
  - (D) RP 900-07, "Recommended Practices for the Inspection and Maintenance of UST Systems".
- (7) Steel Tank Institute:
  - (A) STIP3, "Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks".
  - (B) STI-R892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems".
  - (C) STI-R894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks".
  - (D) RP-972-01, "Recommended Practice For The Addition of Supplemental Anodes to STI-P3 USTs".
- (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) 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)."

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(13) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

## PART 3. DESIGN AND INSTALLATION

### 165:25-2-36. Tank system installation

(a) **Backfill material.** Backfill material used below, around, and/or above a new underground storage tank system installation must be clean, unused, non-corrosive porous material such as sand, crushed rock or pea gravel specified by the tank manufacturer. The licensed tank installer must be present and continuously supervise backfilling operations to ensure that proper procedures are followed.

#### (b) UST installation

(1) Following the required 24-hour notification of new UST installations, an on-site inspection may be required at the following critical junctures. The PSTD Fuel Specialist may observe and/or inspect:

- (A) The air/soap test of tanks.
- (B) The tank pit prior to the placement of tank(s).
- (C) The backfilling of the lower quadrant of tank(s).
- (D) The air/soap test and layout of piping prior to backfilling.
- (E) The tightness test of tanks and piping, and leak detector tests prior to startup.

(2) Precautions must be taken to prevent damage to the tank or piping coating during installation. Any damage to the coating must be repaired in accordance with the manufacturer's instructions prior to the completion of the installation.

(3) Piping must be arranged to minimize crossed lines and interference with conduits and other tank system components. If crossing is unavoidable, adequate clearance must be provided to prevent contact between piping segments.

(4) Underground piping must have a minimum slope of one-eighth inch (1/8") per foot toward the tank.

(5) If a tank is installed in an area subject to a high water table or flooding, anchoring must be used to prevent tank flotation. Anchoring straps and associated equipment must be installed in a manner that will prevent damage to the tank and/or its coating.

(6) The licensed installer must follow PEI RP-100 recommended practice for ballasting to prevent tank flotation during installation.

### 165:25-2-40. 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 for a period of one hour.

(2) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.

(3) As an alternative to the preceding methods in (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, ~~and pumps, and dispensing units and~~ The piping must be subjected to an air test of at least 50 psi.

(1) Air test secondary piping for a period of one hour, using the test pressure prescribed by the piping manufacturer.

(2) Apply soap solution to all joints and piping surfaces and inspect for leaks.

(d) All piping should be air tested and monitored continuously during the installation.

~~(e)~~ Tightness (also called precision) testing of the entire system must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation:

(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 and~~

~~(B)~~ A A certified ATG capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank and

~~(C)~~ B A precision tightness test of the ullage portion of the tank must be completed.

(3) Testing of both interstice and primary tank of a double wall tank as specified by tank manufacturer must be performed.

(4) Primary tank openings, manways and risers must be tested during the installation of all double wall tanks.

(5) The product line(s) must be hydrostatically tested by a NWGLDE approved 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 and electronic leak detector(s) must be tested for function by simulating a leak and operate in accordance with manufacturer's specifications.

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

(8) 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.

## PART 6. PIPING

**165:25-2-55.1. Underground storage tank piping materials**

- (a) All new or replacement underground pressurized piping must be installed as follows:
  - (1) Nonmetallic;
  - (2) Double-walled;
  - (3) A tracer locator wire must be installed in all piping trenches; and
  - (4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.
- (b) All new or replacement suction product piping must meet the requirements of 165:25-3-6.29 as follows:
  - (1) Nonmetallic;
  - (2) Double-walled;
  - (3) A tracer locator wire must be installed in all piping trenches; and
  - (4) Tank, dispenser, and transition sumps must be installed and monitored per 165:25-3-6.29.
- (c) Existing facilities that are replacing more than twenty feet (20') of piping must upgrade pursuant to (a) or (b) of this Section. If metallic line fails due to corrosion, the entire product line must be immediately removed, and cannot be repaired.
- (d) Existing facilities that making any alteration to a fuel island must install dispenser sumps and monitor as pursuant 165:25-3-6.29.
- (e) Existing facilities that are replacing dispensers must install dispenser sumps and monitor as pursuant to 165:25-3-6.29 if modifications are made below the dispenser cabinet.
- (f) Existing facilities that are replacing underground storage tanks or making repairs to a submersible pump that requires concrete removal must install tank sumps and they must be monitored pursuant 165:25-3-6.29.
- (g) Existing facilities that are replacing underground storage tanks must replace all single walled piping per (a) or (b) of this section.
- (h) Piping installed as a siphon or to manifold tanks may be single wall non-metallic pipe.

**PART 7. DISPENSERS**

**165:25-2-75. Required signs**

- (a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:
  - (1) WARNING
  - (2) It is unlawful and dangerous to dispense gasoline into unapproved containers.
  - (3) No smoking.
  - (4) Stop motor.
  - (5) No filling of portable containers in or on a motor vehicle.
  - (6) Place container on ground before filling.
  - (7) Discharge your static electricity before fueling by touching a metal surface away from the nozzle.

- (b) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed.

**SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS**

**PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS**

**165:25-3-6.21. General release detection methods and devices**

- (a) Owners/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) Owners/operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.
- (c) Interstitial monitoring must be used as the method of release detection for secondarily contained tanks and/or piping installed after July 1, 2008.

*[OAR Docket #09-948; filed 5-15-09]*

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

*[OAR Docket #09-946]*

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- Subchapter 1. General Provisions
- Part 1. Purpose and Definitions
- 165:26-1-2. Definitions [AMENDED]
- Part 5. Standards and Codes
- 165:26-1-31. Codes and standards [AMENDED]
- Part 7. Notification and Reporting Requirements
- 165:26-1-42. New tank systems [AMENDED]
- Part 9. Recordkeeping
- 165:26-1-55. Availability of records [AMENDED]
- 165:26-1-57. Tank installation, closure and removal records [AMENDED]
- Subchapter 2. General Requirements for Aboveground Storage Tank Systems

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Part 1. Design and Installation  
165:26-2-1.3. Approved tanks, tank design [AMENDED]  
Part 3. Secondary Containment  
165:26-2-32.1. Spill Prevention, Control and Countermeasure plan [AMENDED]  
Part 13. Miscellaneous Safety Provisions  
165:26-2-132. Required signs [AMENDED]  
Subchapter 3. Release Prevention and Detection  
Part 4. Release Detection  
165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping [AMENDED]  
Subchapter 10. Requirements for Aboveground Storage Tank Systems Utilized by Retail Facilities  
Part 1. General Application and Compliance Provisions  
165:26-10-1. Application [AMENDED]

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Recently enacted federal and state legislation and need to condense the rules in an easily readable and logical format necessitated these changes be made.

### CONTACT PERSON:

Jeffrey Southwick 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### PART 1. PURPOSE AND DEFINITIONS

#### 165:26-1-2. Definitions

In addition to the terms defined in 17 O.S. § 301 *et seq.*, the following words or terms, when used in this Chapter, shall have

the following meaning unless the context clearly indicates otherwise:

**"Aboveground storage tank"** or **"AST"** means any stationary tank not included within the definition of a petroleum storage tank in OAC 165:25-1-11, which is designed to contain any PST regulated substances without structural support of earthen material.

**"Aboveground storage tank system"** means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

**"Agent"** means a person authorized by another to act on their behalf, either out of employment or contract.

**"Airports"** mean landing facilities for aircraft which 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 a petroleum 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.

**"BTEX"** means benzene, toluene, ethylbenzene and xylene.

**"Bulk plant"** means petroleum storage tank facility where regulated substances 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 distributing them 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 system or a galvanic anode system.

**"Change in service"** means discontinuing use of the petroleum storage system for purposes regulated by PSTD.

**"Commission" or "OCC"** means the Oklahoma Corporation Commission and includes its designated agents or representatives.

**"Compatible"** means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the PST system under conditions likely to be encountered in the system.

**"Construction tank"** means a fuel tank used for less than 12 months at a construction site.

**"Division"** means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

**"EPA"** means the United States Environmental Protection Agency.

**"Farm tank"** is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes but is

not limited to fish hatcheries, rangeland, and nurseries with growing operations.

**"Fire protected tank"** means an aboveground storage tank that is listed in accordance with UL 2085, *Standard for Insulated Aboveground Tanks for Flammable and Combustible Liquids*, ~~or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire~~ or an equivalent test procedure that consists of a primary tank provided with protection from physical damage and fire-resistive protection from exposure to a high-intensity liquid pool fire.

**"Fire resistant tank"** means a UL listed aboveground storage tank that provides fire-resistant protection from exposures to a high intensity liquid pool fire.

**"Fleet and Commercial"** means any facility that uses aboveground storage tanks to store regulated substances for use in its own vehicles or equipment. This definition extends to facilities that provide oil change and lube services to consumers.

**"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.

**"Fund"** means the Petroleum Storage Tank Indemnity Fund.

**"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 it is impenetrable to the regulated substance, has a permeability of at least  $1 \times 10^{-6}$  cm/sec., and will prevent the discharge to 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 added to or withdrawn from it.

**"Marina"** means any fuel storage facility located by the water for the purpose of fueling watercraft.

**"Pier"** means dock, floating dock, and wharf.

**"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 petroleum storage tank system may have occurred.

**"Private airport"** means an airport used only by its owner and regulated as a fleet and commercial facility.

**"Private airstrip"** means a personal residential takeoff and landing facility attached to the airstrip owner's residential property and used only by the owner.

**"PSTD"** means Petroleum Storage Tank Division.

**"Public Utility"** means any entity providing gas, electricity, water, or telecommunications services for public use.

**"Regulated substances"** means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

**"Release detection"** means the methodology used in 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 petroleum storage tank system and its secondary barrier.

**"Residential tank"** is a tank located on property used primarily for dwelling purposes.

**"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 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 a petroleum 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.

**"TPH"** means total petroleum hydrocarbons.

**"Tank tightness testing"** or **"precision testing"** means a procedure for testing a petroleum 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 a petroleum storage tank system that has been taken out of service but not removed.

**"Used Motor Oil"** is any spent oil removed from a motor vehicle.

**"Vault"** means an enclosure consisting of four walls, a floor, and a top for the purpose of containing a liquid storage tank and not intended to be occupied by personnel other than for inspection, repair, or maintenance of the vault, the storage tank or related equipment.

## PART 5. 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. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes. A copy is available for inspection at the

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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".
    - (C) Standard UL971, 2005, "Nonmetallic Underground Piping for Flammable Liquids".
  - (7) Petroleum Equipment Institute: Publication PEI/RP 200-03, "Recommended Practices for Installation of Aboveground Storage Tank Systems for Motor Vehicle Fueling".
  - (8) "Spill Prevention, Control and Countermeasure Regulation", 40 CFR 112.
- (b) The standards set forth in (a) of this Section are also available from the following sources:
- (1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42<sup>nd</sup> Street, New York City, New York, 10036; Telephone: (212) 642-4900.
  - (2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.
  - (3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.

(4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.

(5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone (281) 492-0535.

(6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.

(7) National Groundwater Association (NWWA), 601 Dempsey Road, Westerville, Ohio 43081; Telephone (614) 898-7791.

(8) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.

(9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

## PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

### 165:26-1-42. New tank systems

(a) Owners of all aboveground storage tanks regulated pursuant to this Chapter must notify PSTD of the existence of their tanks if the tanks are covered by these rules and have not already been registered. The notice must be on a form prescribed by PSTD (Form 7530 Registration for Petroleum Storage Tanks) and specify, at a minimum, the date of installation if known, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, type of secondary containment, and type of regulated substance being stored unless otherwise specified. Thereafter, owners must notify the PSTD of new tanks within 30 days of tank installations by application of Form 7530.

(b) Persons intending to install a new aboveground storage tank and/or new aboveground or underground piping must give the PSTD notification of the installation at least 24 hours before the tank and/or lines are to be installed by submitting the PSTD scheduling form. If events require the owner to change the date of installation, the Division should be given 48 hours notice of the new date.

(c) Upon receipt of the scheduling form an authorization letter giving temporary approval to receive fuel into an un-permitted tank will be sent to the owner. This letter will expire 90 days after the date of issuance. After the tank installation is complete, the PSTD registration form must be submitted with copies of the installation testing.

(d) Owners and AST Licensees must certify on the PSTD Registration form that the installation of tanks and piping meet the requirements of this Chapter.

## PART 9. RECORDKEEPING

**165:26-1-55. Availability of records**

- (a) Owners and operators of regulated aboveground storage tank systems must cooperate with PSTD 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 must be kept at the facility and available for immediate inspection by the PSTD Fuel Specialist or be readily available upon request.
- (b) Failure to have the required records available when requested by PSTD may result in an enforcement action.
- (c) Release detection records must be maintained on forms specified by PSTD.
- (d) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by PSTD must be transferred at no cost to the new owner or operator.
- (e) Each owner/operator must provide written notice of any address change within 30 days to the PSTD office.

**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 PSTD 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.
- (c) The owner or the owner's representative (as directed by the owner) must submit the PSTD Closure Report Form and all required attachments to PSTD within 45 days from the date the tanks are permanently closed. ~~taken out of service or removed. The information must include but is not limited to, the following:~~

**SUBCHAPTER 2. GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS**

**PART 1. DESIGN AND INSTALLATION**

**165:26-2-1.3. Approved tanks, tank design**

- (a) The material and construction of the tank must be compatible with the material stored and the conditions of storage such as pressure and temperature.
- (b) Underground tanks installed for aboveground use prior to July 1, 2007 may be used if installed inside secondary containment.
- (c) Only tanks designed for aboveground use may be installed aboveground after July 1, 2007.

**PART 3. SECONDARY CONTAINMENT**

**165:26-2-32.1. Spill Prevention, Control and Countermeasure Plan**

- (a) 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.
- (b) The registered Professional Engineer or person responsible for preparation of plan must certify that plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards and the requirements of 40 CFR 112; procedures for required inspections and testing must be established; and the plan must be adequate for the facility.

**PART 13. MISCELLANEOUS SAFETY PROVISIONS**

**165:26-2-132. Required signs**

- (a) Warning signs must be conspicuously posted in the dispensing area incorporating the following or equivalent wording:
  - (1) WARNING
  - (2) It is unlawful and dangerous to dispense gasoline into unapproved containers.
  - (3) No smoking.
  - (4) Stop motor.
  - (5) No filling of portable containers in or on a motor vehicle.
  - (6) Place container on ground before filling.
- (b) An OCC approved label must be displayed in a clear, conspicuous and prominent manner visible to customers using either side of the pump from which a blended ethanol or biodiesel product is dispensed.

**SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION**

**PART 4. RELEASE DETECTION**

**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.

(F) An annual line tightness test performed by a certified tester may be used in lieu of monthly visual monitoring for aboveground product piping.

(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) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(v) 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.

(vi) Use of the PSTD Monthly Inventory Reconciliation Form or an electronic equivalent is required.

(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).

## SUBCHAPTER 10. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES

### PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

#### 165:26-10-1. Application

(a) This Subchapter applies to the storage, handling and use of all regulated substances which are kept in aboveground storage tanks, at facilities which engage in the retail sale of ~~motor fuel~~ a Regulated Substance.

(b) Subchapters 1 General Provisions, 2 General Requirements for AST's, 3 Release Prevention and Detection, and 4 Inspections, Penalties, and Field Citations shall also apply in addition to this Subchapter.

*[OAR Docket #09-946; filed 5-15-09]*

## TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

*[OAR Docket #09-947]*

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 1. General Provisions

165:27-1-2. Definitions [AMENDED]

Subchapter 5. Qualifications for Reimbursement

165:27-5-1. Qualifications for reimbursement [AMENDED]

165:27-5-2. Application for reimbursement [AMENDED]

Subchapter 7. Reimbursement

165:27-7-1. Reimbursable expenses [AMENDED]

165:27-7-2. Reimbursement [AMENDED]

165:27-7-6. Conditions for reimbursement [AMENDED]

165:27-7-7. Exclusions from reimbursement [AMENDED]

165:27-7-10. Pay-For-Performance procedures [AMENDED]

#### DATES:

##### Comment Period:

December 24, 2008 through February 24, 2009

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February 24, 2009

##### Adoption:

February 24, 2009

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March 2, 2009

##### Submitted to the House:

March 2, 2009

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March 2, 2009

**Gubernatorial approval:**

March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval by April 24, 2009.

**Final Adoption:**

April 24, 2009

**Effective Date:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The need to condense the rules to an easily readable and logical format and to add clarity, necessitated these changes be made.

**CONTACT PERSON:**

Jeffrey Southwick 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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**165:27-1-2. Definitions**

In addition to the terms defined in 17 O.S. Sections 303, 352, and in OAC 165:25-1-11 and 165:26-1-2, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

**"Administrative Application"** means an Application for eligibility and reimbursement made to the Commission by the Director of the Petroleum Storage Tank Division on behalf of an unavailable or unwilling Applicant to facilitate meeting the Program's obligation to protecting public health, safety and welfare.

**"Agent"** means a person authorized by another to act on their behalf, either out of employment or contract.

**"Assignment of Benefits"** means a written directive from the Application of record instructing the PSTD Indemnity Fund to pay reimbursement directly to the named Assignee.

**"Assignment of Rights"** (aka "Limited Power of Attorney") means a transfer of authority granting the Assignee the legal right to act on the Assignee's behalf for specified matters.

**"Associated costs"** means expenses that are not integral to the corrective action and not subject to reimbursement.

**"Chemicals of Concern ("COC")** means chemicals that may pose a threat to human health and the environment.

**"Claim or Claims"** means a properly submitted request for reimbursement from the Fund for an SOR or eligible case when the deductible is paid.

**"Closed file"** means a file for which final resolution has been made of all invoices submitted for corrective action taken under an application for reimbursement from the Indemnity Fund.

**"Commission or OCC"** means the Oklahoma Corporation Commission.

**"Confirmed Release"** means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

**"Contamination"** means pollution in the native environment caused by a release of a regulated substance above action levels for that substance as set by the Commission.

**"Disbursement"** includes all monies, actually paid, expended, encumbered, reserved or attributable to a reimbursable event(s).

**"Dispenser"** means equipment, gauge(s), hose(s), nozzle(s), immediately associated pipe or fittings and other such appurtenances located aboveground and intended for dispensing PSTD-regulated substances from a tank system. The dispenser is not part of a tank system for purposes of the Indemnity Fund Program.

**"Eligible Person"** means the party who has made application to the Indemnity Fund and met applicable criteria to become eligible to receive reimbursement on an OCC confirmed release, and who has been issued an Eligibility Letter from the Indemnity Fund. An eligible person may be an impacted party or adjacent owner.

**"Eligible Release"** means a release of a petroleum product that qualifies for Indemnity Fund eligibility and/or reimbursement, and generally includes only those products and/or a release from a storage tank system regulated by the OCC.

**"Fund"** means the Petroleum Storage Tank Indemnity Fund.

**"Impacted Party"** means an owner whose property has been impacted by a release from an on-site or off-site petroleum storage tank system that was never owned or operated by the impacted party and who has no OCC regulatory responsibility. An Impacted Party can apply for Fund eligibility and reimbursement, and the Fund deductible is not applicable.

**"Investigation"** means activities taken to identify, confirm, monitor or delineate the physical extent of a release and which result in the selection of an appropriate means to remediate a release and specific design criteria for such remediation upon currently used costing programs and/or reasonable competitive bids.

**"Licensed Remediation Consultant"** means an individual who has a current license issued by the PSTD.

**"Pay for Performance (PFP)"** means a process where an environmental consulting company (Consultant) guarantees by contract that a release of a regulated substance will be remediated to Chemicals of Concern (COC) levels agreed to by the PSTD, the Consultant and tank owner/operator that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

**"Person"** means any and all persons, including any individual, trust, firm, joint stock company, federal agency,

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corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. It also includes a consortium, a joint venture, a commercial entity, and the United State Government.

**"Petroleum storage tank system"** means a closed-plumbed system including storage tank(s), line(s) and dispenser(s) for a given product, e.g. a facility site can have a gasoline and a diesel system, or systems for different grades of gasoline, or even separate systems for the same grade of gasoline. It also includes a transport truck when attached to a tank system, and a used oil tank.

**"PSTD"** means Petroleum Storage Tank Division, or Division.

**"Reimbursement"** means repayment of a claim to a qualified Claimant or Assignee, or for an Administrative Application, or for such a claim submitted on behalf of a qualified Claimant, for incurred allowable costs resulting from an eligible release.

**"Remedial Action Plan"** means a plan implementing the required and approved remediation.

**"Remediation"** means the process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and/or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment.

**"Site assessment"** means a multi-step process designed to determine if a site has possibly been impacted by an amount of regulated substance(s).

**"Site characterization"** means a report submitted to the Commission that defines the extent of the contamination. The report should include, as a minimum, all things required by OAC 165:29 for such a report.

**"Suspicion of Release" ("SOR")** means preliminary investigative work performed under a PSTD Purchase Order to determine if a release has occurred. A modified eligibility process for a SOR will be is required.

**"Work Plan"** means a proposed scope of work to implement corrective action. This shall be submitted through a purchase order request and/or remediation plan.

### SUBCHAPTER 5. QUALIFICATIONS FOR REIMBURSEMENT

#### 165:27-5-1. Qualifications for reimbursement

In order to receive reimbursement from the Indemnity Fund, a person must, among other requirements:

- (1) In order to receive reimbursement every scope of work must have a pre-approved Purchase Order and/or a Pay for Performance Contract. The scope of work must be completed in accordance with the standards, requirements, rules, and regulations of the PSTD. Initially submitted claims and resubmitted claims shall be evaluated by the Division under the system of evaluation employed by the program at the time the claim is originally submitted or re-submitted unless otherwise directed by PSTD.

- (2) The Applicant must be eligible and approved in the Fund for a confirmed release case. Modified eligibility in the Fund is required for reimbursement on Suspicions of Release, and other investigations.

- (3) The Applicant must apply for reimbursement with timely and properly completed forms, including a certified affidavit by a Licensed Remediation Consultant that the costs incurred are true and correct with supporting documentation as set forth on the Purchase Order.

- (4) Investigation and remediation work must be supervised/performed by a Licensed Remediation Consultant. Reimbursement will be paid to the Applicant unless the Applicant provides the Fund with a written "Assignment of Benefit" directing reimbursement be paid directly to an Assignee. Any revocation of "Assignment of Benefits" must be provided to the PSTD in writing. The Fund may also reimburse directly to a vendor engaged by PSTD for ancillary services deemed necessary to support a project upon presentation of a reimbursement request form accompanied by an original invoice.

- (5) Investigation and remediation costs expended prior to Commission submission, shall be subject to Commission audit and reimbursement of costs based upon allowed costs at the time the submitted costs were incurred.

#### 165:27-5-2. Application for reimbursement

An application for PSTD Eligibility on a confirmed release shall be made to the Administrator of the Indemnity Fund Program on applicable forms and include:

- (1) A properly completed "Indemnity Fund Application" form with all requested information provided.
- (2) A sworn Non-Collusion Affidavit ~~from~~ executed by both the Applicant and the Licensed Consultant.
- ~~(3) A sworn Non-Collusion Affidavit from the Licensed Consultant.~~
- (4) A Leak Detection Data Sheet (if applicable) with supporting documents and other information verifying regulatory compliance at the time of the reporting of the release.
- ~~(5) Non-Ownership/Participation Affidavit.~~
- ~~(6) Assignment of Benefits.~~
- ~~(7) Damage Statement (I.A.).~~
- ~~(8) Other Financial Mechanisms (I.A.).~~
- ~~(9) Information deemed by PSTD staff to substantiate a claim as an impacted party or adjacent property owner.~~
- ~~(10) Any other information requested by the PSTD or Fund. When deemed warranted to support PSTD's charge to protect the public health, safety, and welfare, the Director of the PSTD may execute an Administrative Application to the Fund on behalf of an unavailable or unwilling owner.~~

### SUBCHAPTER 7. REIMBURSEMENT

#### 165:27-7-1. Reimbursable expenses

The Fund may reimburse eligible persons for:

- (1) Integral costs which are directly related to the corrective action. These costs may include such items as waste disposal, soil and groundwater remediation techniques, laboratory analyses, professional services, drilling, sampling, coring, transportation, etc.
- (2) Backfill on active confirmed cases.
- (3) Suspicion of release, and other costs deemed investigatory in nature.
- (4) Third Party property damages and medical costs as set forth in 17 O.S. 356.

**165:27-7-2. Reimbursement**

- (a) Among other requirements an applicant for reimbursement is required to show:
  - (1) Allowable costs were incurred on or after December 23, 1988.
  - (2) The PSTD has determined that the release or suspicion of release may pose a threat to human health or the environment.
  - (3) The eligible person, to the extent possible, has fully cooperated with PSTD in responding to the release.
- (b) The Petroleum Storage Tank Division shall reimburse from the Indemnity Fund an eligible person for allowable costs in excess of 1% co-pay not to exceed Five Thousand Dollars (\$5,000.00) but not more than:
  - (1) One million five hundred thousand dollars (\$1,500,000.00) per occurrence providing the storage tank is used in petroleum marketing or if the system has a throughput in excess of ten thousand (10,000) gallons per month based on annual throughput for the previous calendar year, and
    - (A) Two Million Dollars (\$2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems, or
    - (B) Three million dollars (\$3,000,000.00) annual aggregate for owners or operators with more than one hundred storage tank systems or,
  - (2) Five hundred thousand dollars (\$500,000.00) per occurrence providing the system is not used in petroleum marketing, and if the storage tank system has a throughput of ten thousand (10,000) gallons or less per month based on annual throughput for the previous calendar year, and
    - (A) Two million dollars (\$2,000,000.00) annual aggregate for owners of one to one hundred storage tank systems or,
    - (B) Three million dollars (\$3,000,000.00) for owners with more than one hundred storage tank systems.
- (c) Reimbursement shall not be made from the Indemnity Fund pursuant to this Section until the Indemnity Fund Program has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.
- (d) Releases that occurred prior to June 4, 2004, shall not receive reimbursement until the \$5,000.00 deductible has been prepaid or a payment arrangement concerning the deductible has been agreed to by PSTD and significant compliance with the payment agreement is achieved.
- (e) All corrective action costs incurred shall be subject to reimbursement in accordance with the unit cost pricing sheet

established by the Unit Cost Committee and any adaptations, amendments or changes thereto.

(f) All remediation costs incurred shall be subject to reimbursement that is deemed fair and reasonable by the PSTD.

**165:27-7-6. Conditions for reimbursement**

- (a) Action taken as a result of an eligible release other than in an emergency may be made by competitive bid of at least two (2) bidders. Acquisition or contracts or subcontracts for corrective action or for labor or equipment which exceed Two Thousand Five Hundred Dollars (\$2,500.00) from any one vendor or subcontractor for any one site shall be awarded to the lowest and best bidder. Professional engineering, geological, land surveying and other professional services or services provided by a PSTD Licensed Remediation Consultant required for investigation and the preparation of work plan and/or purchase orders, proposed corrective action plans and oversight of remediation will be reimbursed at current approved reasonable costs, or at the PSTD Director's discretion.
- (b) When current costing systems cannot accommodate specific situations, contracts awarded should be to the lowest and best bidder. The Indemnity Fund Program requires proof of such competitive bidding.
- (c) The owner/applicant and Licensed Remediation Consultant shall keep, and have available for review by the Indemnity Fund Program, records pertaining to the corrective action. These include but are not limited to:
  - (1) Corrective action plans.
  - (2) Remedial action plans
  - (3) Contracts and contract negotiations.
  - (4) Accounts
  - (5) Invoices
  - (6) Sales tickets
  - (7) Subcontractor invoices
  - (8) Other forms of documentation for expenses incurred relating to such investigation, corrective action, remedial action, injury or damage.
- (d) All records of costs incurred shall be certified by affidavit as true and correct and shall contain invoice dates, invoice numbers and amount of invoices being submitted.
- (e) Reimbursement shall be made by the Fund only for costs that the PSTD determines were actually incurred, were reasonable, and are integral and necessary towards the cleanup of the site.
- (f) An Applicant with a release or whose property has been impacted by a release, shall not retain an environmental consulting firm to perform remediation in which the Applicant has more than a 10% interest.
- (g) An Applicant shall provide application information that will enable the Fund to determine which reimbursement method to use.
  - ~~(1) One time payment. Applicants will qualify for a one time payment if they have:~~
    - ~~(A) Received notification of case closure by PSTD.~~
    - ~~(B) Been determined eligible to access the Fund.~~
  - (2) Initial, supplemental and final payments. Applicants may submit an Initial Reimbursement Request and periodic Supplemental Reimbursement Requests followed

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by a Final Reimbursement Request after case closure if they:

(A) Make application within two years from the date of closure letter from PSTD.

(B) Been determined to be eligible to access the Fund.

(32) An application for eligibility and all claims for reimbursement to the Fund must be ~~make~~ made within two (2) years of the case closure letter issued by the PSTD. Eligible persons are encouraged to submit claims for reimbursement as the costs are incurred and in the order incurred.

### 165:27-7-7. Exclusions from reimbursement

(a) Tanks and/or systems owned or operated by state and federal governments are not eligible for reimbursement from the Fund.

(b) Tanks or systems are not eligible if owned or operated by a Class I Railroad.

(c) No reimbursement shall be made by the Indemnity Fund to any person who has received, or is eligible, for reimbursement from any other state or federal agency, insurance company, or third party payor for the corrective action taken or to any person for the same cost.

(d) No reimbursement shall be made for loss of time.

(e) No reimbursement shall be made for loss of business and taking of property associated with the corrective action.

(f) No reimbursement shall be made for punitive damages from civil actions resulting from the eligible release.

(g) No reimbursement shall be made for attorney's or legal fees.

(h) No reimbursement shall be made for associated but non-integral costs of the corrective action such as but not limited to costs of renovating, removing or disposing of tanks and other such related items.

(i) No reimbursement shall be made for releases from storage tank systems on Individual Allottee Indian Trust lands or Tribal Trust lands.

(j) No reimbursement shall be made for costs incurred prior to confirmation of release or SOR investigation unless costs of an emergency response are approved by the PSTD.

(k) No reimbursement shall be made for non-regulated petroleum storage tank system releases or of non-regulated substances.

### 165:27-7-10. Pay-For-Performance procedures

(a) Pay-For-Performance (PFP) Remediation Proposals are designed for pre-approval of work that is to be performed. Pay-For-Performances will not be issued on work that has already been completed.

(b) Before a Pay-For-Performance (PFP) Remediation Proposal can be approved, a Remedial Action Plan which satisfies the criteria of OAC 165:29-3-80 must be approved by the PSTD.

(c) A Performance-based Remedial Action Plan must be submitted for review to the PSTD.

(d) The Performance-based Remedial Action Plan Proposal shall include the following information:

(1) Chronologic summary of site work with type, amount, and location of the release.

(2) General description of the site geology and hydrology with stratigraphic cross-section.

(3) Tier I/IA and 2 (if needed) report summary with proposed contaminant clean-up levels

(4) Description of the proposed remediation technology to be used.

(5) Schematics showing remediation system layout and remediation equipment.

(6) Description of performance monitoring methods and list of key monitoring wells.

(7) Total site remediation cost, contract terms, payment schedule, contract time frame, and warranty period.

(8) Base map with all well and soil boring locations.

(9) Detailed facility map with current benzene and TPH groundwater and soil plume maps.

(10) Detailed facility map with free product thickness, if present.

(11) Concentration maps of all other chemicals of concern that exceed Oklahoma Risk Based Corrective Action ("ORBCA") Site Specific Target Levels.

(12) The number of months that will be required to complete the remediation.

(13) The number of months that remediation will be warranted through continued operation in the event clean up levels have not been reached during the required clean up period.

(14) Other relevant information to explain the extent and type of the contamination, how the proposed performance based work plan will accomplish the clean up, types of monitoring to be used, and any risks that may be associated with the clean-up that should be addressed.

(e) All costs associated with the Performance-based Proposal must be included in the Performance-based Remedial Action Plan submitted to the PSTD.

(f) Any change order or re-design costs will be part of the original Performance-based Work Plan unless otherwise stipulated in the PFP contract.

~~(g) Performance based Work Plans and all supporting documents will be held confidential until the PFP is submitted on behalf of Applicant by the Licensed Remediation Consultant and ("Pay for Performance Agreement") is signed by all parties, including the Tank Owner, the Licensed Remediation Consultant and the Administrator of the Fund.~~

~~(h) After the PFP is submitted on behalf of Applicant by the Licensed Remediation Consultant and executed by all parties, the PFP and all it's supporting documents are open records.~~

(ig) Costs associated with the closing of the site may or may not be included in the PFP but will be discussed prior to the execution of the PFP.

[OAR Docket #09-947; filed 5-15-09]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 29. REMEDIATION OF  
PETROLEUM STORAGE TANK RELEASES**

*[OAR Docket #09-945]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- Part 3. Definitions
- 165:29-1-11. Definitions [AMENDED]
- Part 7. National Industry Codes
- 165:29-1-32. Incorporated codes and standards [AMENDED]
- Subchapter 3. Release Prevention, Detection and Correction
- Part 1. Release Prohibition, Reporting, and Investigation
- 165:29-3-2. Release reporting [AMENDED]
- Part 3. Removal and Closure of Petroleum Storage Tank Systems
- 165:29-3-65. Assessing the site at closure or change in service [AMENDED]
- Part 5. Corrective Action Requirements
- 165:29-3-71. General applicability; exception [AMENDED]
- 165:29-3-81. Property owners affected by releases; notice [AMENDED]
- Part 7. Licensing for Remediation Consultants
- 165:29-3-90. Licensing for Remediation Consultants involved with closures, ~~investigations, removals~~ investigation, and the remediation of releases from underground or aboveground storage tanks [AMENDED]

**AUTHORITY:**

42 U.S.C §6991 et Seq.; 17 O.S. §§301 et Seq.

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March 2, 2009

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**Final Adoption:**

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**Effective Date:**

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**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The need to condense the rules to an easily readable and logical format and to add clarity, necessitated these changes be made.

**CONTACT PERSON:**

Jeffrey Southwick 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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**PART 3. DEFINITIONS**

**165:29-1-11. Definitions**

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Abandoned system" means a storage tank system that has not been removed but has been taken out of service and is not intended to be returned to service, or that has been rendered permanently unfit for use as determined by the Commission, including all tanks closed prior to April 21, 1989.

"Aboveground storage tank" or "AST" means any stationary tank that is not included within the definition of an underground storage tank in OAC 165:25-1-11, which is designed to contain, without structural support of earthen material, PSTD-regulated substances.

"Aboveground storage tank system" means an aboveground storage tank and any connected aboveground or underground piping, dispensers and associated equipment and fixtures.

"Aboveground release" means any release to the surface of the land or to surface water. It includes, but is not limited to, releases from the aboveground portion of an underground storage tank system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank system.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Aquifer" means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water for beneficial uses.

"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 a petroleum storage tank.

"Backfill" refers to only the material placed in the excavation zone to support the petroleum storage tank system.

"Belowground release" means any release to the subsurface of the land or to groundwater. It includes, but is not limited to, releases from belowground portions of petroleum storage tank systems and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from underground storage tank systems. "Belowground release" does not include releases to a secondary containment system.

"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.

"Beneficial uses" means a classification of the waters of the State, according to their best uses in the interest of the public.

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"CASRN" means Chemical Abstracts Service Registry Number.

"CERCLA," also known as "Superfund," means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 et seq., and any amendments thereto.

"COC" means Chemical of Concern.

"Commission" means the Oklahoma Corporation Commission and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Confirmed Release" means a release of petroleum from a regulated storage tank system resulting in levels of chemicals of concern in native soils and/or groundwater that exceed state action levels to which a PSTD case number is assigned and further corrective action is required.

"Contaminants" or "contamination" means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.

"Corrective action" means action taken to monitor, minimize, eliminate or clean up a release from a storage tank system.

"Corrective Action Plan" means any plan submitted to the Division detailing the method and manner of corrective action to be taken for a release.

"DAF" means Dilution Attenuation Factor.

"DEQ" means the Oklahoma Department of Environmental Quality.

"DWS" means Drinking Water Standards.

"de minimis" means, for the purposes of this Chapter, very small, as in very small amounts or concentrations of regulated substances.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate underground storage tank systems from the surrounding area. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Dilution Attenuation Factor" or "DAF" means a unitless number greater than or equal to unity and represents the ratio of dissolved phase concentration at a downgradient location to the concentration at an upgradient location. It represents the reduction in concentration due to the combined influence of several factors (diffusion, dispersion, adsorption, decay, volatilization). It is applicable for all media, but is most commonly used for the unsaturated and saturated zones. DAF is generally estimated using a fate and transport model or based on site-specific data.

"Director" means the Director of the Petroleum Storage Tank Division of the Corporation Commission.

"Division" means the Petroleum Storage Tank Division of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Electrical equipment" means underground equipment that contains dielectric fluid necessary for the operation of equipment such as transformers and buried electric cable.

"Environment" means any water, water vapor, any land including land surface or subsurface, fish, wildlife, air and atmosphere, and all other natural resources.

"Environmental experience" means work-related experience in any type of activities associated with soil, water or atmosphere impacted or potentially impacted by a hazardous substance.

"Excavation zone" means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Facility" means any location or part thereof containing one or more petroleum storage tanks or systems.

"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.

"FOC" means fraction organic carbon content.

"Fraction organic carbon content" or "FOC" means the fraction of organic carbon in soil that influences the adsorption of organic chemicals. It can be estimated in soils using high temperature combustion and oxidation techniques such as ASTM method D2974.

"Free product" means a regulated substance that is present as a non-aqueous phase liquid (e.g., liquid not dissolved in water).

"Fresh groundwater" means groundwater with total dissolved solids (TDS) less than five thousand (5,000) parts per million.

"Fund" means the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during its production or gathering operations.

"Groundwater" means that part of water that is below the water table.

"Half-life" means the time required for the decay or transformation of one half of the amount of a chemical.

"Hazard Index" means the sum of the Hazard Quotients.

"Hazard Quotient" means the estimated dose, or intake, for a specific chemical and a specific pathway, divided by the Reference Dose (RfD).

"Hazardous substance" means ethylene glycol-based antifreeze, motor oil, motor fuel, gasoline, diesel, aviation fuel and blending material used in motor fuels.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to the regulated substance, has a permeability of at least  $1 \times 10^{-6}$  cm/sec., and will prevent the discharge to the environment of any regulated substance for a period of at least as long as

the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

**"In service"** means a petroleum storage tank that is not abandoned, or could contain regulated substances, and/or has regulated substances regularly added to or withdrawn from it.

**"Inventory controls"** means techniques used to identify a loss of regulated substances that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

**"Licensed Remediation Consultant"** means an individual who has a current license issued by the Petroleum Storage Tank Division.

**"Liquid trap"** means sumps, well cellars, and other traps used in association with oil or gas production, gathering, and extraction operations (including gas production plants) to collect oil, water, and other liquids. Liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

**"MCL"** means Maximum Contaminant Level.

**"MtBE"** means methyl tertiary butyl ether.

**"Maintenance"** means the normal operational upkeep necessary to prevent a petroleum storage tank system from releasing product.

**"Motor fuel"** means any petroleum or petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

**"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.

**"NACE"** means the National Association of Corrosion Engineers.

**"NFPA"** means the National Fire Protection Association, Inc.

**"NPDES"** means the National Pollutant Discharge Elimination System.

**"Nuisance conditions"** means unpleasant odors, unpleasant visual impacts or other observable aesthetic impacts as determined by the Commission.

**"ORBCA" or "Oklahoma Risk-Based Corrective Action"** means a scientific risk-based analysis that governs petroleum storage tank site assessment and remediation. It determines acceptable concentration levels of petroleum constituents in order to protect the public health, safety or welfare or the environment.

**"OSDA"** means the Oklahoma State Department of Agriculture.

**"OWRB"** means the Oklahoma Water Resources Board.

**"Observation tube"** means a leak detection device placed within the tank field that reaches two (2) feet below the tank bottom and can be inspected periodically to determine whether contamination by a regulated substance has occurred.

**"Observation Well"** means a cased and screened boring or drilled hole, installed within the tank excavation or piping

trench that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors as a method of release detection.

**"Operational life"** means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

**"Operator"** means any person in control of or having responsibility for the daily operation of the petroleum storage tank system, whether by lease, contract, or other form of agreement. The term also includes a past operator at the time of a release or violation of state statutes or Commission rules.

**"Out of service"** means a petroleum 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 a petroleum storage tank is filled beyond its capacity, resulting in a discharge of regulated substance to the environment.

**"Owner"** means any person who holds title to, controls, or possesses an interest in a storage tank system or a piece of property that has a storage tank system for the storage, use, or dispensing of PSTD-regulated substances. In the case of a petroleum storage tank system no longer in place, the term "owner" also means any person who held title to, controlled, or possessed an interest in a storage tank system immediately before it's decommissioning. The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the system.

**"PEI"** means the Petroleum Equipment Institute.

**"POC"** means Point of Compliance.

**"POE"** means Point of Exposure.

**"PSI"** means pounds per square inch.

**"PSTD"** means Petroleum Storage Tank Division or Division.

**"Pay-for-Performance (PFP)"** means a process where an environmental consulting company (Consultant) guarantees by signing a mutual agreement (the contract) that a release of a regulated substance will be remediated to COC levels agreed to by the PSTD and the Consultant that are protective of human health, safety and the environment. This performance-based process encompasses several steps, but is not limited to the contract signed by an officer/owner of the environmental consulting company, the applicant and the Administrator of the Indemnity Fund and an agreed to reasonable price. Scheduled payments are distributed only as performance-based goals are attained.

**"Person"** means any individual, trust, firm, joint stock company or corporation, limited liability company, partnership, association, any representative appointed by order of a court, the state, any municipality, county, school district or other political subdivision or agency of the state, or any interstate body. The term also includes a consortium, joint venture, commercial entity, the United States Government, a federal

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agency, including a government corporation, or any other legal entity.

**"Person in charge"** means the owner or person designated by the owner, the operator, or permittee as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility, such as the transfer of regulated substances to or from any points at a facility.

**"Petroleum"** means antifreeze, motor oil, gasoline, diesel, aviation fuel, and/or volatile blending materials used in motor fuels, like kerosene and ethanol and used oil.

**"Pipe"** or **"Piping"** means a hollow cylinder or tubular conduit constructed of non-earthen materials.

**"Pipeline facilities"** means new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under:

- (A) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671, et seq.).
- (B) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001, et seq.).
- (C) The State Hazardous Liquid Transportation System Safety Act, § 47.1 et seq. of Title 52 of the Oklahoma Statutes.
- (D) Intrastate pipeline facilities regulated under state laws.

**"Point of Compliance"** means a select location where the concentration of a chemical released must be at or below back-calculated levels. The back-calculated levels are such that estimated concentrations at the Point of Exposure are below health-based levels.

**"Point of Exposure"** means a location at which an individual or population may be exposed to site-specific Chemicals of Concern through ingestion, inhalation and/or dermal contact.

**"Pollution"** means contamination or other alteration of the physical, chemical or biological properties of any natural waters of the state, or contamination or alteration of the physical, chemical or biological properties of the land surface or subsurface, when such contamination or alteration will or is likely to create a nuisance or render the waters or land harmful to the public health, safety or welfare, or the environment.

**"Polyvinyl chloride"** means a thermoplastic resin.

**"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 a release from a petroleum storage tank system may have occurred.

**"Potency Factor"** means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Slope Factor.

**"RBCA"** means Risk-Based Corrective Action.

**"RCRA"** means the Resource Conservation and Recovery Act of 1976, 42 U.S.C.A. §§ 6912, 6991(a) through (f), and 6991(h), and any amendments thereto.

**"RfD"** means Reference Dose.

**"Reasonable Maximum Exposure"** or **"RME"** means the highest rate of exposure that has a small probability (5 percent) of being exceeded.

**"Reference Dose"** or **"RfD"** means the estimate of the daily intake of a chemical over a lifetime that is not likely to result in any significant adverse health effects (including in sensitive subpopulations).

**"Regulated substances"** or **"product"** means hazardous substances or petroleum regulated by PSTD.

**"Regulatory contact"** means the person or company with whom the PSTD is working in its regulatory capacity to correct a problem. It could be the current owner, past owner, operator or volunteer. The term denotes a functional role instead of one with legal significance. It is the person or company with whom the Division is working to get something done, and not necessarily the person a court would consider legally responsible for the problem.

**"Release"** means any spilling, overfilling, or leaking from a storage tank system that goes beyond the excavation zone, tankpit, or secondary containment facility into the native environment or any concentrations of a regulated substance that as determined by the PSTD poses a threat to human health or the environment.

**"Release detection"** means the methodology used in 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 petroleum storage tank system and its secondary barrier.

**"Remediation"** process or technique used to reduce concentration levels of regulated substances in the soil and groundwater, and, or to reduce the presence of free product in the environment to levels that are protective of human health, safety and the environment. Generally remediation activities are scheduled after the site assessment is complete and the Remedial Action Plan (RAP) has been approved.

**"Repair"** means to restore a tank or petroleum storage tank system component to PSTD standards that has caused a release of regulated substances from the petroleum storage tank system.

**"Reportable Quantity"** or **"RQ"** means the amount of a hazardous substance release required to be reported to appropriate federal, state, and/or local officials.

**"Residual Product"** Petroleum hydrocarbons (product) that are absorbed or otherwise bound to geological materials (sand, silt, or clay) in any soil zone (vadose, capillary, or saturated zone), in such a manner that ground water in contact with the residual product or beneath the residual product is not contaminated with any petroleum constituent regulated by the OCC.

**"Risk-Based Corrective Action"** means all of the activities necessary to manage a site such that concentrations of chemicals from a release are at levels that are not detrimental to public health and the environment. It includes, but is not limited to, collection of site-specific data, analysis of the data to quantify the risk, comparison of the risk with acceptable levels, and implementation of engineering and non-engineering measures to ensure that concentrations of remaining Chemicals of Concern are not detrimental to human health.

**"SARA"** means the Superfund Amendments and Reauthorization Act of 1986.

**"SCL"** means Soil Cleanup Level.

"STI" means the Steel Tank Institute.

"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.

"Saturated zone" means a subsurface zone below which all pore space is filled with water.

"Slope Factor" means the plausible upper-bound estimate of the probability of a response (cancer) per unit intake of chemical over a lifetime. Also referred to as Potency Factor.

"Smear Zone" Any soil zone containing petroleum hydrocarbons that can contaminate ground water in contact with the petroleum hydrocarbons or ground water beneath the petroleum hydrocarbons with petroleum constituents regulated by the PSTD.

"Soil zone" means and includes, but is not limited to, vadose zone, capillary fringe, or saturated soil zone.

"Source of contamination" means the location of the highest concentration of chemical contaminants in soil and groundwater.

"Source of release" means the location where regulated substances from a regulated tank system entered the environment.

"Spill" means a release that occurs during transfer operations of regulated substances to or from a petroleum storage tank system, resulting in a discharge of such substances into the environment.

"Storage Tank System" means one or a combination of tanks, including piping, hoses, dispensers and other system equipment used to contain regulated substances.

"Stormwater collection system" or "wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport surface water runoff resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Suspected release (SOR)" means an event has occurred that establishes a reasonable basis to believe a release from a petroleum storage tank system may have occurred.

"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.

"TDS" means Total Dissolved Solids.

"TPH" means Total Petroleum Hydrocarbon(s).

"Target Risk Level" means the level set by the Oklahoma Corporation Commission that must be achieved at each site prior to a risk-based closure of the site. For example, for current receptors this level has been set at 1E-06 (one-in-a-million) and a Hazard Quotient of less than 1.0 (one).

"Transporter" means any person who transports, delivers, or distributes any quantity of regulated substance from one point to another.

"UL" means Underwriter's Laboratory.

"USGS" means the United States Geological Survey.

"Usable groundwater" means fresh groundwater that may be produced from an aquifer for beneficial uses.

"Underground area" means an underground room such as a basement, cellar, shaft, or vault that provides enough space for physical inspection of the exterior of a tank situated on or above the surface of the floor.

"Underground storage tank" or "UST" means a regulated storage tank that has 10 percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment.

"Unsaturated zone" or "vadose zone" means the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil, and containing air or gases generally under atmospheric pressure. This zone is limited by the ground surface and the upper surfaces of the water table.

"Vault" means an underground compartment used to house a storage tank system. It must be large enough for a person to visually inspect all areas around the storage tank.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Waters of the State" means all bodies or accumulations of water, surface and/or underground, natural or artificial, and public or private, which are contained within, flow through, or border upon any part of the State of Oklahoma or any portion thereof.

## PART 7. NATIONAL INDUSTRY CODES

### 165:29-1-32. Incorporated codes and standards

Specific references to documents listed in (1) through (13) below are made throughout this Chapter. Each of these documents or parts thereof are adopted and incorporated by reference as standards, but only to the extent that they are specifically referenced in this Chapter. These rules will supersede in any conflict between these rules and any standard. These codes and standards will be updated periodically through a formal rulemaking procedure initiated by PSTD to reflect any substantive or relevant changes.

- (1) National Fire Protection Association Standards:
  - (A) Standard Number 30, 1999, "Flammable and Combustible Liquids Code."
  - (B) Standard Number 329, 1999, "Underground Leakage of Flammable and Combustible Liquids."
  - (C) Standard Number 385, 1990, "Tank Vehicles for Flammable and Combustible Liquids."
  - (D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids."
  - (E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers."
  - (F) Standard Number 30A, 1996, "Automotive and Marine Service Station Code."

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- (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, 1996, "Removal and Disposal of Used Underground Service Station Tanks."
  - (D) Recommended Practice 1631, 1997, "Interior Lining of Underground Storage Tanks."
  - (E) Recommended Practice 1621, 1993, "Bulk Liquid Stock Control at Retail Outlets."
  - (F) Recommended Practice 1626, 1993, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations."
  - (G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."
  - (H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases."
  - (I) Publication 2200, 1994, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines."
  - (J) Publication 2015, 1994, "Cleaning Petroleum Storage Tanks."
- (3) National Association of Corrosion Engineers:
  - (A) Standard Number RP-0169-92, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems."
  - (B) Standard Number RP-0184-94, "Repair of Lining Systems."
  - (C) Standard Number RP-0285-95, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems."
  - (D) Standard Number RP-0286-97, "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, 1996, "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, 1996, "Pipe Connectors for Flammable and Combustible Liquids and LP Gas."
- (5) American Society for Testing and Materials:
  - (A) Standard D 4021-92, "Standard Specifications for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."
  - (B) Standard ES 40-94 "Emergency Standard Practice for Alternative Procedures for the Assessment of

Buried Steel Tanks Prior to the Addition of Cathodic Protection."

- (6) Petroleum Equipment Institute PEI/RP 100-97, "Recommended Practices for Installation of Underground Liquid Storage Systems."
- (7) Steel Tank Institute STI-F894-99, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks."
- (8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks."
- (9) Factory Mutual 1920, "Flexible Pipe Couplings."
- (10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining Without Additional Cathodic Protection."
- (11) National Water Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)."
- (12) American Society for Testing and Materials, ASTM Designation: E 1739-95, Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites."
- (13) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE).

### SUBCHAPTER 3. RELEASE PREVENTION, DETECTION AND CORRECTION

#### PART 1. RELEASE PROHIBITION, REPORTING, AND INVESTIGATION

##### 165:29-3-2. Release reporting

- (a) These reporting requirements do not relieve the owner or operator of the responsibility to take corrective action as required by this Subchapter to protect human health and the environment, including the containment and cleanup of spills and overfills that are not required to be reported.
- (b) All petroleum storage tank system owners, operators, their agents and employees must report any of the following events to the PSTD by telephone at ~~(405) 521-6575~~ 405-521-4683 or 1-888-621-5878 (and if after hours or on weekends or holidays, they must leave a message on the answering machine) within 24 hours of discovering the substances, conditions or monitoring results. Release reports may also be made by telephone to PSTD personnel at the following numbers: 405-522-1437; 405-522-5266; 405-522-1439 or 405-522-5264. Owners or operators must send written confirmation within 20 days in accordance with the release investigation and confirmation requirements of this Subchapter.
  - (1) The discovery of released regulated substances at the petroleum storage tank system facility or in the surrounding area including but not limited to the presence of free product or vapors in soils, basements, crawlspaces,

sewer and utility lines, and nearby surface water whether on-site or off-site.

(2) Any unusual operating conditions observed by the owner or operator, like the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the petroleum 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.

(3) An unusual level of vapor on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm, or 1,500 units/ppm for diesel storage tanks, must be reported to the PSTD within 24 hours of receiving the report by the owner or operator or any of his or her employees at the facility. If diesel and gasoline tanks share the same tankpit, the reporting level is 1,500 units/ppm. Within 10 days, the owner or operator must submit to the PSTD all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the PSTD will advise the owner or operator what action, if any, he or she needs to take. Whenever these vapor thresholds are exceeded the tank owner must provide alternative test results that confirm the petroleum storage tank system is currently not leaking.

(c) Monitoring results must be reported within 24 hours of the owner or operator's receipt of them; and the PSTD will advise what action should be taken to determine whether or not a release has 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.

(d) All owners and/or operators of petroleum storage tank systems shall maintain records of all reportable and non-reportable events listed in 165:29-3-2 sufficient to permit adequate inspection and review by the PSTD. These records shall be kept in permanent form for 3 years following the date of the event. If any of the possible, probable, or definite release conditions in this Section are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate an owner or operator's knowledge of release conditions or monitoring results was delayed.

(e) The owner or operator of a petroleum storage tank system must maintain records of all reportable and nonreportable events so that adequate inspection and review can be made by the PSTD. These records must be kept for 3 years following the date of the event.

(f) While aboveground petroleum releases of less than 25 gallons need not be reported, they must be recorded by the owner or operator and cleaned up immediately.

(g) Any releases requiring emergency corrective action must be reported immediately to the PSTD, ~~and when offices are closed they~~ After office hours, weekends or holidays, calls must be reported to the PSTD's pager at ~~405-791-4512~~ 405-752-5255 or the Oklahoma Department of Environmental Quality (DEQ) at 1-800-522-0206 (in state) or 405-271-4468 (out of state).

### PART 3. REMOVAL AND CLOSURE OF PETROLEUM STORAGE TANK SYSTEMS

#### 165:29-3-65. Assessing the site at closure or change in service

(a) As directed by the PSTD, backfill material that is removed when an underground storage tank or associated piping is pulled from the subsurface may be tested for BTEX, TPH (GRO and/or DRO, whichever is appropriate) and total lead, if appropriate.

(b) As directed by the PSTD excavated backfill material may be sampled at a rate of one composite sample (composed of 10 grab samples) per 50 cubic yards of material, which must be analyzed by a laboratory certified by DEQ.

(c) The consultant or tankowner may put excavated backfill back into the tankpit while waiting for sampling results, but if the backfill needs to be re-excavated and replaced with clean backfill, the re-excavation is not a reimbursable expense.

(d) After reviewing ~~the~~ analytical results, the PSTD, ~~consultant and tankowner~~ will determine if ~~the~~ concentrations of ~~the~~ Chemicals of Concern are at levels that pose a threat to human health, safety and/or the environment, and should be removed. This decision will be based upon ~~the~~ analytical results and specific site conditions such as, but not limited to, ~~the~~ lithology of the tankpit walls and surrounding native ~~soil~~ soils, gradient and direction of groundwater flow, and potential ~~receptors~~ receptor exposure to chemicals of concern.

(e) Contaminated backfill and tankpit water that poses a threat to human health and/or the environment as determined by the PSTD must be removed from the site to a proper disposal site and replaced by clean backfill, or may be remediated above grade to concentrations below action levels or ORBCA-related cleanup levels.

(f) Expenses incurred in the removal and disposal (but not re-excavation, see (c) above) of contaminated backfill and tankpit water ~~are~~ may be reimbursable by the Fund only with written or documented verbal pre-approval (i.e., confirmed by fax or email) from the PSTD Technical staff. Reimbursement of eligible backfill disposal costs can only be paid when associated with an active, confirmed release case.

(g) Reimbursable backfill expenses identified in Section (f) above do ~~This Section does~~ not apply to new tank installations. If existing tanks are removed and replaced with new tanks, in order to ensure the efficacy of the cathodic protection, old backfill must be removed and new backfill must be ~~put~~ placed in the tankpit. If the backfill is contaminated to the degree that it must be taken to a landfill, ~~its~~ backfill removal and disposal costs are not reimbursable expenses ~~with written or documented verbal pre-approval (i.e. fax or email) from a member of the PSTD Technical staff.~~

(h) No soil, backfill material, or groundwater is to be removed from the site without prior PSTD approval and proper laboratory characterization unless otherwise directed by the PSTD.

### PART 5. CORRECTIVE ACTION REQUIREMENTS

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### 165:29-3-71. General applicability; exception

(a) Every owner or operator of a petroleum storage tank system must, in response to a confirmed release from a petroleum storage tank system, comply with the requirements of this Part, with the exception of those systems excluded from regulation in OAC 165:25 and OAC 165:26, the Commission's Underground and Aboveground Storage Tank Rules.

(b) All work done associated with the assessment, characterization, investigation, clean up, remedial action, and closure form a release or suspected release of a regulated substance should be pre-approved by the PSTD.

(c) Upon confirmation of a release, or after a release from the petroleum storage tank system is identified, the owner or operator must perform the following initial response actions:

(1) Report the release to the PSTD either by telephone, electronic mail or fax. If after hours, contact the PSTD pager at (405) 575-5255.

(2) Take immediate action to prevent any further release of the regulated substance into the environment, and prove that any system still containing fuel is tight by having a system tightness test performed.

(3) Identify and mitigate any fire, explosion, and vapor hazards.

(4) Remove free product to the extent practicable as determined by the PSTD while continuing, as necessary, any actions required by this Subchapter.

(d) Any corrective action work performed ~~in the abatement, mitigation or remediation of~~ at a release site must have prior documented verbal or written approval by a member of the PSTD Technical staff to be considered reimbursable by the Indemnity Fund. This requirement for pre-approval excludes required emergency spill mitigation measures. Additionally, field work associated with all corrective actions requires 48-hour (two working days excluding holidays and weekends) written notice to the PSTD of scheduled field activities. Notice must be made to the PSTD staff member assigned to the case, his/her Supervisor and the PSTD Technical Manager.

### 165:29-3-81. Property owners affected by releases; notice

(a) Upon confirmation that soil and/or groundwater contamination is above action levels, owners or operators must, at a minimum, notify adjacent or abutting property owners that have been, or may be ~~directly~~ impacted by the release. This notice should be made just after delineation of the release to Tier 2 clean-up levels or prior to a case closure based on Tier 1A modified RBSL's. The notice, unless otherwise directed by the PSTD, must include at a minimum:

(1) The origin and extent of the release; ~~and that an~~ impacted party, upon written request to owner/operator may receive reports;

(2) The nature of the substance(s) released;

(3) The name, address and telephone number of the owner or operator or his or her designee who may be contacted for more information about the release; ~~and~~

(4) The phone number and name of the Project Environmental Analyst at the PSTD whom the property owner can contact for additional information.

(5) If an adjacent or abutting property owner that has been or may be impacted by a release party requests, in writing, copies of all reports, it is the responsibility of the owner/operator to assure past and future reports are delivered to ~~any the requesting impacted party property owner.~~

(b) For each confirmed release that requires remediation or closure by a risk assessment or Risk-Based Corrective Action, the owner or operator must notify property owners directly that have been or may be impacted by the release and provide:

(1) The origin and extent of the release;

(2) The nature of the substance(s) released;

(3) A description of any planned remedial action or closure based upon a risk assessment of the release;

(4) The name, address and telephone number of the owner or operator or his or her designee and of the PSTD Project Environmental Analyst working on the case who may be contacted for more information about the release, including any planned response action; and

(5) A statement that additional information about the release, including any planned response action, is on file with the PSTD and available for public review.

(c) The notices required by this Section must be given by certified mail/return receipt requested. Copies of the return receipts must be included in the Public Participation Report submitted to the PSTD.

(d) The PSTD must ensure that any and all information concerning the release is made available to the public for review upon request.

(e) Before approving a remediation plan or closure based upon risk assessment, the PSTD may hold a public meeting to consider comments on the proposed remediation plan or closure if there is sufficient public interest, or for any other reasons.

(f) The notice required by this Section must also be given;

(1) after implementation, see OAC 165:29-3-80(c), of an approved Remedial Action Plan that does not achieve the cleanup levels established in the plan, and

(2) and, when termination of the plan is subsequently approved by the PSTD.

## PART 7. LICENSING FOR REMEDIATION CONSULTANTS

### 165:29-3-90. Licensing for Remediation Consultants involved with closures, investigations, removals investigation and the remediation of releases from underground or aboveground storage tanks

(a) Any individual seeking a license as a Remediation ~~consultant~~ Consultant involved with closures, ~~investigations, removals investigation and~~ and/or the remediation of releases from either underground or aboveground storage tank sites must complete an application form prepared by PSTD. The application form requires information regarding education,

experience, knowledge of applicable state and federal regulations, industry standards and practices and references.

(b) All applicants must qualify in the following manner:

(1) Satisfy requirements of the Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120 (HAZWOPER) 40 hour course with eight- (8-) hour annual updates and the eight- (8-) hour supervisor course; must provide evidence of the successful completion of a PSTD-approved Risk-Based Corrective Action course, seminar or school. At a minimum this course must include sixteen (16) hours of risk assessment/risk analysis and fate and transport of chemicals in the environment and eight (8) hours of hands-on computer training with appropriate software; and

(2) Have seven (7) years' environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities and pass an examination, which must be taken no more frequently than once every six (6) months, authorized by the State of Oklahoma, which demonstrates knowledge of reference materials published by EPA:NWWA (Technical Enforcement Guidance Document-TEGD) and all applicable federal, state, and local regulations; or

(3) Have a four- (4-) year degree from an accredited college or university recognized by the state in Geology, Hydrology, Environmental Science, Environmental Engineering, Petroleum Engineering, Civil Engineering, Geologic Engineering or an equivalent engineering degree and at least four (4) or more years of environmental experience with at least two (2) years' experience at regulated petroleum storage tank facilities, and pass an examination administered by the PSTD. The examination will test an applicant's knowledge of industry standards, reference materials, laws and regulations, and may be taken no more frequently than once every six (6) months.

~~(e) Any licensed Remediation Consultant submitting reports, worksheets, checklists, closure reports or other relevant documents that incorporate the ORBCA process or any other risk analysis provided in OAC 165:25 and 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively, must provide evidence of attendance at a PSTD approved Risk Based Corrective Action course, seminar or school. At a minimum this Course must include sixteen (16) hours of risk assessment/risk analysis and fate and transport of chemicals in the environment and eight (8) hours of hands on computer training with appropriate software.~~

~~(d) Licensed Remediation Consultants are required to pay fees for applications, examinations, and certifications according to the schedule provided in OAC 165:5-3-2, the Commission's Rules of Practice.~~

~~(e) Licensed Remediation Consultants must provide proof of sixteen (16) hours of PSTD-approved continuing professional education to PSTD every two (2) years.~~

~~(f) Sampling, sampling at tank closures, investigations, and remediation or any other activities directed by PSTD must be under the supervision of a licensed Remediation Consultant. All work requiring supervision by Licensed Remediation~~

Consultants must contain a verification statement signed by the consultant in supervisory control.

~~(g) Licensed Remediation Consultants must supervise and/or perform work only in the areas in which they are educated and/or experienced.~~

~~(h) PSTD has the responsibility and for good cause shown, to deny, suspend, refuse to renew or revoke the license, or reprimand any remediation Remediation consultant Consultant, who is found guilty of:~~

~~(1) The practice of any fraud or deceit in obtaining a license or performing work pursuant to this Chapter, OAC 165:25 or 165:26, the Commission's Underground and Aboveground Storage Tank Rules, respectively, OAC 165:27, the Commission's Indemnity Fund Rules or Chapter 15 Fuel Inspection.~~

~~(2) Any gross negligence, incompetence or misconduct in consultant work performed pursuant to Chapter 15, 25, 26, 27, 29.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits and submitting them to PSTD or to clients with the intention to induce payment, or to further the fraudulent act for whatever purpose.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter, OAC 165:25, OAC 165:26, OAC 165:27, and OAC 165:15.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter that the Remediation Consultant did not supervise, or work that was not performed.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public.~~

~~(7) Criminal indictments or convictions.~~

~~(h) Prior to any license suspension, revocation, or refusal to renew, the Director will have the matter investigated and a report prepared for his or her consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Licensee will be officially notified by the Director by Notice sent to the Licensee by certified mail/return receipt requested. The Notice will state the date and time of the hearing scheduled before a Commission Administrative Law Judge. The burden of proof of violations of this Chapter, as well as adherence to applicable State law, rests upon the PSTD.~~

~~(i) This Section in no way exempts the Remediation Consultant from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

[OAR Docket #09-945; filed 5-15-09]

**TITLE 165. CORPORATION COMMISSION  
CHAPTER 35. ELECTRIC UTILITY RULES**

[OAR Docket #09-933]

**RULEMAKING ACTION:**  
PERMANENT final adoption

# Permanent Final Adoptions

## RULES:

- Subchapter 1. General Provisions [AMENDED]
- 165:35-1-2. Definitions [AMENDED]
- Subchapter 41. Demand Programs [NEW]
- 165:35-41-1. Purpose [NEW]
- 165:35-41-2. Goals [NEW]
- 165:35-41-3. Definitions [NEW]
- 165:35-41-4. Demand portfolio submission and implementation [NEW]
- 165:35-41-5. Commission consideration [NEW]
- 165:35-41-6. Evaluation, measurement, and verification [NEW]
- 165:35-41-7. Reporting [NEW]

## AUTHORITY:

- Oklahoma Corporation Commission
- Article IX, Section 19, Oklahoma Constitution
- 17 Okla. Stat. § 152

## DATES:

### Comment Period:

October 15, 2007 through November 24, 2008

### Public Hearing:

November 24, 2008

### Adoption:

November 24, 2008

### Submitted to the Governor:

December 4, 2008

### Submitted to the House:

December 4, 2008

### Submitted to Senate:

December 4, 2008

### Gubernatorial approval:

December 15, 2008

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 24, 2009.

### Final Adoption:

March 24, 2009

### Effective Date:

June 25, 2009

## SUPERSEDED EMERGENCY ACTIONS:

None

## INCORPORATIONS BY REFERENCE:

### Incorporated standards:

*The California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects*, October 2001.

### Incorporating rules:

165:35-41-5(c) and 165:35-41-3

### Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday, at the Public Utilities Division of the Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, Oklahoma City, OK 73105; and at [http://www.energy.ca.gov/greenbuilding/documents/background/07-J\\_CPUC\\_STANDARD\\_PRACTICE\\_MANUAL.PDF](http://www.energy.ca.gov/greenbuilding/documents/background/07-J_CPUC_STANDARD_PRACTICE_MANUAL.PDF); and on the Oklahoma Corporation Commission website, [www.occeweb.com](http://www.occeweb.com), under the Public Utility Information link.

## ANALYSIS:

The proposed changes to OAC 165:35 add a new subchapter, Subchapter 41, entitled, "Demand Programs," designed to establish fair and reasonable rules for planning and implementing energy efficiency and demand response programs that may receive cost recovery treatment. The proposed revisions also amend OAC 165:35-1-2 to add definitions consistent with the new subchapter. The rules are needed to ensure that effective, efficient, beneficial demand programs are implemented by utilities. The rules provide the minimum requirements for demand programs and the process for cost recovery.

## CONTACT PERSON:

Lenora Burdine (405) 522-1010.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 165:35-1-2. Definitions

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

**"Affiliate"** means any person, entity, business section, or division that, directly or through one or more intermediaries, controls, is controlled by, or is under the control of an entity that is regulated by this Commission. Control includes, but is not limited to, the direct or indirect possession of authority to direct a direction of the management or policies of a person or entity, whether such authority is the result of acting alone or in conjunction with others. Control may be exercised through management, ownership of voting securities or other right to vote, by contract, or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

**"ANSI"** means the American National Standards Institute.

**"Capacity"** means the quantity of electric power produced by a generating facility at a point in time, as measured in kilowatts or megawatts.

**"Commission"** means the Oklahoma Corporation Commission and the Commission's staff operating under its direction.

**"Company submeter"** means kWh measuring device provided by the utility located on line beyond the point of delivery of electrical service providing service to another consumer. Usage from these meters is deducted from the meter at point of delivery.

**"Competitive bidder"** means any entity that submits a competitive bid in response to a request.

**"Competitive bidding process"** means a process to solicit offers to provide fuel supplies, electric generation service, fuel transportation services, and other goods or services related to a utility's provision of electric service to end users.

**"Complaint"** means an expression of dissatisfaction regarding the utility's billings, service procedures, or employee conduct which requests or requires some remedial or corrective action be taken by the utility. Complaints may be made by the consumer or other interested party. A complaint may be made orally, electronically or in writing, but must be made or received at the utility's offices.

**"Consumer"** means any person, member of a cooperative, firm, corporation, municipality or agency, other political subdivision of the United States, or the State of Oklahoma receiving electric service of any nature from a utility.

**"Corporate support services" or "Shared Services"** means human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

**"Customer rate class"** means a division of rates as provided by a utility's tariff for pricing electric service.

**"Customer sector"** means a major division of ratepayers, i.e., residential, commercial, or industrial.

**"Customer submeter"** means a kWh measuring device provided by the customer and located on line beyond the point of delivery of electrical service.

~~**"Demand side program"** means any program or measure conducted by the utility to modify the net consumption of electricity on the retail customer's side of the electric meter, including, but not limited to energy efficiency measures, load management, interruptible load, and on-site generation.~~

**"Disconnection"** means electric service has been discontinued by consumer request or by the utility.

**"Economy energy"** means electric energy that is purchased during the course of a day to take advantage of the opportunity to purchase power from unexpected surpluses on or available to the grid more cheaply than producing it oneself or purchasing power under existing contracts.

**"Electric consuming facility"** means anything that utilizes electric energy from a central station source.

**"Electric energy"** means the quantity of electric power that is generated over a specific interval of time, measured in kilowatt-hours or megawatt-hours.

**"Electric plant"** means facilities and equipment owned or operated by a utility, including but not limited to generating stations, substations, transformers, towers, poles, conductors, transportation equipment, conduits, meters, motors, real estate, buildings, and dams.

**"Electric service"** means the supply of electricity, including generation, transmission, distribution and ancillary services (e.g. spinning and supplemental reserves) for ultimate consumption.

**"Electricity"** means electric power and energy produced, transmitted, distributed, or furnished by a utility.

~~**"End use measure"** means an energy efficiency measure or an energy management measure.~~

**"Energy"** means a quantity of electricity produced over a given time, as measured in kilowatt-hours.

**"FERC"** means the Federal Energy Regulatory Commission.

**"Fuel procurement plan"** means a plan that (1) establishes the parameters of a fuel supply portfolio for a utility and (2) strikes an appropriate balance between fuel costs and the related risks to which ratepayers are exposed (e.g., fuel cost increases and supply disruptions) over the term of the resource plan.

**"Fuel supplies"** means the coal, oil, natural gas and other fuels that generation facilities consume to produce electricity and the transportation and transmission services used to deliver those fuels.

**"Generation facility"** means a machine or machines capable of producing capacity, energy or other electricity products.

**"Generation service"** means the production of energy, capacity and other electricity products to meet customer demands for electricity.

**"Generation supplier"** means an entity capable of providing generation service.

**"Independent power producer"** means any generation supplier that is not a utility or an affiliate thereof.

**"Integrated resource plan"** means a utility's plan as further defined and established in Commission rules found at OAC 165:35-37 to ensure that sufficient supply- and demand-side resources are available to meet its obligation to serve and to achieve public policy objectives, including those prescribed by law, rule, or Commission order.

**"Interested party"** means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers, or any other party involved in, or affected by, the provision of electric generation service.

**"kW"** means kilowatts, and **"kWh"** means kilowatt-hours.

~~**"Legal holiday(s) holiday"** means those days any day declared by law or proclamation of the Governor of Oklahoma to be a legal holiday holiday by the Chief Executive of the State of Oklahoma or a day on which the United States Postal Service does not deliver mail.~~

**"Load"** means the amount of electric power delivered or required at any specific point or points on an electric transmission and distribution system.

**"Long-term"** means longer than one year.

**"Meter"** means any device or devices used to measure or register electric power and energy.

**"Meter shop"** means a shop used for the inspection, testing, and repair of meters.

**"Municipality"** means an incorporated city or town in the State of Oklahoma.

**"MW"** means megawatts, and **"MWh"** means megawatt-hours.

**"Planned interruption"** means electric service that has been suspended by the utility.

**"Planning period"** means the ten (10) year period that begins on the date that the utility files its integrated resource plan with the Commission.

**"Premises"** means any piece of land or real estate, any building or other structure or portion thereof, or any facility where electric service is furnished to a consumer.

**"Prudence review"** means a comprehensive review that examines as fair, just, and reasonable, a utility's practices, policies, and decisions regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ratepayers, without consideration of its ultimate used and useful nature.

**"Purchased-power procurement plan"** means a plan that establishes the parameters of a purchased-power portfolio for a utility that meets the utility's planning objectives and strikes an appropriate balance between power supply costs and the related risks to which ratepayers are exposed (e.g., purchased-power cost increases and power supply disruptions) over the term of the resource plan.

**"Records"** means documentation maintained by the utility either in electronic or paper form.

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**"Residence"** means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities, and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

**"Resources"** means supply-side generating facilities including life extension and repowering projects for such facilities (and the output thereof), and ~~demand side program and end use measures non-supply side programs, including energy efficiency programs and demand response programs.~~

**"RFP"** means "request for proposal," the document that publicly opens a competitive bidding process by describing the utility's needs and seeking bids to fulfill those needs.

**"Risk management plan"** means a systematic method utilized by a utility to, among other things:

- (A) Identify risks inherent in procuring and obtaining a supply portfolio;
- (B) Establish the means by which the utility plans to address and balance or hedge the identified risks related to cost, price volatility and reliability; and
- (C) Address the fuel, purchased-power and utility supply costs implicit in the utility's supply portfolio, and also ~~demand side~~ energy efficiency and demand response programs as a potential hedge against risk.

**"RUS"** means the Rural Utilities Service.

**"Special contract"** means a written agreement between a utility and a consumer providing for furnishing electric service on terms different from those prescribed in approved tariffs.

**"Stakeholder"** means an interested party, as defined above.

**"Statistical sampling"** means a method for drawing elements from a population such that all possible elements in the population have a known and specified probability of being drawn and such that the set of chosen elements has approximately the same distribution of characteristics as the population from which it was drawn.

**"Subdivision"** means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided for the purpose of disposition pursuant to a common promotional scheme or plan of advertising for disposition.

**"Subsidize"** means to furnish financial support by the utility to the affiliate.

**"Tariff"** includes every rate schedule, or provision thereof, and all terms, conditions, rules, and regulations for furnishing electric service.

**"Unplanned or emergency interruption"** means service has been suspended due to circumstances beyond the control of the utility.

**"Utility"** means any person, firm, partnership, or corporation furnishing electric service to the public in Oklahoma and subject to the regulatory jurisdiction of the Commission.

## **SUBCHAPTER 41. DEMAND PROGRAMS**

### **165:35-41-1. Purpose**

The purpose of this subchapter is to establish fair and reasonable rules for planning and implementation of energy efficiency and demand response programs that may receive cost-recovery treatment from the Commission.

### **165:35-41-2. Goals**

(a) The goals of energy efficiency and demand response programs are to:

- (1) Minimize the long-term cost of utility service, and
- (2) Avoid or delay the need for new generation, transmission, and distribution investment.

(b) As a part of the hearing process for approval of a utility's energy efficiency and demand response programs, the Commission shall set specific savings goals for each utility to reduce the rate of growth of peak demand, energy usage, and capacity addition without adversely affecting customer comfort or state economic activity, based on market potential studies, integrated resource plans, or other evidence.

### **165:35-41-3. Definitions**

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

**"Average customer bill"** means the value derived from the sum of all ratepayer bills in a particular customer sector divided by the number of ratepayers in that sector; i.e., the arithmetic mean. A utility may provide average customer bills for customer rate classes rather than customer sectors if it chooses to do so and clearly identifies the choice.

**"Barrier"** means any physical or non-physical necessity, obligation, condition, constraint, or requisite that obstructs or impedes electricity user participation in energy efficiency or demand response programs. Barriers may include but are not limited to language, physical or mental disability, educational attainment, utility meter type, economic status, property status, or geography.

**"Base line"** means kilowatt-hour energy use, trend in kilowatt-hour energy use, percentage of capacity use over time, trend in percentage of capacity use, and description of conditions affecting such uses and trends prior to implementation of an energy efficiency or demand response program designed to affect particular uses and trends.

**"California Standard Practice Manual"** means The California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects, 2001 edition, produced by the California Energy Commission and the California Public Utility Commission.

**"Cost effective"** and **"cost effectiveness"** mean utilizing a specified amount of money, in a way that delivers the most benefit from available alternative uses, so long as the benefit's value exceeds the money spent.

**"Customized opportunity"** means an energy efficiency or demand response program tailored to an individual electricity user's needs, including opportunities for high-volume electricity usage customers to self administer and self fund their own programs.

**"Deemed savings"** means an estimate of energy or peak demand savings for a single unit of an installed energy-efficiency or renewable-energy measure that (1) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and (2) will be applied to measures that are deployed in significant numbers in similar ways.

**"Demand portfolio"** means a collection of energy efficiency and demand response programs offered or proposed by an electric utility; for example, a residential weatherization program, a program to trade ordinary commercial fluorescent ballasts for T-5 ballasts, and a program to provide financial inducement for purchase of properly sized industrial motors is a demand portfolio.

**"Demand portfolio administrator"** means the utility employee responsible for supervising the utility's energy efficiency and demand response efforts as proposed in compliance with this subchapter.

**"Demand response"** means any load management program in which a utility offers electricity users payments or other inducement to reduce their demand for electricity for specified periods of time.

**"Electricity user"** means a real property freeholder or leaseholder at a specific location who consumes energy at that location, regardless of whether the consumer receives an energy bill directly from a utility.

**"Energy efficiency"** means reducing electricity consumption on the customer's side of the meter while achieving substantially the same level of end-use service.

**"Evaluation, measurement, and verification"** means a systematic, objective study conducted periodically to authenticate, assess, and report how well a program is achieving its objectives, including identification and quantification of inputs, outputs, outcomes, and unintended effects.

**"Fuel switching"** means changing from natural gas to electricity or from electricity to natural gas for a particular end-use service or installing electric heating devices in new construction where natural gas service is available or can be economically made available. It does not include installation of any device that relies primarily on on-site renewable energy, such as, but not limited to, a solar water heater, geothermal heat pump, or biomass gas-powered furnace.

**"Goal"** means a target to be achieved by a utility's demand portfolio. A goal may be expressed in kilowatts, kilowatt-hours, percentage reduction or limitation, years that anticipated construction of utility plant is delayed, and/or another quantifiable measurement approved by the Commission. When determining whether a goal is met, reductions or increases attributable to weather and economic activity will not be counted.

**"Hard-to-reach customers"** means:

(A) Residential electricity users who rent their residences from persons other than kin related to the third degree of affinity or consanguinity, trusts operated by and for the benefit of the users, or the users' legal guardians,

(B) Commercial electricity users who rent their business property from persons other than the users'

owners, parent companies, subsidiaries of their parent companies, their own subsidiaries, or trusts operated by and for the benefit of the same;

(C) Residential or commercial electricity users who traditionally fail to engage in energy efficiency or demand response programs because of one or more severe barriers beyond those experienced by average residential or commercial customers in a utility's service area.

**"High-volume electricity usage"** means consumption by a single customer in Oklahoma of more than 15 million kWh of electricity per year, regardless of the number of meters or service locations.

**"Incentive"** means a sum of money a utility may be allowed to recover--in addition to program costs and lost net revenues--which sum is designed to reward the utility for successful and appropriate energy efficiency and demand response program performance.

**"Inducement"** means any thing of value offered by a utility to encourage an electricity user or trade ally to engage in an energy efficiency or demand response program approved pursuant to this subchapter.

**"Lost net revenue"** means income from the retail sale of electricity forgone by a utility directly resulting from the success of its demand portfolio, less expenses the utility was not required to pay by forgoing the sales.

**"Low-income customer"** means a residential electricity user who provides proof to a utility that the user has been determined by the appropriate authority to be eligible to receive services through the Oklahoma Department of Commerce Weatherization Assistance Program State Plan, as provided by OAC 150:80; Health Care Authority SoonerCare Choice or fee-for-service programs, as provided by OAC 317:25, 35, and 40; or Department of Human Services Temporary Assistance for Needy Families, State Supplemental Payment, Low Income Home Energy Assistance, Food Stamp, or Refugee Resettlement programs as provided by OAC 340:10, 15, 20, 50, and 60, respectively, or similar program.

**"Market potential study"** means an evaluation that assesses customer population base lines, customer needs, target customer populations, and how best to address these issues.

**"Market transformation"** means the strategic process of influencing customer population decision-making to create lasting change in customer behavior by removing barriers or exploiting opportunities to accelerate adoption of cost-effective energy efficiency as a matter of standard practice.

**"Measure"** means the equipment, materials, or actions that are installed or used within an energy efficiency or demand response program that result in measurable or verifiable savings; for example, a measure would include caulking around windows or weather stripping around doors to prevent heat loss.

**"Peak demand"** means a utility system's maximum annual customer-driven electricity requirement, measured in kilowatts.

**"Peak shaving"** means reducing demand for electricity during high-use hours.

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**"Program"** means an organized set of activities or measures directed toward the common purpose of energy efficiency or demand response that a utility undertakes or proposes to undertake to reduce peak demand or future growth in energy or capacity demand; for example, a general offer to assist homeowners in weatherizing their homes is a program.

**"Program cost"** means the expenditures incurred by a utility to achieve capacity, energy, and peak demand savings through energy efficiency and demand response programs. Expenditures made by customers or third parties are not included. Programs costs must be reported in nominal dollars in the year in which they are incurred, regardless of when the savings occur. The utility's program costs are all labor, equipment, inducement, marketing, monitoring, measurement and evaluation, and other expenditures incurred by the utility for operation of the energy efficiency and demand response programs, regardless of whether the costs are expensed or capitalized.

**"Program implementer"** means the person who puts an energy efficiency program into practical effect.

**"Research and development"** means a planned activity aimed at discovering new knowledge with the hope of developing new or improved energy efficiency processes, products, or services and the translation of these research findings into a plan or design for new or improved energy efficiency processes, products, and services.

**"Savings"** means a reduction in the rate of growth of energy use, as measured in kilowatt-hours, or capacity addition, as measured in kilowatts, or peak demand, as measured in kilowatts.

**"Standard offer"** means an energy efficiency or demand response program available to a group of customers or customers generally on the same terms and without customization.

**"Trade allies"** means contractors, retailers, skilled laborers, service providers, and wholesale distributors who support energy efficiency programs through sale or installation of goods and services.

### **165:35-41-4. Demand portfolio submission and implementation**

(a) All electric utilities under rate regulation of the Commission shall propose, at least once every three years, and be responsible for the administration and implementation of a demand portfolio of energy efficiency and demand response programs within their service territories. Such proposals shall be made by filing an application with the Commission on or before July 1 prior to the year the programs will be effective. The application shall describe the demand portfolio and contain the following information:

- (1) A description of the intent of the demand portfolio as a whole;
- (2) A description of the intent of each program;
- (3) A description and quantification of the target market of each program, differentiated by customer sectors;
- (4) A base line describing the state of the market that each program is intended to address, taking into account applicable building energy codes and appliance and equipment energy standards;

(5) A description of the barriers to investment in energy efficiency and demand response in the absence of each program and the ways each program will reduce or eliminate these barriers;

(6) A description of research and public input that contributed to the development of the content of each program;

(7) A report of the cost-effectiveness of each program and the demand portfolio, including supporting data;

(8) A description of how each program is expected to change over its course to reflect expected changes in market penetration, technology, and other market information, as well as lessons learned;

(9) A plan for evaluation, measurement, and verification of performance and results of the demand portfolio and each program, including a plan for the use of deemed savings, if applicable, or the use of statistical sampling, if applicable, or the use of metering, where appropriate;

(10) A plan for evaluation of the market effects of each program or applicable group of programs;

(11) A plan for evaluation of administration and implementation of each program or applicable group of programs;

(12) A plan for ending a program, if applicable;

(13) A process for amending a program;

(14) An annual budget for each program, providing detail for program costs, and differentiating evaluation, measurement, and verification costs from other program costs;

(15) A report on how the demand portfolio is expected to affect rates, sales, average bills and total revenue requirement for each customer sector;

(16) A report on how the demand portfolio meets savings goals that may be in place at the time of filing;

(17) An estimate of expected savings in peak demand, energy use, and capacity, with location information about the source of savings if savings are not expected to be evenly distributed throughout the utility system;

(18) Detailed explanation of the utility's request for recovery of prudently incurred program costs, recoupment of lost net revenue, and additional incentives the utility proposes it requires to make the programs workable; and

(19) Identification of the demand portfolio administrator, including name, job title, business postal address, business electronic mail address, and business telephone number.

(b) Demand portfolios shall:

(1) Contain programs for all customer sectors;

(2) Strike a balance among procuring peak demand reduction, procuring energy savings, procuring capacity savings, educating the public, and transforming markets for energy efficiency;

(3) Include standard offers to customers and trade allies to encourage simple ways to participate, where appropriate;

(4) Contain customized opportunities for energy efficiency and demand response among larger customers;

(5) Not include programs or measures that promote fuel switching. For new construction, an electric utility

shall not offer customer or builder incentives for the use of specific electric equipment or appliances with the exception of programs or measures that promote renewable technologies such as geothermal, solar and other renewable resources;

(6) Be consistent with the utility's integrated resource plan;

(7) Have an implementation schedule of no more than three years;

(8) Address opportunities presented by new construction and renovation;

(9) Promote comprehensive energy efficiency and demand response in buildings;

(10) Address programs for low-income customers and hard-to-reach customers to assure proportionate energy efficiency programs are deployed in these customer groups despite higher barriers to energy efficiency investments. Programs targeted to low-income or hard-to-reach customers may have lower threshold cost-effectiveness results than other programs; and

(11) Allow any high-volume electricity user, after the utility has a reasonable opportunity to present customized opportunities to such user, to opt out of some or all energy efficiency or demand response programs by submitting notice of such decision to the director of the Public Utility Division and to the electric utility that submits the demand portfolio.

(c) Demand portfolios may:

(1) Integrate energy efficiency and demand response;

(2) Include research and development that would lead to effective energy efficiency or demand response programs or other energy end use efficiency for Oklahoma so long as the total budget for such programs does not exceed five percent of the total budget for energy efficiency and demand response programs and the Commission finds the cost-effectiveness for the demand portfolio remains sufficient;

(3) Allow utility cooperation in state, regional and national programs that have the potential to save energy, reduce peak demand, or avoid capacity addition in Oklahoma; and

(4) Allow utility cooperation in state, regional and national programs to take advantage of economies of scale, provide consistent mass media messages, or otherwise improve program administration or customer acceptance.

**165:35-41-5. Commission consideration**

(a) In reviewing demand portfolios, the Commission will consider:

(1) The quality of the programs in all their elements relative to their program objectives;

(2) Experience of the program administrator and program implementer, if known, at designing and implementing programs;

(3) The cost-effectiveness for each program and for the demand portfolio;

(4) The savings goals;

(5) The availability of programs to all customers;

(6) The degree to which programs include innovative ways of increasing savings, increasing participation in programs, increasing market transformation, increasing customer education, or decreasing the cost to obtain savings or promote participation;

(7) The effect on rates, average customer bills, and total cost of service;

(8) Forecasts of utility plant that would be required absent savings from the energy efficiency and demand response programs;

(9) Consistency with the most recently filed integrated resource plan;

(10) The effect on the environment, to the extent of Commission authority; and

(11) Other evidence the Commission finds relevant.

(b) The Commission will endeavor to issue an order within ninety days of the filing of the application.

(c) Whether a program is cost effective will be determined by the Commission and may be based on the tests found in the California Standard Practice Manual. The California Standard Practice Manual tests are to be used in conjunction with one another and no one test may be used to deem a program to be lacking cost-effectiveness. Results of the Rate Impact Measure Test contained in the California Standard Practice Manual shall also include an estimate of the impact on average customer bills.

(d) A utility's recovery of prudently incurred program costs in rates or riders shall be determined by the Commission on a utility-specific basis; provided costs other than for inducement shall not exceed ten percent of program costs and all program costs shall not add more than \$1.90 to the residential sector's monthly average customer bill; and provided further that cost of time-of-use devices and installation shall not be included in the caps provided herein.

(e) Programs may be modified by the utility with forty-five days notice to the Commission without prior approval by the Commission under the following conditions:

(1) The program is not terminated earlier than specified in the program; and

(2) The modification does not result in a shift of more than ten percent of the total demand portfolio budget resources away from programs serving any customer sector.

(f) If the Commission receives an objection to the proposed program modification no later than thirty days after receiving the utility's notice, the Commission may, but is not required to, set a hearing before the Commission or an administrative law judge.

**165:35-41-6. Evaluation, measurement, and verification**

(a) Utilities are responsible for timely evaluation, measurement, and verification of their energy efficiency and demand response programs.

(b) The intent of the evaluation, measurement, and verification process is:

(1) To provide a reliable calculation of the net savings produced by energy efficiency and demand response programs;

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- (2) To assess the effects of programs on the market for energy efficient products and services and products and services that support demand response programs; and
- (3) To assess the effectiveness of the administration and implementation of energy efficiency and demand response programs.
- (c) Utilities shall prepare and maintain a program-tracking database.
- (d) Each evaluation, measurement, and verification plan for a program will explain the methods that will be applied with an explanation of how those methods will meet the requirements of this rule.
- (e) Deemed savings, customer bill analysis, on-site metering, and statistical sampling will be permitted in appropriate applications.
- (f) Assumptions with any supporting research about the ratio between gross savings in energy consumption by utility customers and net savings attributable to energy efficiency and demand response programs will be included in the evaluation, measurement, and verification plan.
- (g) The evaluation, measurement, and verification process shall produce reports that are fully documented, auditable, and transparent.

### **165:35-41-7. Reporting**

- (a) Each utility shall report by June 1 of each year on the performance of energy efficiency and demand response programs for the preceding program year and cumulative program performance.
- (b) Energy efficiency program results and demand response program results will be reported separately.
- (c) The report shall contain detail for a program reflecting the scale of the program as a part of the demand portfolio and will include the following:
- (1) List of all programs and the date each program started;
  - (2) List of savings realized for each program and the methods used to measure and verify these savings;
  - (3) The utility's annual growth in metered energy and peak demand for the previous three years, with a calculation of the average growth rate over that entire period;
  - (4) The most current information available comparing projected savings to reported savings for each of the utility's programs;
  - (5) The most current information available comparing reported savings and verified achieved savings and an explanation of how each was measured;
  - (6) The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the market;
  - (7) A statement of funds expended by the utility for program administration, including evaluation, measurement, and verification;
  - (8) A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending;

- (9) A list of programs or program categories by customer sector stating:
- (A) Number of customers served by each program or program category;
  - (B) Program or program category expenditures;
  - (C) Verified energy and peak demand savings achieved by the program or program category, when available;
  - (D) A description of proposed changes in the program plans; and
  - (E) Any other information prescribed by the Commission;
- (10) A list of research and development activities included in the demand portfolio, their status, and a report on the connection between each activity and effective energy efficiency or demand response programs;
- (11) Identification of program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers; and
- (12) Identification of instances in new construction or renovation when a natural gas main served a location so a gas furnace or water heater could have been installed but the customer installed an electric device and an electric utility inducement was provided.
- (d) After receiving the report, the Commission:
- (1) May schedule a hearing about the performance of the programs, the outlook for the future, and other relevant issues and may consider requests from parties for a hearing; and
  - (2) Will endeavor to act on the report within sixty days by accepting the report, rejecting the report, or opening an investigation to inquire further into the report.
- (e) The Commission may direct the utility to make brief quarterly or monthly reports including measurements of key metrics and news of any unexpected developments in program administration, delivery or planning.

[OAR Docket #09-933; filed 5-15-09]

## **TITLE 165. CORPORATION COMMISSION CHAPTER 45. GAS SERVICE UTILITIES**

[OAR Docket #09-1037]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. General Provisions [AMENDED]  
165:45-1-2. Definitions [AMENDED]  
Subchapter 23. Demand Programs [NEW]  
165:45-23-1. Purpose [NEW]  
165:45-23-2. Goals [NEW]  
165:45-23-3. Definitions [NEW]  
165:45-23-4. Demand portfolio submission and implementation [NEW]  
165:45-23-5. Commission consideration [NEW]  
165:45-23-6. Evaluation, measurement, and verification [NEW]  
165:45-23-7. Reporting [NEW]

### **AUTHORITY:**

Oklahoma Corporation Commission; Article IX, Section 19, Oklahoma Constitution 17 O.S. §152

**DATES:**

**Comment Period:**

December 18, 2008 through March 10, 2009

**Public Hearing:**

February 26, 2009; March 10, 2009

**Adoption:**

March 10, 2009

**Submitted to the Governor:**

March 18, 2009

**Submitted to the House:**

March 18, 2009

**Submitted to Senate:**

March 18, 2009

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April 23, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 13, 2009.

**Final Adoption:**

May 13, 2009

**Effective Date:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

*The California Standard Practice Manual: Economic Analysis of Demand-Side Programs and Projects*, October 2001.

**Incorporating rules:**

165:45-23-3

165:45-23-5(c)

**Availability:**

8:00 a.m. to 4:30 p.m., Monday through Friday, at the Public Utility Division of the Oklahoma Corporation Commission, 2101 North Lincoln Boulevard, the Jim Thorpe Building, Suite 580, Oklahoma City, OK 73105; on the Oklahoma Corporation Commission website: [www.occeweb.com](http://www.occeweb.com); and at [http://www.energy.ca.gov/greenbuilding/documents/background/07-J\\_CPUC\\_STANDARD\\_PRACTICE\\_MANUAL.PDF](http://www.energy.ca.gov/greenbuilding/documents/background/07-J_CPUC_STANDARD_PRACTICE_MANUAL.PDF)

**ANALYSIS:**

The proposed changes to OAC 165:45 add a new subchapter, Subchapter 23, entitled, "Demand Programs," designed to establish fair and reasonable rules for planning and implementing energy efficiency programs that may receive cost recovery treatment. The proposed revisions also amend OAC 165:45-1-2 to add definitions consistent with the new subchapter. The rules are needed to ensure that effective, efficient, and beneficial demand programs are implemented by the utilities. The rules provide the minimum requirements for demand programs and the process for cost recovery.

**CONTACT PERSON:**

Elizabeth J. Stefanik, Assistant General Counsel, Oklahoma Corporation Commission, (405) 522-2100.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**165:45-1-2. Definitions**

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

**"Affiliate"** means any person, entity, or business section, or division that directly or through one or more intermediaries controls, is controlled by, or is under common control with the entity in question. Control includes but is not limited to, the

possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct the management or policies of a person or entity. Control may be exercised through management, ownership of voting securities or other right to vote, by contract or otherwise. A voting interest or ownership of five percent (5%) or more creates a presumption of control.

**"Aggregation point"** means any Commission approved interconnection point of more than one citygate at which gas can be aggregated for the purposes of supplying reliable and least cost natural gas services for more than one city or municipality.

**"ANSI"** means the American National Standards Institute, Inc.

**"Attorney General"** means the Oklahoma Attorney General.

**"Business day"** means Monday through Friday, excluding all legal holidays which have been declared legal holidays by law or proclamation of the Governor of Oklahoma, or those days on which mail is not delivered.

**"Citygate"** means the interconnection point between the local distribution facilities which are located downstream of such interconnection point and the transmission lines and/or other facilities located upstream of such interconnection point at a point in time to be determined by the Commission during the unbundling plan hearing, or as otherwise ordered by the Commission.

**"Citygate gas service(s)"** means any one or more of the services of natural gas supply, gathering, storage or transmission of natural gas upstream of the citygate or other delivery point acquired by a gas utility at the citygate or other delivery point pursuant to the competitive bidding procedures in Subchapter 17 of this Chapter in order to provide natural gas service to end-users on its local distribution facilities.

**"Competitive bid"** means a response provided based on a public competitive bidding process.

**"Commission"** means the Oklahoma Corporation Commission.

**"Complaint"** means an oral or written communication by an interested party requesting an investigation or corrective action regarding the provision of natural gas services.

**"Consumer"** means any person, firm, corporation, municipality, or agency, other political subdivision of the United States or the State of Oklahoma receiving any type of natural gas service. Any reference to a "customer" or "end-user" or "ratepayer" contained in a tariff, or in this Chapter, shall be deemed to mean a "consumer," unless the context clearly indicates otherwise.

**"Corporate Support Services" or "Shared Services"** are human resources, procurement services, information technology, regulatory services, administrative services, real estate services, legal services, accounting, environmental services, research and development, internal audit, community relations, corporate communications, financial services, financial planning and management support services shared between or among a gas utility, its parent holding company or an affiliated entity and such other services authorized by the Commission on a case-by-case basis.

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**"Corporation Commission"** means the Oklahoma Corporation Commission.

**"Customer rate class"** means a division of rates as provided by a utility's tariff for pricing natural gas service.

**"Customer sector"** means a major division of consumers, i.e., residential, commercial, or industrial.

**"Distribution main"** means a distribution line that serves as a common source of supply to service lines.

**"Distribution system"** means any pipeline, meter, metering station, valve, regulator, regulating station and/or delivery station which receives natural gas from a transmission system, gathering line, or other natural gas supply source for service to one or more consumers.

**"Distribution"** or **"Distribution service"** means the downstream transportation of natural gas services from the citygate to end-users through a utility's local distribution facilities unbundled from all citygate gas services, but generally bundled with any one or more of the services of billing, metering, customer service and similar services.

**"Downstream (or "merchant" or "retail") service"** means any one or more of the citygate(s) service(s) of natural gas supply, gathering, storage or transmission of natural gas marketed downstream by an entity at the retail or merchant level to end-users rather than through the competitive bidding process pursuant to Subchapter 17 of this Chapter, and which entity uses the local distribution facilities of a utility, rather than bypass for ultimate delivery of such downstream or merchant or retail service to the end-user.

**"End-user"** means any consumer receiving natural gas service of any nature.

**"FERC"** means the Federal Energy Regulatory Commission.

**"Gas"** means manufactured gas, natural gas, other hydrocarbon gas, or any mixture of gases produced, transmitted, distributed or furnished by a utility unless otherwise specifically designated.

**"Gas supply source"** means gas from the wellhead, any type of storage, processing plant, or other provider of gas.

**"Gathering line"** means a pipeline that transports gas from a production facility within a gathering system.

**"Gathering system"** means a pipeline system bringing gas from the wellhead to an aggregation point or transmission line or other gas handling facility.

**"Gas utility"** means natural gas utility as defined in this Chapter.

**"Independent producer"** means, for purposes of this Chapter only, any person who produces natural gas and is not engaged in marketing natural gas except for its own account or for other working interest owners in operated wells or who derives a majority of his or her oil or natural gas related income from working interests.

**"Interested party"** means any individual or entity with appropriate authority to act on behalf of a particular consumer or group of consumers or any other party involved in, or affected by, the provision of natural gas services.

**"Intrastate pipeline"** means a common carrier transmission pipeline as defined in 52 O.S. § 24 and as applied in this Chapter.

**"Legal holiday"** means ~~only those days~~ any day declared to be a legal ~~holidays~~ holiday by law or proclamation of the Governor of Oklahoma, or ~~those days~~ day on which the United States Postal Service does not deliver mail ~~is not delivered~~.

**"Local distribution company"** means the utility distributing natural gas, delivered to its citygate from a transmission pipeline or gathering system, to residential, commercial and industrial end-users over a local geographic area.

**"Local distribution facilities"** means facilities whose function is the local distribution of natural gas to residential, commercial and industrial consumers and which facilities are characterized by a system of pipes, meters, stations, valves and other equipment for distributing natural gas among consumers within a particular local community or in smaller diameter lines at lower pressures in contrast to movement in larger diameter lines at higher pressures characteristic of transmission, unless otherwise ordered by the Commission.

**"Meter"** means any device that measures the quantity of gas transferred from one party to another.

**"Meter shop"** means a shop used for the inspection, testing and repair of meters.

**"Municipality"** means an incorporated city or town in the State of Oklahoma.

**"Natural gas services"** means any of the services in the natural gas industry, including, but not limited to, local distribution, transmission, gathering, storage, and gas supply, and as specified in Subchapter 17 of this Chapter.

**"Natural gas utility"** means a natural gas utility as defined in 17 O.S. § 151 et seq., and that includes all utility affiliate assets which the Commission has determined to be included in ratebase.

**"P.s.i.a."** means pounds per square inch absolute.

**"Pipe"** means any tubing used in the gathering, transmission or distribution of gas which meets the specifications of the U.S. Department of Transportation (U.S.D.O.T.).

**"Premises"** means any piece of land or real estate, or any building or other structure or portion thereof, or any facility where gas service is furnished to a consumer.

**"Prudency review"** means, for purposes of this Chapter, a comprehensive review that examines as fair, just and reasonable, a utility's practices and policies and judgment regarding an investment or expense at the time the investment was made or expense was incurred; including direct or indirect maximization of its positive impacts and mitigation of adverse impact upon its ~~ratepayers~~ consumers, without consideration of its ultimate used and useful nature.

**"Public competitive bidding process"** means a gas utility process to solicit from all entities offers to provide natural gas services upstream of the citygate as provided in Subchapter 17 of this Chapter.

**"Regulator"** means a device used to reduce the gas pressure.

**"Residence"** means any dwelling unit containing kitchen appliances, permanent sewer or septic facilities and water service. A weekend cabin and a mobile home are residences when used as such. An individual room in a hotel or motel is not a residence.

**"Request for bid"** means a gas utility's request for proposals to provide natural gas services at a Commission approved gas utility's designated citygate or aggregation point.

**"Service line"** means a line that branches off a distribution main or distribution line in order to transport gas from the common source of supply to utility meters or to a consumer's piping, whichever is farther downstream, or the connection to a consumer's piping if there is no utility meter.

**"Shipper"** means any person, firm or corporation engaged in the intrastate or interstate transmission of natural gas for third parties.

**"Special contract"** means a written Commission-approved agreement between a utility and a consumer for the provision of gas service on terms and conditions which are different from those authorized by a tariff.

**"Statistical sampling"** means a method for drawing elements from a population such that all possible elements in the population have a known and specified probability of being drawn and such that the set of chosen elements has approximately the same distribution of characteristics as the population from which it was drawn.

**"Storage"** means an underground natural or man-made facility used to store natural gas for extended periods of time.

**"Stranded costs"** ~~mean~~ means those prudent and verifiable costs and investments incurred by a natural gas utility, which were "used and useful" to meet the needs of its end-users, including but not limited to, its upstream capacity and supply commitments that cannot be avoided or mitigated or recovered from end-users under an existing tariff which have been caused as a result of the restructuring of the natural gas industry which were incurred prior to February 19, 1997, the date of issuance of Commission Order No. 409563, which closed the Notice of Inquiry, Cause No. PUD 960000133, and which ordered the promulgation of rules to restructure the natural gas service industry, such date being the date the gas utilities were placed on notice of the Commission's intent to restructure natural gas utility service(s). Prior to or during the utilities' stranded cost hearing, this date may be modified by order of the Commission, after notice and hearing. Stranded costs may include prudent and verifiable transition costs.

**"Subdivision"** means any land, wherever located, whether improved or unimproved, contiguous or not, which is divided into lots or proposed to be divided, for the purpose of disposition pursuant to a common promotional scheme or plan of advertising.

**"Subsidize"** means to furnish financial support by the utility to the affiliate.

**"Tariff"** means every rate schedule, or provision thereof, and all terms, conditions, rules and regulations for furnishing gas service filed with the Commission and approved by the Director of the Public Utility Division.

**"Therm"** means 100,000 British thermal units of heat.

**"Transition costs"** ~~mean~~ means those prudent and verifiable costs and investments incurred by a public gas utility after February 18, 1997, in implementing the Commission's gas utility restructuring rules and to restructure its facilities, contracts and operation. Such costs as determined by the Commission

may include education for the public related to the natural gas industry restructuring.

**"Transmission or transmission service"** means the upstream transportation of natural gas through pipelines and/or other facilities from a well-head, gathering line or other receipt point to a local distribution facilities or an end-user located on the transmission pipeline.

**"Transmission pipeline"** means a pipeline, either a gas utility owned transmission line or an intrastate pipeline, other than a gathering system that transports gas from a gathering system, interstate pipeline or storage facility to a citygate, aggregation point, storage facility or other delivery point.

**"Unbundling"** means the identification and separation of natural gas services and/or products and the associated costs to provide each such service and/or product which have been part of the "bundled" complement of services provided by a public gas utility.

**"Unbundling plan"** means a public utility's proposal(s) to separate its previously bundled services offered upstream of the citygate and to price these services individually.

**"Uniform System of Accounts (USOA)"** means the system of accounts as currently prescribed the Federal Energy Regulatory Commission (FERC), those accounting systems as published by the National Association of Regulatory Utility Commissioners (NARUC) or other accounting methods approved by the Commission.

**"Upstream of the Citygate"** means all natural gas services provided at the gas utility's citygate or other point of delivery to local distribution facilities which are necessary to serve end-users.

**"Upstream related entity"** means an affiliate of a gas utility or that portion of a gas utility which provides citygate gas services.

**"U.S.D.O.T."** means the United States Department of Transportation.

**"Utility"** means a natural gas utility as defined in this Chapter.

## **SUBCHAPTER 23. DEMAND PROGRAMS**

### **165:45-23-1. Purpose**

The purpose of this subchapter is to establish fair and reasonable rules for planning and implementing energy efficiency programs that may receive cost-recovery treatment from the Commission.

### **165:45-23-2. Goals**

(a) The goal of energy efficiency programs is to minimize the long-term cost of utility service.

(b) As a part of the hearing process for approval of a utility's energy efficiency programs, the Commission may set specific savings goals for each utility to reduce natural gas usage and/or the rate of growth of natural gas usage generally, without adversely affecting customer comfort or state economic activity, based on market potential studies, base line studies, gas supply portfolios, risk management plans or other evidence.

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## **165:45-23-3. Definitions**

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

**"Average customer bill"** means the value derived from the sum of all consumer bills in a particular customer sector divided by the number of consumers in that sector; i.e., the arithmetic mean. A utility may use the average customer bills for the customer rate classes rather than the customer sectors if it chooses to do so and clearly identifies the choice.

**"Barrier"** means any physical or non-physical necessity, obligation, condition, constraint, or requisite that obstructs or impedes natural gas user participation in energy efficiency programs. Barriers may include but are not limited to language, physical or mental disability, educational attainment, utility meter type, economic status, property status, or geography.

**"Base line"** means natural gas use, trend in natural gas use, and description of conditions affecting such uses and trends prior to implementation of an energy efficiency program designed to affect particular uses and trends.

**"California Standard Practice Manual"** means The California Standard Practice Manual: Economic Analysis of Demand Side Programs and Projects, 2001 edition, produced by the California Energy Commission and the California Public Utility Commission.

**"Cost effective"** and **"cost effectiveness"** mean utilizing a specified amount of money, in a way that delivers a benefit from available alternative uses, so long as the benefit's value exceeds the money spent.

**"Customized opportunity"** means an energy efficiency program tailored to an individual natural gas user's needs.

**"Deemed savings"** means an estimate of natural gas savings for a single unit of an installed energy-efficiency or renewable-energy measure that (1) has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and (2) will be applied to measures that are deployed in significant numbers in similar ways.

**"Demand portfolio"** means a collection of energy efficiency programs offered or proposed by a natural gas utility; for example, a residential weatherization program and a program to trade tankless water heaters for tank water heaters is a demand portfolio.

**"Demand portfolio administrator"** means the utility employee responsible for supervising the utility's energy efficiency efforts as proposed in compliance with this subchapter.

**"Energy efficiency"** means reducing natural gas consumption on the customer's side of the meter while achieving substantially the same level of end-use service.

**"Evaluation, measurement, and verification"** means a systematic, objective study conducted periodically to authenticate, assess, and report how well a program is achieving its objectives, including identification and quantification of inputs, outputs, outcomes, and unintended effects.

**"Fuel switching"** means changing from rate regulated natural gas to rate regulated electricity or from rate regulated electricity to rate regulated natural gas for a particular end-use

service. It does not include installation of any device that relies primarily on on-site renewable energy, such as, but not limited to, a solar water heater, geothermal heat pump, or biomass gas-powered furnace.

**"Goal"** means a target to be achieved by a utility's demand portfolio. A goal may be expressed in thousand cubic feet, dekatherms, percentage reduction or limitation, and/or another quantifiable measurement approved by the Commission. When determining whether a goal is met, reductions or increases attributable to weather and economic activity will not be counted.

**"Hard-to-reach customers"** means:

(A) Residential natural gas users who rent their residences from persons other than kin related to the third degree of affinity or consanguinity, trusts operated by and for the benefit of the users, or the users' legal guardians;

(B) Commercial natural gas users who rent their business property from persons other than the users' owners, parent companies, subsidiaries of their parent companies, their own subsidiaries, or trusts operated by and for the benefit of the same;

(C) Residential or commercial natural gas users who traditionally fail to engage in energy efficiency programs because of one or more barriers beyond those experienced by average residential or commercial customers in a utility's service area.

**"Incentive"** means a sum of money a utility may be allowed to recover, in addition to program costs and lost net revenues, which sum is designed to reward the utility for successful and appropriate energy efficiency and demand response program performance.

**"Inducement"** means any thing of value offered by a utility to encourage natural gas users or trade allies to engage in an energy efficiency program approved pursuant to this subchapter.

**"Lost net revenue"** means income from the retail sale of natural gas forgone by a utility directly resulting from the success of its demand portfolio, less expenses the utility was not required to pay by forgoing the sales.

**"Low-income customer"** means a residential natural gas user who provides proof to a utility that the user has been determined by the appropriate authority to be eligible to receive services through the Oklahoma Department of Commerce Weatherization Assistance Program State Plan, as provided by OAC 150:80; Health Care Authority SoonerCare Choice or fee-for-service programs, as provided by OAC 317:25, 35, and 40; or Department of Human Services Temporary Assistance for Needy Families, State Supplemental Payment, Low Income Home Energy Assistance, Food Stamp, or Refugee Resettlement programs as provided by OAC 340:10, 15, 20, 50, and 60, respectively, or similar program.

**"Market potential study"** means an evaluation that assesses customer population base lines, customer needs, target customer populations, and how best to address these issues.

**"Market transformation"** means the strategic process of influencing customer population decision-making to create lasting change in customer behavior by removing barriers or

exploiting opportunities to accelerate adoption of cost-effective energy efficiency as a matter of standard practice.

**"Measure"** means the equipment, materials, or actions that are installed or used within an energy efficiency program that result in measurable or verifiable savings; for example, a measure would include caulking around windows or weather stripping around doors to prevent heat loss.

**"Natural gas user"** means a real property freeholder or leaseholder at a specific location who consumes natural gas at that location, regardless of whether the consumer receives a gas bill directly from a utility.

**"Program"** means an organized set of activities or measures directed toward the common purpose of energy efficiency that a utility undertakes or proposes to undertake to reduce future natural gas usage or growth in natural gas usage; for example, a general offer to assist homeowners in weatherizing their homes is a program.

**"Program cost"** means the expenditures incurred by a utility to achieve natural gas savings through energy efficiency programs. Expenditures made by customers or third parties are not included. Programs costs must be reported in nominal dollars in the year in which they are incurred, regardless of when the savings occur. The utility's program costs are all labor, equipment, inducement, marketing, monitoring, measurement and evaluation, and other expenditures incurred by the utility for operation of the energy efficiency programs, regardless of whether the costs are expensed or capitalized.

**"Program implementer"** means the person who puts an energy efficiency program into practical effect.

**"Research and development"** means a planned activity aimed at discovering new knowledge with the hope of developing new or improved energy efficiency processes, products, or services and the translation of these research findings into a plan or design for new or improved energy efficiency processes, products, and services.

**"Savings"** means a reduction in the use of natural gas or rate of growth of natural gas use, as measured in dekatherms or thousand cubic feet.

**"Standard offer"** means an energy efficiency program available to a group of customers or customers generally on the same terms and without customization.

**"Trade allies"** means contractors, builders, developers, retailers, skilled laborers, service providers, and wholesale distributors who support energy efficiency programs through sale or installation of goods and services.

**"Transportation Customer"** means any customer who buys gas on the open market from any provider, and engages a regulated utility's pipeline to transport the gas to the customer's facility.

**165:45-23-4. Demand portfolio submission and implementation**

(a) All natural gas utilities under rate regulation of the Commission having more than 25,000 meters in the state of Oklahoma shall propose, at least once every three years, and be

responsible for the administration and implementation of a demand portfolio of energy efficiency programs within their service territories. Such proposals shall be made by filing an application with the Commission on or before April 1 of the year the programs will be effective. The application shall describe the demand portfolio and contain the following information:

(1) A description of the intent of the demand portfolio as a whole;

(2) A description of the intent of each program;

(3) A description and quantification of the target market of each program, differentiated by customer sectors;

(4) A base line describing the state of the market that each program is intended to address, taking into account applicable building energy codes and appliance and equipment energy standards;

(5) A description of the barriers to investment in energy efficiency in the absence of each program and the ways each program will reduce or eliminate these barriers;

(6) A description of research and public input that contributed to the development of the content of each program;

(7) A report of the cost-effectiveness of each program and the demand portfolio, including supporting data;

(8) A description of how each program is expected to change over its course to reflect expected changes in market penetration, technology, and other market information, as well as lessons learned;

(9) A plan for evaluation, measurement, and verification of performance and results of the demand portfolio and each program, including a plan for the use of deemed savings, if applicable, or the use of statistical sampling, if applicable, or the use of metering, where appropriate;

(10) A plan for evaluation of the market effects of each program or applicable group of programs;

(11) A plan for evaluation of administration and implementation of each program or applicable group of programs;

(12) A plan for ending a program, if applicable;

(13) A process for amending a program;

(14) An annual budget for each program, providing detail for program costs, and differentiating evaluation, measurement, and verification costs from other program costs;

(15) A report on how the demand portfolio is expected to affect rates, sales, average bills and total revenue requirement for each customer sector;

(16) A report on how the demand portfolio will meet savings goals that may be in place at the time of filing and or that are otherwise proposed in the filing;

(17) An estimate of the expected savings in natural gas usage, with location information about the source of savings, if savings are not expected to be evenly distributed throughout the utility system;

(18) A detailed explanation of the utility's request for recovery of prudently incurred program costs, recoupment of lost net revenue, and any additional incentives the utility proposes it requires to make the programs workable;

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- (19) Identification of the demand portfolio administrator, including name, job title, business postal address, business electronic mail address, and business telephone number; and
- (b) Demand portfolios shall:
- (1) Contain programs for all customer sectors;
  - (2) Strike a balance among procuring natural gas savings, educating the public, and transforming markets for energy efficiency;
  - (3) Include standard offers to customers and trade allies to encourage simple ways to participate, where appropriate;
  - (4) Contain customized opportunities for energy efficiency among larger customers;
  - (5) Not include programs or measures that promote fuel switching, with the exception of (a) programs or measures that promote renewable technologies such as biomass-derived methane, geothermal, solar and other renewable resources; or (b) in the event after notice and hearing, such programs or measures are shown to promote the goals of the Commission pursuant to this Subchapter and/or otherwise to be in the public interest;
  - (6) Have an implementation schedule of no more than three years;
  - (7) Address opportunities presented by new construction and renovation;
  - (8) Promote comprehensive energy efficiency in buildings; and
  - (9) Address programs for low-income customers and hard-to-reach customers to assure proportionate energy efficiency programs are deployed in these customer groups despite higher barriers to energy efficiency investments. Programs targeted to low-income or hard-to-reach customers may have lower threshold cost-effectiveness results than other programs.
- (c) Demand portfolios may:
- (1) Include research and development that would lead to effective energy efficiency programs or other energy end use efficiency for Oklahoma so long as the total budget for such programs does not exceed five percent of the total budget for energy efficiency programs and the Commission finds the cost-effectiveness for the demand portfolio remains sufficient;
  - (2) Allow utility cooperation in state, regional and national programs that have the potential to save natural gas in Oklahoma; and
  - (3) Allow utility cooperation in state, regional and national programs to take advantage of economies of scale, provide consistent mass media messages, or otherwise improve program administration or customer acceptance.
- (d) Natural gas utilities having fewer than 25,000 meters in this state are exempt from filing application requirements in subsections (a) through (c); however, each qualifying natural gas utility shall submit to the director of the Public Utility Division for review, evidence of why it is not economically feasible to file the application requirements in subsections (a) through (c), and shall submit the following as evidence to further the goals of this Subchapter:
- (1) A description of the programs that are economically feasible to implement; and
  - (2) The target market of each program.
- (e) Transportation customers shall not be subject to energy efficiency programs and related program costs implemented pursuant to this Subchapter.
- 165:45-23-5. Commission consideration**
- (a) In reviewing demand portfolios, the Commission will consider:
- (1) The quality of the programs in all their elements relative to their program objectives;
  - (2) Experience of the program administrator and program implementer, if known, at designing and implementing programs;
  - (3) The cost-effectiveness for each program and for the demand portfolio;
  - (4) The savings goals;
  - (5) The availability of programs to all customers;
  - (6) The degree to which programs include innovative ways of increasing savings, increasing participation in programs, increasing market transformation, increasing customer education, or decreasing the cost to obtain savings or promote participation;
  - (7) The effect on rates, average customer bills, and total cost of service;
  - (8) The effect on the environment, to the extent of Commission authority; and
  - (9) Other evidence the Commission finds relevant.
- (b) The Commission will endeavor to issue an order within ninety days of the filing of the application.
- (c) Whether a program is cost effective will be determined by the Commission and may be based on the tests found in the California Standard Practice Manual. The California Standard Practice Manual tests are to be used in conjunction with one another and no one test may be used to deem a program to be lacking cost-effectiveness. Results of the Rate Impact Measure Test contained in the California Standard Practice Manual shall also include an estimate of the impact on average customer bills.
- (d) A utility's recovery of prudently incurred program costs in rates or riders shall be determined by the Commission on a utility-specific basis; provided costs other than for inducement shall not exceed ten percent of program costs and all program costs shall not add more than \$1.33 to the residential sector's monthly average customer bill.
- (e) Programs may be modified by the utility with forty-five days notice to the Commission without prior approval by the Commission under the following conditions:
- (1) The program is not terminated earlier than specified in the program; and
  - (2) The modification does not result in a shift of more than ten percent of the total demand portfolio budget resources away from programs serving any customer sector.
- (f) If the Commission receives an objection to the proposed program modification no later than thirty days after receiving the utility's notice, the Commission may, but is not required to,

set a hearing before the Commission or an administrative law judge.

**165:45-23-6. Evaluation, measurement, and verification**

- (a) Utilities are responsible for timely evaluation, measurement, and verification of their energy efficiency programs.
- (b) The intent of the evaluation, measurement, and verification process is:
  - (1) To provide a reliable calculation of the net savings produced by energy efficiency programs;
  - (2) To assess the effects of programs on the market for energy efficient products and services; and
  - (3) To assess the effectiveness of the administration and implementation of energy efficiency programs.
- (c) Utilities shall prepare and maintain a program-tracking database.
- (d) Each evaluation, measurement, and verification plan for a program will explain the methods that will be applied with an explanation of how those methods will meet the requirements of this rule.
- (e) Deemed savings, customer bill analysis, on-site metering, and statistical sampling will be permitted in appropriate applications.
- (f) Assumptions with any supporting research about the ratio between gross savings in energy consumption by utility customers and net savings attributable to energy efficiency programs will be included in the evaluation, measurement, and verification plan.
- (g) The evaluation, measurement, and verification process shall produce reports that are fully documented, auditable, and transparent.

**165:45-23-7. Reporting**

- (a) Each utility shall report by April 1 of each year on the performance of energy efficiency programs for the preceding program year and cumulative program performance.
- (b) The report shall contain detail for a program reflecting the scale of the program as a part of the demand portfolio and shall include the following:
  - (1) A list of all programs and the date each program started;
  - (2) A list of savings realized for each program and the methods used to measure and verify these savings;
  - (3) The utility's annual growth or reduction in metered natural gas for the previous three years, with a calculation of the average growth or reduction rate over that entire period;
  - (4) The most current information available comparing projected savings to reported savings for each of the utility's programs;
  - (5) The most current information available comparing reported savings and verified achieved savings and an explanation of how each was measured;

- (6) The most current information available comparing the base line and milestones to be achieved under market transformation programs with actual conditions in the market;
  - (7) A statement of funds expended by the utility for program administration, including evaluation, measurement, and verification;
  - (8) A statement of any funds that were committed but not spent during the year, by program, with an explanation for non-spending;
  - (9) A list of programs or program categories by customer sector stating:
    - (A) The number of customers served by each program or program category;
    - (B) The program or program category expenditures;
    - (C) The verified energy savings achieved by the program or program category, when available;
    - (D) A description of proposed changes in the program plans; and
    - (E) Any other information prescribed by the Commission;
  - (10) A list of research and development activities included in the demand portfolio, their status, and a report on the connection between each activity and effective energy efficiency programs;
  - (11) Identification of program implementers, including names, job titles, business postal addresses, business electronic mail addresses, and business telephone numbers; and
  - (12) Identification of instances in new construction or renovation when an electric furnace or water heater could have been installed but the customer installed a natural gas device and a natural gas utility inducement was provided.
- (c) After receiving the report, the Commission:
    - (1) May schedule a hearing about the performance of the programs, the outlook for the future, and other relevant issues and may consider requests from parties for a hearing; and
    - (2) Will endeavor to act on the report within sixty days by accepting the report, rejecting the report, or opening an investigation to inquire further into the report.
  - (d) The Commission may direct the utility to make brief quarterly or monthly reports including measurements of key metrics and news of any unexpected developments in program administration, delivery or planning.

*[OAR Docket #09-1037; filed 5-22-09]*

**TITLE 210. STATE DEPARTMENT OF EDUCATION  
CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES**

*[OAR Docket #09-1061]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

# Permanent Final Adoptions

## RULES:

Subchapter 13. Student Assessment  
210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration [AMENDED]

## AUTHORITY:

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

## DATES:

### Comment period:

February 17, 2009 through March 25, 2009

### Public hearing:

March 26, 2009

### Adoption:

March 26, 2009

### Submitted to Governor:

March 27, 2009

### Submitted to House:

March 27, 2009

### Submitted to Senate:

March 27, 2009

### Gubernatorial approval:

May 4, 2009

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

### Final adoption:

May 20, 2009

### Effective:

June 25, 2009

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATIONS BY REFERENCE:

N/A

### ANALYSIS:

The proposed amendment to rules provides a description of the requirements to be met by school districts and the State Department of Education as relates to remediation of students who do not attain at least a satisfactory or proficient score on the seventh grade criterion-referenced tests in reading and mathematics, the eighth grade criterion-referenced tests in reading and mathematics, and the end-of-instruction exams. The changes will provide public school educators with the guidance necessary to achieve further improvements in the quality of education for the students of this state.

### CONTACT PERSON:

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:**

## SUBCHAPTER 13. STUDENT ASSESSMENT

### 210:10-13-2. Oklahoma School Testing Program (OSTP) scope and general administration

(a) Definitions. In this Section, the words and terms shall have the following meaning:

"Proficient/Satisfactory" means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(ab) All public school districts shall administer the state mandated academic achievement tests of the OSTP to all students enrolled in the designated grades. The series of tests shall be field-tested/implemented by the amended schedule in Title 70 O.S., Section 1210.508, or federal law.

(1) ~~Students with Individualized Education Programs (IEPs) shall have an appropriate statement on the IEP requiring administration of the general assessment with or without accommodations or an alternate assessment as part of the Oklahoma School Testing Program (OSTP). Any accommodations normally employed and needed must exist on the IEP. All documentation for each student shall be on file in the local school before tests are administered.~~ Students with Individualized Education Programs (IEPs) shall have an appropriate statement on the IEP with regard to the type of assessment in which the student will participate (e.g., Oklahoma Core Curriculum Test (OCCT) with or without accommodations, the Oklahoma Modified Alternate Assessment Program (OMAAP) with or without accommodations, a combination of OCCT and OMAAP, or the Oklahoma Alternate Assessment Program (OAAP) Portfolio). The OCCT, OMAAP, and OAAP Portfolio are all a part of the Oklahoma School Testing Program (OSTP). Any state approved accommodations must be documented in the student's current IEP. Current documentation for each student shall be on file in the local school prior to test administration.

(2) All students who have been determined to be limited English proficient (LEP), also known as English language learners (ELL), as identified in Public Law 107-110 shall be included in all of the state-mandated academic achievement tests of the OSTP. ELL students are those who have been appropriately identified, through English proficiency screening by the local school districts, as requiring specialized instructional services designed to increase their English proficiency and academic performance. For every student identified as ELL, the local district shall have on file verification that the student is receiving special instruction designed for the specific purpose of improving the ELL student's English proficiency. Any State Department of Education approved and adopted English proficiency assessment shall be considered an official assessment of the OSTP, and will be subject to the same security, privacy, and administration measures accorded to all other OSTP assessments.

(A) Students identified as ELL shall be assessed in a valid and reliable manner with the state academic assessments with acceptable accommodations as necessary and, to the extent practicable, with alternate assessments aligned to the state assessment provided by the local school district in the language and form most likely to yield accurate data on what such students know and can do in these content areas; these alternate assessments will continue until such students have achieved English language proficiency with the exception noted in paragraph (B).

(B) If ELL students are administered the state-mandated reading and language arts achievement tests in a language other than English, this will be allowed only during their first three consecutive years of school attendance in the United States (not including Puerto Rico). After these first three years these tests must be administered in English,

except that if the local school district determines on a case-by-case basis, that a student has not yet reached a level of English language proficiency that will allow valid and reliable information to be obtained, even with testing accommodations, in which case individual waivers will be allowed by the local district for up to two additional consecutive years, according to federal law.

(3) All End-of-Instruction assessments must be taken once the corresponding course of instruction has been completed. In order to meet the Federal No Child Left Behind (NCLB) legislation requirements, all students prior to graduating from high school must take the Algebra I, Biology I, and English II assessments regardless of whether instruction has been taken, unless otherwise exempt.

~~(bc)~~ On an annual basis, school superintendents or their designees shall provide a copy of the State Board of Education Rules, OAC 210:10-13, for all school personnel responsible for receipt, inventory, distribution, or return of tests documents, and/or for administration of tests within the Oklahoma School Testing Program.

~~(ed)~~ Districts may request special reports beyond those provided by state contract with the testing company at their own cost (i.e., individual student records on CD or disk, District Title I Report, District Alpha Order Report, etc.).

~~(de)~~ Test results of all students not enrolled in a district for a full academic year shall be disaggregated and shall not be used to determine the progress of the district, according to federal law. Test results of all students not enrolled in a school site for a full academic year shall be disaggregated and shall not be used to determine the progress of the school site, according to federal law. "Full Academic Year" is defined as continuous enrollment for two full consecutive semesters (i.e., from yearly test date to test date), except in the case of certain school, district, or instructional configurations where the definition is "continuous enrollment from the first day of the school." Beginning with the 2008-2009 school year "Full Academic Year" shall be defined for the purposes of the Oklahoma Core Curriculum Tests (OCCT), Oklahoma Modified Alternate Assessment Program (OMAAP), and the Oklahoma Alternate Assessment Program (OAAP) as continuous enrollment beginning within the first ten days of the school year without an enrollment lapse of ten or more consecutive days. ~~The specified school, district or instructional configurations where the later definition applies are as follows:~~

- ~~(1) when students move sequentially to the next higher grade in transition years from one site to the next within a district;~~
- ~~(2) when students move sequentially to the next higher grade in transition years from an elementary district to a K-12 district;~~
- ~~(3) when schools are held accountable for student competencies acquired in a specified course of instruction assessed by End of Instruction Tests.~~

~~(ef)~~ Test results of all students who have been placed in a facility within a district by state- or court-order, shall not be used to determine the progress of the site or the district. Instead

their scores will be used in accountability calculations in one statewide "virtual" district.

(fg) Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's seventh grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the eighth-grade criterion-referenced tests in reading and mathematics. Each public school student who does not score at least at the satisfactory level on state criterion-referenced tests in reading and mathematics by the end of the student's eighth grade year shall be provided remediation for the purpose of assisting the student in performing at least at the satisfactory level on the end-of-instruction tests administered in high school. Beginning with students entering the ninth grade in the 2008-2009 school year, each public school student who does not attain at least a satisfactory or proficient score on the state end-of-instruction tests shall be provided remediation for the purpose of assisting the student in attaining at least a satisfactory or proficient score on the Algebra I, English II, and two of the remaining five end-of-instruction tests, in order to graduate from an Oklahoma accredited public high school.

(1) Districts and/or schools may provide remediation through extended instructional time during the school day, a summer academy, tutoring, online coursework, or other supplementary services. Remediation is not limited to these practices.

(2) Remediation provided through instructional time during the school day, a summer academy, or school-based tutoring shall be under the supervision of a highly qualified teacher in ~~mathematics or reading, as appropriate,~~ the appropriate content area.

(3) The State Department of Education—~~(SDE)~~ shall provide information about best practices for remediation and interventions on the ~~SDE~~ State Department of Education website.

(4) Beginning spring 2007 and each year thereafter, a district plan of remediation shall be submitted to the State Department of Education's online reporting site for students who do not score at least at the satisfactory level on the seventh grade criterion-referenced tests in reading and mathematics. Beginning spring 2008 and each year thereafter, a district plan of remediation shall be submitted for students who do not score at least at the satisfactory level on the eighth grade criterion-referenced tests in reading and mathematics. Plans shall be reviewed and approved prior to release of state funds allocated for remediation. Beginning with the 2008-2009 school year, the district shall submit an annual remediation plan to its local board of education at a regularly scheduled meeting prior to November 15 of each school year. The remediation plan shall be for those students who do not attain at least a satisfactory or proficient score on the tests listed in this section. The plan should include how remediation funds will be spent, when and where remediation will be provided, what content will be addressed, how instruction will be delivered, and who will provide the instruction, including the highly qualified status of the instructor.

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(5) ~~The per student dollar amount shall be determined by the State Board of Education after the total number of students who qualify for remediation funding have been identified by final scores on the state criterion references tests in reading and mathematics.~~

(6) ~~Upon State Department of Education approval of the district remediation plan, to include estimated expenditures and assurances, funds shall be released to the district on a per student basis for the costs associated with providing remediation. Any unallocated funds remaining at the end of the fiscal year shall return to the general fund.~~

(7) ~~School districts shall monitor the results of the remediation, as measured by periodic progress assessments, and submit the findings annually to the State Department of Education's online reporting site. State Department of Education regional accreditation officers shall assist districts in compliance with reporting requirements.~~

(8) ~~Any district not showing adequate improvement shall be required to submit a detailed plan of improvement for remediation programs and may be subject to onsite monitoring by the State Department of Education. Adequate improvement shall be defined as the percentage of students provided remediation that are not successful on the eighth grade criterion referenced tests in reading and mathematics, as compared with a targeted percentage of improvement established by the State Board of Education.~~

(5) Funds for remediation shall be disbursed by the State Department of Education to the local school districts by September 1 of each year in accordance with the requirements of 70 O.S. § 1210.526. Funds for each fiscal year shall be based on the most recent OSTP test results available for each student from the previous school year or summer test administration.

(6) Funds for remediation shall be utilized to provide intervention and remediation for qualifying students as described in this section. Allowable expenditures include salaries and stipends for highly qualified teachers and tutors under the supervision of highly qualified teachers; instructional materials such as textbooks, workbooks, teacher-made materials, computer assisted instructional software, manipulatives, and classroom instructional tools necessary to provide remediation; assessments designed to monitor the progress of students in remediation programs; transportation to and from tutoring sessions held outside of the school day; and training in best practices for providing remediation. Funds for remediation may not be used for salaries, materials, or administrative services not directly related to remediation or for students who do not qualify for remediation as described in this section.

(7) School districts shall report the use of remediation funds and the results of the remediation, as measured by periodic progress assessments and district student performance on state assessments. Districts shall submit an online report annually to the State Department of Education through the Oklahoma School District Reporting Site (SDRS). The district shall also submit the annual report to

its local board of education at a regularly scheduled meeting. Remediation results shall be presented by a designated public school principal for each site.

*[OAR Docket #09-1061; filed 5-26-09]*

## TITLE 210. STATE DEPARTMENT OF EDUCATION CHAPTER 10. SCHOOL ADMINISTRATION AND INSTRUCTIONAL SERVICES

*[OAR Docket #09-1062]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 13. Student Assessment

210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams [NEW]

### **AUTHORITY:**

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

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### **SUPERSEDED EMERGENCY ACTIONS:**

N/A

### **INCORPORATIONS BY REFERENCE:**

N/A

### **ANALYSIS:**

The rule provides a process for school districts and the State Board of Education to apply exceptions and exemptions to the graduation requirements related to end-of-instruction exams. The rule establishes student exceptions and exemptions related to graduation requirements for end-of-instruction exams to comply with the requirements set forth in 70 O.S. § 1210.523.

### **CONTACT PERSON:**

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:**

## SUBCHAPTER 13. STUDENT ASSESSMENT

**210:10-13-16. Student exceptions and exemptions related to graduation requirements for end-of-instruction exams**

(a) **Definitions.** Words and terms in this section shall have the following meaning:

(1) **"Alternate method"** means demonstrating mastery of state curriculum standards through an End of Course Project designed and approved by the State Board of Education. An End of Course Project is a project integrating and applying the knowledge and skills gained throughout a course to address a practical, real world challenge.

(2) **"Alternate test"** means a state or national test approved by the Oklahoma State Board of Education for one or more of the subject areas assessed by an end-of-instruction exam, which equals or exceeds the rigor of the end-of-instruction exam.

(3) **"Extenuating Circumstances"** means circumstances which are unexpected, significantly disruptive, beyond a student's control, and which may have reasonably affected his/her academic performance.

(4) **"Proficient/Satisfactory"** means achieving at least the minimum score for demonstrating mastery as defined by the State Board of Education on an academic achievement test of the Oklahoma School Testing Program (OSTP).

(b) In accordance with 70 O.S. § 1210.523 A-E, students may graduate from a public high school with a standard diploma by demonstrating mastery in the state academic content standards for Algebra I; English II; and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History by attaining at least a satisfactory or proficient score on the end-of-instruction exams or in the following way:

(1) Students who do not attain at least a satisfactory or proficient score on any of the required end-of-instruction exams in Algebra I, English II, and two of the following five: Algebra II, Biology I, English III, Geometry, and United States History may be eligible to graduate with a standard diploma by completing steps below until a satisfactory or proficient score is attained and meeting all other graduation requirements:

(A) **Step One:** Students shall be provided one or more remediation opportunities and will either:

- (i) Retake the end-of-instruction exam(s); or
- (ii) Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area which may be taken prior to or subsequent to the end-of-instruction exam.

(B) **Step Two:** Students who do not achieve a satisfactory or proficient score through step one shall continue to receive remediation opportunities and will either:

- (i) Retake the end-of-instruction exam(s); or
- (ii) Score satisfactory or proficient on a State Board of Education approved alternate test in the subject area which may be taken prior to or subsequent to the end-of-instruction exam; or

(iii) Demonstrate mastery of the subject matter through an End of Course Project which includes meeting the level of mastery defined by the rubrics explained in (b)(2) of this section.

(C) Students who do not meet the graduation requirements through Step Two may repeat Step Two as necessary. School districts will only provide remediation for students while they are enrolled in public school.

(D) An alternate test may be used to meet the graduation requirements for one end-of-instruction exam. A student may take more than one alternate test to meet the graduation requirements.

(E) Remediation opportunities will be outlined in the local school district remediation plan (70 O.S. § 1210.523). School districts shall document a student's failure to participate in remediation including written acknowledgement of the graduation requirements by the student's parent or guardian.

(F) School districts shall document a student's failure to complete test retake opportunities including written acknowledgement by the student's parent or guardian of the graduation requirements related to end-of-instruction tests.

(2) Demonstration of mastery through an End of Course Project (Alternate Method).

(A) In order to demonstrate mastery and graduate through an alternate method on end of instruction exams, students must complete an End of Course Project for Algebra I, Algebra II, Biology I, English II, English III, Geometry, or United States History. End of Course Projects will be designed by the State Department of Education and approved by the State Board of Education.

(i) End of Course Projects for English II and English III must include a response to literature and a writing sample of comparable rigor to the end-of-instruction exams.

(ii) End of Course Projects for Biology I must include the process standards as assessed through laboratory experiments.

(B) School districts, shall submit completed student End of Course Project(s) to the State Department of Education by April 1, August 1, or November 1 of each year. Projects will be evaluated and returned within 45 business days. Subject to the availability of funds, the State Department of Education may contract with individuals, educational institutions, or companies to evaluate these End of Course Projects. Evaluators shall use rubrics approved by the State Board of Education for determining student mastery of state academic content standards through End of Course Projects. If funds are not available, End of Course Projects will be evaluated at the local school district level according to requirements of the State Board of Education.

(C) End of Course Projects must be retained for a minimum of 5 years from completion.

(3) The Oklahoma State Board of Education has the authority to waive one or more of the requirements in (b)(1) of this section for an individual student if the Board determines that extenuating circumstances justify the waiver for an end of instruction exam.

(4) Students who do not receive instruction in Oklahoma public schools may demonstrate mastery in required subjects by submitting documentation of proficiency on an equivalent state end-of-instruction exam(s) in the state in which instruction was received; attaining at least a satisfactory or proficient score (as defined by the Oklahoma State Board of Education) on the Oklahoma end-of-instruction exam(s); meeting the approved level of proficiency on an alternate test(s); demonstrating mastery through an End of Course Project(s) as described in (b)(1) and (b)(2) of this section.

(5) Students who do not have an opportunity to take required end-of-instruction exams without extending the date of graduation may demonstrate mastery in required subject areas by meeting the approved level of proficiency on an alternate test(s) or an End of Course Project(s).

(6) Students who have an Individualized Education Program (IEP) in accordance with the Individuals with Disabilities Education Act (IDEA) may demonstrate mastery of state academic content standards through a modified proficiency score on the state assessment(s) as established by the IEP Team. Any deviation from the standard conditions, accommodations, or proficiency score on the state assessment(s) must be established on the student's IEP, and shall be recorded on the student's cumulative record.

(7) Each year beginning with the 2011-2012 school year, school districts shall report to the State Department of Education through the School District Reporting Site, by school site, the number of students issued standard diplomas based on the exceptions and exemptions outlined in these rules, including the categories of exceptions and exemptions granted.

(c) Beginning with students entering the ninth grade in 2008-2009, in order to facilitate the monitoring of student progress toward meeting the graduation requirements of 70 O.S. § 1210.523, districts will maintain an Achieving Classroom Excellence (ACE) Demonstration of Mastery cumulative record for those students who do not attain at least a satisfactory or proficient score on any of the required end-of-instruction exams. All school districts in the state shall use this cumulative record uniform document, or all information required on the uniform document must be contained within the district's student information system. The State Department of Education will provide an electronic version of this cumulative record to the districts. This cumulative record shall accompany the student when transferring to a new district. For each student who meets the graduation requirements, the student's transcript shall read, "The student has met the graduation requirement of demonstrating mastery in the state academic content standards."

[OAR Docket #09-1062; filed 5-26-09]

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

[OAR Docket #09-1063]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Priority Academic Student Skills

Part 7. Mathematics

210:15-3-41. Mathematics content standards grade 1 [AMENDED]

210:15-3-42. Mathematics content standards grade 2 [AMENDED]

210:15-3-43. Mathematics content standards grade 3 [AMENDED]

210:15-3-44. Mathematics content standards grade 4 [AMENDED]

210:15-3-45. Mathematics content standards grade 5 [AMENDED]

210:15-3-47. Mathematics content standards grade 6 [AMENDED]

210:15-3-48. Mathematics content standards grade 7 [AMENDED]

210:15-3-49. Mathematics content standards grade 8 [AMENDED]

210:15-3-51. Mathematics content skills algebra I [AMENDED]

210:15-3-52. Mathematics content standards geometry [AMENDED]

210:15-3-53. Mathematics content standards algebra II [AMENDED]

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#### ANALYSIS:

The proposed rule amendments provide additional clarity, organization, rigor, and detail to the mathematics standards of the *Priority Academic Students Skills*, Oklahoma's core curriculum. Changes will be made to meet requirements in coordination with the existing textbook adoption six-year cycle. The changes will provide public school educators with the guidance necessary to achieve further improvements in the quality of education for Oklahoma students.

#### CONTACT PERSON:

Connie Holland, 405-521-3308

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN O. S. 75, SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:**

**SUBCHAPTER 3. PRIORITY ACADEMIC STUDENT SKILLS**

**PART 7. MATHEMATICS**

**210:15-3-41. Mathematics content standards grade 1**

(a) **Standard - ~~patterns, algebraic reasoning: patterns and relationships.~~** The student will use a variety of problem-solving approaches to model, describe and extend patterns.

(1) Describe, extend and create a variety of patterns using concrete objects (e.g., sort a bag of objects by attributes and orally communicate the pattern for each grouping).

(2) ~~Describe and extend number patterns.~~ Describe, extend, and create patterns with numbers in a variety of situations (e.g., addition charts, skip counting, calendars).

(3) Demonstrate number patterns by counting as many as 100 objects by 1's, 2's, 5's, and 10's.

(4) Recognize and apply the commutative and identity properties of addition, using models and manipulatives to develop computational skills (e.g.,  $2 + 4 = 4 + 2$ ,  $3 + 0 = 3$ ).

(b) **Standard - number sense and operation.** The student will read, write and model numbers and number relationships, ~~to 100.~~ The student will use models to construct basic addition and subtraction facts with whole numbers.

(1) ~~Use concrete models of tens and ones to develop the concept of place value.~~

(2) ~~Compare and Order Objects~~

(A) ~~Compare objects by size and quantity (e.g., more than, less than, equal to).~~

(B) ~~Use ordinal numbers first through tenth to order objects.~~

(3) ~~Read and write numerals to 100.~~

(4) ~~Count as many as 100 objects by ones, twos, fives, and tens.~~

(5) ~~Investigate concepts of fractional parts (e.g., halves, thirds, fourths).~~

(1) Number Sense

(A) Use concrete models of tens and ones to develop the concept of place value.

(B) Compare objects by size and quantity (e.g., more than, less than, equal to).

(C) Read and write numerals to 100.

(D) Manipulate physical models and recognize graphical representation of fractional parts (e.g., halves, thirds, fourths).

(2) Number Operations

(A) Develop and apply the concepts of addition and subtraction.

(i) Use models to construct addition and subtraction facts with sums up to twenty (e.g., counters, cubes).

(ii) Perform addition by joining sets of objects and subtraction by separating and by comparing sets of objects.

(iii) Demonstrate fluency with basic addition and subtraction facts (i.e., memorize and apply) to make a maximum sum of 10 and the associated subtraction facts (e.g.,  $7 + 3 = 10$  and  $10 - 7 = 3$ ).

(B) Write addition and subtraction number sentences for problem-solving situations.

(C) Acquire strategies for making computations using tens and ones to solve two-digit addition and subtraction problems without regrouping (e.g., use estimation, number sense to judge reasonableness, counting on, use base-ten blocks).

(c) ~~Standard - number operations and computation geometry.~~ The student will use models to construct addition and subtraction facts with whole numbers through ~~10.~~ The student will use geometric properties and relationships to recognize and describe shapes.

(1) ~~Develop and apply the concepts of addition and subtraction~~

(A) ~~Use models to construct addition and subtraction facts through 10 (e.g., counters, cubes).~~

(B) ~~Perform addition by joining sets of objects and subtraction by separating and by comparing sets of objects.~~

(C) ~~Demonstrate fluency with basic addition and subtraction facts (i.e., memorize and apply addition and subtraction facts) through 10. Compute efficiently and accurately with single digit numbers.~~

(D) ~~Recognize and apply the commutative and identity properties of addition using models and manipulatives to develop computational skills (e.g.,  $2 + 4 = 4 + 2$ ,  $3 + 0 = 3$ ).~~

(2) ~~Write addition and subtraction number sentences for problem-solving situations.~~

(3) ~~Acquire strategies for making computations (e.g., use estimation, number sense to judge reasonableness, counting on).~~

(1) Sort and identify congruent shapes.

(2) Identify, name, and describe two-dimensional geometric shapes (including rhombi) and objects in everyday situations (e.g., the face of a round clock is a circle, a desk-top is a rectangle).

(3) Identify, name, and describe three-dimensional geometric shapes (including cones) and objects in everyday situations (e.g., a can is a cylinder, a basketball is a sphere).

(4) Use language to describe relationships of objects in space (e.g., above, below, behind, between).

(d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to recognize and describe shapes and use measurement skills to tell time, identify money and develop calendar concepts. The student will develop and use measurement skills to solve problems in a variety of situations.

(1) Geometric Properties and Relationships

(A) Sort and identify congruent shapes.

(B) Identify two dimensional geometric shapes and objects in everyday situations (e.g., the face of a round clock is a circle, a desktop is a rectangle).

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- (C) Use language to describe relationships of objects in space (e.g., above, below, behind, between).
- (2) **Measurement**
- (A) Tell time on digital and analog clocks to the hour and half hour.
- (B) Identify and name the value of pennies, dimes, nickels, and quarters.
- (C) Use the calendar to develop the concepts of days, weeks, and months.
- (1) **Linear Measurement.** Measure objects with one-inch tiles and with a standard ruler to the nearest inch.
- (2) **Time.**
- (A) Tell time on digital and analog clocks to the hour and half-hour.
- (B) Develop the concepts of days, weeks, and months using a calendar.
- (3) **Money.** Identify and name the value of pennies, dimes, nickels, and quarters.
- (e) **Standard - data analysis.** The student will demonstrate an understanding of data collection and display.
- (1) Organize, describe, and display data using concrete objects, pictures, ~~grids, and~~ numbers.
- (2) Formulate and solve problems that involve collecting and analyzing data common to children's lives (e.g., color of shoes, numbers of pets, favorite foods).

## 210:15-3-42. Mathematics content standards grade 2

(a) **Standard - ~~patterns, algebraic reasoning: patterns and relationships.~~** The student will use a variety of problem-solving approaches to ~~extend and create patterns, model, describe, and extend patterns.~~

- (1) Describe, extend, and create patterns using symbols, shapes or ~~designs, numbers~~ (e.g., repeating and growing patterns made up of sets of shapes or designs, create patterns by combining different shapes and taking them apart).
- (2) Formulate and record generalizations about number patterns in a variety of situations (e.g., addition and subtraction patterns; even and odd numbers; build a table showing the cost of one pencil at 10 cents, 2 pencils at 20 cents).
- (3) Find unknown values in open number sentences with a missing addend to solve everyday problems.
- (4) Recognize and apply the associative property of addition (e.g.,  $3 + (2 + 1) = (3 + 2) + 1$ ).
- (b) **Standard - ~~number sense and operation.~~** The student will use numbers and number relationships to acquire basic facts, and will compute with whole numbers less than 100.
- (1) **Place Value**
- (A) Use concrete models of hundreds, tens, and ones to develop the concepts of place value.
- (B) Demonstrate (using concrete objects, pictures, and numerical symbols) fractional parts including halves, thirds, and fourths.
- (2) **Reading and Writing Numbers**
- (A) Link place value concepts to the reading and writing of numbers (e.g., base 10 blocks).

- (B) Represent a number in a variety of ways (e.g., write the calendar day in different ways, write 15 as  $8 + 7$ , write 25 as 2 tens + 5 ones or as 1 ten + 15 ones).
- (C) Write a number sentence to compare numbers less than 100 (e.g., 5 is more than 2, 3 is less than 7, page 51 comes after 50, and 51 is between 50 and 60).
- (3) Develop and use strategies of estimation (e.g., compose, decompose and regroup numbers, use knowledge of 10 to estimate quantities and sums [two numbers less than 10 can not add up to more than 20], use body parts to estimate measurements).
- (4) Determine whether a number is odd or even.
- (1) **Number Sense**
- (A) Use concrete models of hundreds, tens, and ones to develop the concepts of place value and link the concepts to the reading and writing of numbers (e.g., base-10 blocks).
- (B) Represent a number in a variety of ways (e.g., write 15 as  $8 + 7$ , write 25 as 2 tens + 5 ones or as 1 ten + 15 ones).
- (C) Write a number sentence to compare numbers less than 1,000 (e.g.,  $425 > 276$ ,  $73 < 107$ , page 351 comes after 350, 753 is between 700 and 800).
- (D) Demonstrate (using concrete objects, pictures, and numerical symbols) fractional parts including halves, thirds, fourths, and common percents (25%, 50%, 75%, and 100%).
- (2) **Number Operations**
- (A) Demonstrate fluency (i.e., memorize and apply) with basic addition facts to make a maximum sum of 18 and the associated subtraction facts (e.g.,  $15 + 3 = 18$  and  $18 - 3 = 15$ ).
- (B) Use strategies to estimate and solve sums and differences (e.g., compose, decompose and regroup numbers, use knowledge of 10 to estimate quantities and sums (two numbers less than 10 cannot add up to more than 20)).
- (C) Solve two-digit addition and subtraction problems with and without regrouping using a variety of techniques.
- (D) Use concrete models to develop understanding of multiplication as repeated addition and division as successive subtraction.
- (c) **Standard - ~~number operations and computation geometry.~~** The student will ~~compute with whole numbers less than 100,~~ use geometric properties and relationships to recognize and describe shapes.
- (1) ~~Develop and apply the concepts of addition and subtraction~~
- (A) Demonstrate fluency with basic addition and subtraction facts (i.e., memorize and apply addition and subtraction facts) and fact families to 18.
- (B) Solve two digit addition and subtraction problems with and without regrouping using a variety of techniques (e.g., concrete, paper and pencil, mental math).

- (C) Develop operation sense by applying the associative property of addition (e.g.,  $3 + (2 + 1) = (3 + 2) + 1$ ).
- (D) Describe the relationship between addition and subtraction (e.g., addition and subtraction are inverse operations).
- (1) Identify symmetric and congruent shapes and figures.
- (2) Use mental strategies (or decomposition strategies) for addition and subtraction (e.g., make a group of 10 objects and 2 objects from a group of 7 objects and 5 objects).
- (2) Investigate and predict the results of putting together and taking apart two-dimensional shapes.
- (3) Complete addition number sentences with a missing addend and use to solve everyday problems.
- (d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to recognize and describe shapes and use appropriate units of measure in a variety of situations; to solve problems.
- (1) **Geometric Properties and Relationships**
- (A) Sort and classify symmetric and congruent figures.
- (B) Identify two dimensional geometric shapes in everyday situations (e.g., a stop sign is an octagon).
- (2) **Measurement**
- (A) Measure objects with nonstandard and standard units (e.g., use a human foot [nonstandard] then a ruler [standard] to measure length to the nearest inch).
- (B) Select and use appropriate units of measurement in problem solving and everyday situations.
- (3) **Time and Money**
- (A) Tell time on digital and analog clocks to the quarter hour.
- (B) Identify and count money; connect coins and bills with place value.
- (1) **Linear Measurement**
- (A) Measure objects using standard units (e.g., measure length to the nearest foot, inch, or half inch).
- (B) Select and use appropriate units of measurement in problem-solving and everyday situations.
- (2) **Time**
- (A) Tell time on digital and analog clocks to the quarter-hour.
- (B) Solve problems involving number of days in a week, month, or year and problems involving weeks in a month and year.
- (3) **Money**
- (A) Identify and count money up to a twenty dollar bill.
- (B) Recognize and write different amounts of money using dollar and cent notation.
- (e) **Standard - data analysis.** The student will demonstrate an understanding of data collection, display and interpretation.
- (1) Collect, sort, organize, and display data in charts, bar graphs, and tables (e.g., collect data on teeth lost and display results in a chart).
- (2) Summarize and interpret data in charts, bar graphs, and tables.

- (3) Make predictions and estimates to describe data (e.g., predict what data on teeth lost might look like for younger children and/or older children).

**210:15-3-43. Mathematics content standards grade 3**

(a) **Standard - Patterns and Algebraic Reasoning, Algebraic reasoning: patterns and relationships.** The student will use a variety of problem-solving approaches to extend and create patterns.

- (1) Describe (orally or in written form), create, extend and predict patterns using numbers (e.g., 3, 6, 9, 12 . . . , use a function machine to generate input and output values for a table, show multiplication patterns on a hundreds chart).
- (2) Analyze tables to formulate generalizations about patterns in a variety of situations (e.g., list the multiples of 5 in a table to show that multiples of 5 have a 0 or 5 in the ones place; given pairs of numbers with a common relationship, determine the rule and generate additional pairs with the same relationship).

(1) Describe (orally or in written form), create, extend and predict patterns in a variety of situations (e.g., 3, 6, 9, 12 . . . , use a function machine to generate input and output values for a table, show multiplication patterns on a hundreds chart, determine a rule and generate additional pairs with the same relationship).

(2) Find unknowns in simple arithmetic problems by solving open sentences (equations) and other problems involving addition, subtraction, and multiplication.

(3) Recognize and apply the commutative and identity properties of multiplication using models and manipulative to develop computational skills (e.g.,  $3 \cdot 5 = 5 \cdot 3$ ,  $7 \cdot 1 = 7$ ).

(b) **Standard - number sense and operations.** The student will use numbers and number relationships to acquire basic facts. The student will estimate and compute with whole numbers.

(1) **Place Value**

(A) Model the concept of place value through 4 digits (e.g., base 10 blocks, bundles of 10s, place value mats).

(B) Read, model and write whole numbers up to 4 digits (e.g., base 10 blocks, expanded form).

(2) **Whole Numbers and Fractions**

(A) Compare and order whole numbers up to 4 digits.

(B) Compare and order fractions including halves, thirds and fourths using a model (e.g., fraction circles, pictures, egg cartons, fraction strips).

(1) **Number Sense**

(A) **Place Value**

(i) Model the concept of place value through 4 digits (e.g., base-10 blocks, bundles of 10s, place value mats).

(ii) Read and write whole number up to 4 digits (e.g., expanded form, standard form).

(B) **Whole Number and Fractions**

(1) **Number Sense**

(A) **Place Value**

(i) Model the concept of place value through 4 digits (e.g., base-10 blocks, bundles of 10s, place value mats).

(ii) Read and write whole number up to 4 digits (e.g., expanded form, standard form).

(B) **Whole Number and Fractions**

## Permanent Final Adoptions

- (i) Compare and order whole numbers up to 4 digits.
- (ii) Create and compare physical and pictorial models of equivalent and nonequivalent fractions including halves, thirds, fourths, eighths, tenths, twelfths, and common percents (25%, 50%, 75%, 100%) (e.g., fraction circles, pictures, egg cartons, fraction strips, number lines).
- (2) Number Operations
  - (A) Estimate and find the sum or difference, (with and without regrouping) of 3- and 4-digit number using a variety of strategies to solve application problems.
  - (B) Multiplication Concepts and Fact Families
    - (i) Use physical models and a variety of multiplication, algorithms to find the product of multiplication problems with one-digit multipliers.
    - (ii) Demonstrate fluency (memorize and apply) with basic multiplication facts up to  $10 \times 10$  and the associated division facts (e.g.,  $5 \times 6 = 30$  and  $30 \div 6 = 5$ ).
    - (iii) Estimate the product of 2-digit by 2-digit numbers by rounding to the nearest multiple of 10 to solve application problems.
- (c) **Standard - number operations and computation-geometry.** The student will estimate and compute with whole numbers-use geometric properties and relationships to recognize and describe shapes.
  - (1) Estimate, find the sum and difference, with and without regrouping, of 3 and 4 digit numbers to solve application problems-Identify and compare attributes of two- and three- dimensional shapes and develop vocabulary to describe the attributes (e.g., count the edges and faces of a cube, the radius if half of a circle lines of symmetry).
  - (2) Multiplication ConceptsAnalyze the effects of combining and subdividing two-and three-dimensional figures (e.g., folding paper, tiling, nets, and rearranging pieces of solids).
    - (A) Demonstrate fluency with basic multiplication facts and fact families (i.e., memorize and apply multiplication facts).
    - (B) Develop multiplication algorithms (e.g., use physical materials to show 4 groups of 3 objects, show multiplication as repeated addition).
    - (C) Estimate the product of 2 digit numbers by rounding to the nearest multiple of 10 to solve application problems.
    - (D) Recognize and apply the commutative and identity properties of multiplication using models and manipulatives to develop computational skills (e.g.,  $3 \cdot 5 = 5 \cdot 3$ ,  $7 \cdot 1 = 7$ ).
    - (E) Solve problems involving money that require addition and subtraction.
  - (3) Make and use coordinate systems to describe locations and shapes on a grid with ordered pairs and to describe paths from one point to another point on a grid.
- (d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to recognize

and describe shapes and use customary and metric measurements to solve problems-The student will use appropriate units of measure to solve problems.

- (1) Spatial Reasoning and Coordinate Locations
  - (A) Describe and compare two and three dimensional shapes (e.g., count the edges and faces of a cube, combine or divide basic shapes to form new shapes, identify and draw congruent shapes).
  - (B) Identify locations on a grid with ordered pairs (e.g., give the location of a ship on a grid by selecting D, 1).
- (2) Measurement
  - (A) Solve problems with customary units involving length using half inch and quarter inch measurements and weight using pound and ounce.
  - (B) Solve problems with metric units involving length using meter and centimeter and mass using gram and kilogram.
  - (C) Use manipulatives to develop the concept of perimeter and area (e.g., cover a shape with pattern blocks to find area).
- (3) Develop and use strategies to estimate measurements (e.g., use parts of the body as benchmarks for measuring length).
- (4) Tell time on digital and analog clocks to 5 minutes and use information to solve problems involving time and temperature (e.g., read a thermometer).
  - (1) Measurement
    - (A) Choose an appropriate measurement instrument and measure the length of objects to the nearest inch or half-inch and the weight of objects to the nearest pound or ounce.
    - (B) Choose an appropriate measurement instrument and measure the length of objects to the nearest meter or centimeter and the weight of objects to the nearest gram or kilogram.
    - (C) Develop and use the concept of perimeter of different shapes to solve problems.
    - (D) Develop and use strategies to choose an appropriate unit and measurement instrument to estimate measurements (e.g., use parts of the body as benchmarks for measuring length).
  - (2) Time and Temperature
    - (A) Solve simple addition problems with time (e.g., 15 minutes added to 1:10 p.m.).
    - (B) Tell time on digital and analog clocks to the nearest 5 minutes.
    - (C) Read a thermometer and solve for temperature change.
- (e) **Standard - data analysis, and probability.** The student will demonstrate an understanding of data—collection, display and interpretation- of data and probability.
  - (1) Data Analysis
    - (A) Pose questions, collect, record, and interpret data to help answer questions (e.g., which was the most popular booth at our carnival?).
    - (B) Read graphs and charts; identify the main idea, draw conclusions, and make predictions based on the

data (e.g., predict how many children will bring their lunch based on a menu).

(C) Construct a bar graph or pictograph with labels and a title from a set of data. Construct bar graphs, frequency tables, line graphs (plots), and pictographs with labels and a title from a set of data.

(2) Probability: Describe the probability (more, less, or equally likely) of chance events.

(A) Describe the probability (more, less, or equally likely) of chance events.

(B) List arrangements (permutations) and combinations of up to three items (e.g., possible ways to arrange scoops of chocolate, strawberry and vanilla ice cream on a cone).

**210:15-3-44. Mathematics content standards grade 4**

(a) **Standard - patterns and algebraic reasoning: patterns and relationships.** The student will use a variety of problem solving approaches to analyze, extend and create patterns.

(1) Discover, describe, extend, and create a wide variety of patterns using tables, graphs, rules, and models (e.g., use 1-inch tiles to demonstrate that doubling the length of the side of a square more than doubles the area, explore the characteristics of odd and even numbers, extend patterns of geometric shapes).

(2) Elementary Function Concepts

(A) Use a variety of techniques to generalize number patterns (e.g., use function machines and "t tables" to demonstrate "What is the rule?").

(B) Solve simple open sentences involving operations on whole numbers (with a variable, e.g.,  $a + 17 = 23$ ).

(1) Discover, describe, extend, and create a wide variety of patterns using tables, graphs, rules, and verbal models (e.g., determine the from a table or "function machine," extend visual and number patterns).

(2) Find variables in simple arithmetic problems by solving open sentences (equations) and other problems involving addition, subtraction, multiplication, and division with whole numbers.

(3) Recognize and apply the commutative, associative, and distributive properties to solve problems (e.g.,  $3 \times (2 + 4) = (3 \times 2) + (3 \times 4)$ ).

(b) **Standard - number sense and operation.** The student will use numbers and number relationships to acquire basic number facts. The student will estimate and compute with whole numbers and fractions.

(1) Place Value

(A) Apply the concept of place value through 6 digits (e.g., write numbers in expanded form, play a trading game involving place value).

(B) Read, write and rename whole numbers through 6 digits and decimal numbers to the hundredths (e.g., money, numerals to words).

(2) Compare and order whole numbers and decimals to the hundredths (e.g., pictures of shaded regions of two-dimensional figures, use  $>$ ,  $<$ ,  $=$  symbols).

(3) Fractions

(A) Use 0,  $1/2$ , and 1 or 0, 0.5, and 1, as benchmarks and place additional fractions and decimals on a number line (e.g.,  $1/3$ ,  $3/4$ , 0.7, 0.4).

(B) Create physical and pictorial models of equivalent and non-equivalent fractional parts to be compared, added or subtracted (e.g., egg cartons, fraction strips, circles, and squares).

(1) Number Sense

(A) Place Value

(i) Apply the concept of place value of whole numbers through 6 digits (e.g., write numbers in expanded form).

(ii) Model, read, write, and rename decimal numbers to the hundredths (e.g., money, numerals to words).

(B) Whole Number, Fraction, and Decimal

(i) Compare and order whole numbers and decimals to the hundredths place (e.g., pictures of shaded regions of two-dimensional figures, use  $>$ ,  $<$ ,  $=$  symbols).

(ii) Use 0,  $1/2$ , and 1 or 0, 0.5, and 1, as benchmarks and place additional fractions, decimals, and percents on a number line (e.g.,  $1/3$ ,  $3/4$ , 0.7, 0.4, 62%, 12%).

(iii) Create physical and pictorial models of equivalent and non-equivalent fractional parts to be compared, added or subtracted (e.g., egg cartons, fraction strips, circles, and squares).

(iv) Explore and connect negative numbers using real work situations (e.g., owing money, temperature, measuring elevations above and below sea level).

(2) Number Operations

(A) Estimate and find the product of up to three-digit by three-digit using a variety of strategies to solve application problems.

(B) Division Concepts and Fact Families

(i) Demonstrate fluency (memorize and apply) with basic division facts up to  $144 \div 12$  and the associated multiplication facts (e.g.,  $44 \div 12 = 12$  and  $12 \times 12 = 144$ ).

(ii) Estimate the quotient with 1- and 2-digit divisors and a 2- or 3-digit dividend to solve application problems.

(iii) Find the quotient (with and without remainders) with 1-digit divisors and a 2- or 3-digit dividend to solve application problems.

(c) **Standard - number operations and computation-geometry.** The student will estimate and compute with whole numbers-use geometric properties and relationships to analyze shapes.

(1) Estimate and find the product of 2- and 3-digit numbers to solve application problems.

(2) Division Concepts

(A) Demonstrate fluency with basic division facts and fact families (i.e., memorize and apply division facts).

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- (B) Develop division algorithms (e.g., use physical materials to show 12 objects arranged in 3 groups, show division as repeated subtraction and as the inverse of multiplication).
- (C) Estimate and find the quotient (with and without remainders) with a 1-digit divisor and a 2- or 3-digit dividend to solve application problems.
- (3) Apply a variety of estimation and mental math techniques to simplify computations (e.g., use rounding to estimate  $82 \div 58$  is about 80, 60 or 20, use  $30 \cdot 5$  to find the product of  $300 \cdot 5$ ).
- (4) Develop operation sense by applying the associative property of multiplication (e.g.,  $6 \cdot (2 \cdot 3) = (6 \cdot 2) \cdot 3$ ).
- (1) Identify, draw, and construct models of intersecting, parallel, and perpendicular lines.
- (2) Identify and compare angles equal to, less than, or greater than 90 degrees (e.g., use right angles to determine the approximate size of other angles.
- (3) Identify, draw, and construct models of regular and irregular polygons including triangles, quadrilaterals, pentagons, hexagons, heptagons, and octagons to solve problems.
- (4) Describe the effects on two-dimensional objects when they slide (translate), flip (reflect), and turn (rotate) (e.g., tessellations).
- (d) **Standard - geometry and measurement.** The student will use geometric properties and relationships to analyze shapes and use standard units of customary and metric measurements to solve problems appropriate units of measure in a variety of situations to solve problems.
- (1) **Basic Characteristics of Lines and Angles**
- (A) Identify, draw, and construct models of intersecting, parallel, and perpendicular lines (e.g., use spaghetti, straws, toothpicks).
- (B) Identify and compare angles equal to, less than, or greater than 90 degrees (e.g., use right angles to determine the approximate size of other angles; make a variety of angles using flexible straws and compare).
- (2) Identifies basic characteristics of the rectangular coordinate system and find the distance between horizontal and vertical lines of a rectangular coordinate system (e.g., the x-axis is the horizontal axis).
- (3) **Spatial Reasoning**
- (A) Describe the effects on two- and three-dimensional objects when they slide (translate), flip (reflect), and turn (rotate) (e.g. tessellations).
- (B) Predicts and verifies the effects of combining, subdividing, and changing two- and three-dimensional figures (e.g., folding paper, tiling, and rearranging pieces of solids).
- (4) **Measurement**
- (A) Establish benchmarks for customary and metric units and estimate the measures of a variety of objects and compare units (e.g., mass: the mass of a raisin is about 1 gram, length: the width of a finger is about 1 centimeter).
- (B) Select appropriate customary and metric units of measure to solve application problems involving length, weight, mass, and volume.
- (C) Solve application problems involving money, time and temperature (e.g., elapsed time).
- (1) **Measurement**
- (A) Estimate the measures of a variety of objects using customary units.
- (B) Establish benchmarks for metric units and estimate the measures of a variety of objects (e.g., mass: the mass of a raisin is about 1 gram, length: the width of a finger is about 1 centimeter).
- (C) Select appropriate customary and metric units of measure and measurement instruments to solve application problems involving length, weight, mass, and volume.
- (D) Develop and use the concept of area of different shapes using grids.
- (2) **Time and Temperature**
- (A) Solve elapsed time problems.
- (B) Read thermometers using different intervals (intervals of 1, 2, or 5) and solve for temperature change.
- (3) **Money:** Determine the correct amount of change when a purchase is made with a twenty dollar bill.
- (e) **Standard - data analysis and probability.** The student will demonstrate an understanding of data—collection, display, and interpretation—of data and probability.
- (1) **Data Analysis**
- (A) Examine data displays such as tallies, tables, charts and graphs and use the observations to pose and answer questions (e.g., choose a table in social studies of population data and write problems).
- (B) Collect, organize and record data in tables and graphs (e.g., bar, pictograph, line plots).
- (2) Investigate and record probabilities by experimenting with devices that generate random outcomes (e.g., coins, number cubes, spinners).
- (1) **Data Analysis**
- (A) Read and interpret data displays such as tallies, tables, charts and graphs and use the observations to pose and answer questions (e.g., choose a table in social studies of population data and write problems).
- (B) Collect, organize and record data in tables and graphs (e.g., bar, pictograph, line plots).
- (2) **Probability:** Predict the probability of outcomes of simple experiments using words such as certain, equally likely, impossible (e.g., coins, number cubes, spinners).
- (3) **Central Tendency:** Determine the median (middle), and the mode (most often) of a set of data.
- 210:15-3-45. Mathematics content standards grade 5**
- (a) **Standard - patterns and algebraic reasoning: patterns and relationships.** The student will use algebraic methods to describe patterns and solve problems in a variety of contexts.
- (1) Describe rules that produce patterns found in tables, graphs, and models, and use variables (e.g., boxes, letters,

pawns, number cubes, or other symbols) to solve problems or to describe general rules in algebraic expression or equation form.

(2) Use algebraic problem-solving techniques (e.g., use a balance to model an equation and show how subtracting a number from one side requires subtracting the same amount from the other side) to solve problems.

(3) Recognize and apply the commutative, associative, and distributive properties to solve problems (e.g.,  $3 \times (2 = 4) = 3 \times 2 = (3 \times 4)$ ).

(b) **Standard - number sense and operation.** The student will demonstrate an understanding of the basic concepts and properties of real numbers. The student will use numbers and number relationships to acquire basic facts. The student will estimate and compute with whole numbers, fractions, and decimals.

(1) Fractions, Decimals and Percents

(A) Solve problems using decimal numbers to the 1000ths place.

(B) Compare, convert, and order common fractions and decimals to the 100ths place to solve problems.

(C) Represent with models the connection between fractions, decimals, and percents and be able to convert from one representation to another (e.g., use  $10 \times 10$  grids, base 10 blocks; limit fractions to halves, fourths, fifths, and tenths).

(D) Explain verbally with manipulatives and diagrams 25%, 50%, 75%; use these percents to solve problems and relate them to their corresponding fractions and decimals.

(2) Basic Number Theory Concepts

(A) Apply the basic properties of arithmetic: commutative, associative, distributive, and identity (e.g., show  $2(5 + 1) = (2 \cdot 5) + (2 \cdot 1)$ , given  $(5 + 1) + (5 + 1)$  regroup to show this equals  $(5 + 5) + (1 + 1)$  concluding with  $(2 \cdot 5) + (2 \cdot 1)$ ) to solve problems.

(B) Identify and apply factors, multiples, prime, and composite numbers in a variety of problem solving situations (e.g., build rectangular arrays for numbers 1-100 and classify as prime or composite).

(1) Number Sense

(A) Apply the concept of place value of whole numbers through hundred millions (9 digits) and model, read, and write decimal numbers through the thousandths.

(B) Represent with models the connection between fractions and decimals, compare and order fractions and decimals, and be able to convert from one representation to another (e.g., use  $10 \times 10$  grids, base-10 blocks).

(C) Identify and compare integers (and their absolute values) using real world situations. (e.g., owing money, temperature, measuring elevations above and below sea level).

(D) Identify and apply factors, multiples, prime, and composite numbers in a variety of problem-solving situations (e.g., build rectangular arrays for numbers 1-100 and classify as prime or composite, use common factors to add fractions).

(2) Number Operations

(A) Estimate, add, or subtract decimal numbers with same and different place values to solve problems (e.g.,  $3.72 + 1.4$ ,  $\$4.56 - \$2.12$ ).

(B) Estimate add, or subtract fractions (including mixed numbers) using a variety of methods to solve problems (e.g., use fraction strips, use area models, find a common denominator).

(C) Estimate and find the quotient (with and without remainders) with 2-digit divisors and a 2- or 3-digit dividend to solve application problems.

(c) **Standard - number operations and computation-geometry.** The student will estimate and compute with whole numbers, decimals, and fractions. The student will apply geometric properties and relationships.

(1) Estimation

(A) Use estimation skills to determine solutions to problems involving decimals.

(B) Apply estimation skills to solve problems involving common percents and equivalent fractions.

(2) Whole Numbers, Decimals, and Fractions

(A) Add and subtract decimal numbers with the same and different place values (e.g.,  $3.72 + 1.4$ ) to solve problems.

(B) Multiply and divide whole numbers and decimal numbers with 1- or 2-digit multipliers or divisors to solve problems.

(C) Add and subtract fractions and mixed numbers to solve problems using a variety of methods (e.g., use fraction strips, find the least common denominator [LCD]).

(1) Compare and contrast the basic characteristics of circle and polygons (triangles, quadrilaterals, pentagons, hexagons, heptagons, octagons) to solve problems.

(2) Classify angles (e.g., acute, right, obtuse, straight).

(d) **Standard - geometry and measurement.** The student will apply geometric properties and relationships and use measurements within the metric and customary systems to solve problems in a variety of contexts. The student will use appropriate units of measure to solve problems in a variety of contexts.

(1) Identify and describe the basic properties of figures (e.g., two or three dimensionality, symmetry, number of faces, types of angles).

(2) Find the perimeter of simple polygons and area of a rectangle (e.g., use 1 inch tiles to build rectangles of different perimeters and areas).

(3) Use nonstandard units (beans, rice, candies) and standard units (centimeter cubes, 1 inch cubes) to find the volume of rectangular solids and estimate the volume of other solids.

(4) Use the appropriate units and tools to estimate and measure temperature, distance, length, weight, and angles.

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(5) Convert basic measurements of volume, weight and distance within the same system for metric and customary units (e.g., inches to feet, hours to minutes, centimeters to meters).

(1) Measurement

(A) Compare, estimate, and determine the measurement of angles.

(B) Develop and use the formula for perimeter and area of a square and rectangle to solve problems.

(C) Convert basic measurements of volume, mass and distance within the same system for metric and customary units (e.g., inches to feet, hours to minutes, centimeters to meters).

(2) Money: Solve a variety of problems involving money.

(e) **Standard - data analysis, and probability.** The student will use data analysis, statistics and probability to interpret data in a variety of contexts.

(1) Data Analysis

(A) Analyze data to create and interpret tables and graphs.

(B) Justify the selection of the type of table or graph (e.g., a line graph may be more appropriate than a bar graph when displaying the height of a person over time).

(C) Compare and translate between displays of data (e.g., multiple sets of data on the same graph, Venn diagrams, a combination of diagrams, charts, tables, graphs).

(D) Formulate questions, design investigations, consider samples, and collect, organize, and analyze data using observation, measurement, surveys, or experiments (e.g., how far can 5th graders throw a softball based on where it first hits the ground?).

(E) Determine the range (spread) and the mean (average) of a set of data.

(2) Probability

(A) Determine the probability of events occurring in familiar contexts or experiments and express probabilities as fractions (e.g., find the fractional probability of an event given a biased spinner).

(B) List permutations and combinations of up to five items.

(1) Data Analysis

(A) Compare and translate displays of data and justify the selection of the type of table or graph (e.g., charts, tables, bar graphs, pictographs, line graphs, circle graphs, Venn diagrams).

(B) Formulate questions, design investigations, consider samples, and collect, organize, and analyze data using observation, measurement, surveys, or experiments (e.g., how far can 5th graders throw a softball based on where it first hits the ground?).

(2) Probability

(A) Determine the probability of events occurring in familiar contexts or experiments and express probabilities as fractions from zero to one (e.g., find the

fractional probability of an event given a biased spinner).

(B) Use the fundamental counting principle on sets with up to four items to determine the number of possible combinations (e.g. create a tree diagrams to see possible combinations).

(3) Central Tendency: Determine the range (spread), mode (most often), and median (middle) of a set of data.

## 210:15-3-47. Mathematics content standards grade 6

(a) **Standard - algebraic reasoning: patterns and relationships.** The student will use algebraic methods to describe patterns, and simplify and write algebraic expressions and solve simple equations in a variety of contexts.

(1) Extend and create patterns from tables, graphs, rules and number properties and generalize patterns algebraically (e.g., recursive patterns like the Fibonacci numbers, number sequences, prime and composite numbers).

(2) Use substitution and order of operations to simplify and evaluate algebraic expressions (e.g., if  $x = 5$  evaluate  $2x + 3$ ).

(1) Generalize and extend patterns and functions using tables, graphs, and number properties (e.g., number sequences, prime and composite numbers, recursive patterns like the Fibonacci numbers).

(2) Write algebraic expressions and simple equations that correspond to a given situation.

(3) Use substitution to simplify and evaluate algebraic expressions (e.g., if  $x = 5$  evaluate  $3 - 2x$ ).

(4) Write and solve one-step equations with one variable using number sense, the properties of operations, and the properties of equality (e.g.,  $1/3x = 9$ ).

(b) **Standard - number sense and operation.** The student will use numbers and number relationships to solve a variety of problems. The student will estimate and compute with integers, fractions, and decimals.

(1) Multiply and divide fractions and mixed numbers to solve problems using a variety of methods.

(2) Convert, compare and order decimals (terminating and nonterminating), fractions and percents using a variety of methods.

(3) Estimate solutions to single and multi step problems using whole numbers, decimals, fractions, and percents and assess whether solutions are reasonable (e.g.,  $7/8\text{th} + 8/9\text{th}$  is about 2,  $0.9 + 0.3$  is about 1).

(4) Build and explore multiples and their patterns to develop the concept of exponents.

(5) Simplify numerical expressions with exponents and parentheses using order of operations.

(1) Number Sense: Convert, compare, and order decimals, fractions, and percents using a variety of methods.

(2) Number Operations

(A) Multiply and divide fractions and mixed numbers to solve problems using a variety of methods.

(B) Multiply and divide decimals with 1- or 2-digit multipliers or divisors to solve problems.

- (C) Estimate and find solutions to single and multi-step problems using whole numbers, decimals, fractions, and percents to solve problems (e.g.,  $7/8$ th +  $8/9$ th is about 2,  $3.9 + 5.3$  is about 9).
- (D) Use the basic operations on integers to solve problems.
- (3) Build and recognize multiples to develop the concept of exponents and simplify numerical expressions with exponents and parentheses using order of operations.
- (c) **Standard - geometry.** The student will use geometric properties and relationships to recognize, describe and analyze shapes and representations in a variety of contexts.
- (1) **Angles**
- (A) Compare, estimate and determine the measurement of angles.
- (B) Find the complement and supplement of an angle.
- (2) Differentiate between congruent and similar figures.
- (3) Describe the effect of performing basic transformations on objects and figures in a variety of contexts. (e.g., explore reflection [flip] with mirrors, explore rotation [turn] and translation [slide] by designing the layout of different shapes of floor tile).
- (1) Compare and contrast the basic characteristics of 3-dimensional figures (pyramids, prisms, cones, and cylinders to solve problems.
- (2) Compare and contrast congruent and similar figures.
- (3) Identify the characteristics of the rectangular coordinate system and use them to locate points and describe shapes drawn in all four quadrants.
- (d) **Standard - measurement.** The student will use measurements within the metric and U.S.—customary systems to solve problems in a variety of contexts.
- (1) Collect data and develop formulas to find the circumference and area of circles (e.g., use string the length of the diameter of various circular lids to approximate the circumference and develop the concept of pi).
- (2) Compare and convert units within the same measurement system; express conversions using appropriate unit labels (e.g., square inches to square feet, centimeters to millimeters, hours to minutes); and compute measurements of combined units (e.g.,  $9'8" + 3'6" = ?'$  and  $?"$ ,  $150 \text{ minutes} = ? \text{ hours and } ? \text{ minutes}$ ).
- (3) Find reasonable estimates for measurements using measurements in standard and metric units.
- (1) Use formulas to find the circumference and area of circles in terms of pi.
- (2) Convert, add, or subtract measurements within the same measurement system (e.g.,  $9'8" + 3'6"$ ,  $150 \text{ minutes} = \underline{\hspace{1cm}} \text{ hours and } \underline{\hspace{1cm}} \text{ minutes}$ ).
- (e) **Standard - data analysis, and statistics.** The student will use data analysis, probability, and statistics to interpret data in a variety of contexts.
- (1) Collect, organize, and interpret data to solve problems (e.g., data from student experiments, tallies, Venn diagrams, tables, circle and bar graphs, spreadsheets).

- (2) Construct and interpret graphs of statistical data (e.g., explain how different representations lead to different interpretations and may distort information).
- (3) Find the median and mode for a set of data in a variety of contexts.
- (1) **Data Analysis:** Organize, construct displays, and interpret data to solve problems (e.g., data from student experiments, tables, diagrams, charts and graphs).
- (2) **Probability:** Use the fundamental counting principle on sets with up to five items to determine the number of possible combinations.
- (3) **Central Tendency:** Find the measures of central tendency (mean, median, mode, and range) of a set of data (with and without outliers) and understand why a specific measure provides the most useful information in a given context.

**210:15-3-48. Mathematics content standards grade 7**

- (a) **Standard - algebraic reasoning: patterns and relationships.** The student will use number properties to simplify and solve simple linear equations.
- (1) Identify and apply the commutative, associative, distributive, inverse and identity properties (e.g.,  $n + 0 = n$ ,  $2(x + 3) = 2x + 6$ ).
- (2) Use a variety of methods to model and solve 1 step linear equations (e.g., use properties of equality, graph ordered pairs with paper and pencil, use graphing calculators).
- (1) Identify, describe, and analyze functional relationships (linear and nonlinear) between two variables to solve problems (e.g., as the value of x increases on a table, do the values of y increase or decrease, identify a positive rate of change on a graph and compare it to a negative rate of change, describe relationships between two variables on a scatter plot).
- (2) Write and solve two-step equations with one variable using number sense, the properties of operations, and the properties of equality (e.g.,  $-2x + 4 = -2$ ).
- (3) Inequalities: Model, write, solve and graph one-step linear inequalities with one variable.
- (b) **Standard - number sense and operation.** The student will use numbers and number relationships to acquire basic facts and determine the reasonableness of results.
- (1) **Integers**
- (A) Compare and order positive and negative integers and describe their use in real life situations (e.g., temperature, sea level, stock market fluctuations, football yardage).
- (B) Use the basic operations on integers to solve problems.
- (2) **Ratio, Proportion and Percents**
- (A) Demonstrate the concept of ratio and proportion with models (e.g., similar geometric shapes, scale models).
- (B) Set up equivalent ratios, estimate and solve problems using ratio, proportions, and percents including percents greater than 100 and less than 1 (e.g., determine missing sides of similar figures,

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- heart rate per minute, cost per pound, pay to hours worked overtime).
- (C) Solve percent application problems (e.g., discounts, tax, finding the missing value of percent/part/whole).
- (3) Exponents
- (A) Analyze and develop generalizations of exponential patterns, including zero as an exponent, using manipulatives and calculators (e.g., model getting paid a penny the first day, 2 cents the second day, 4 cents the third day . . .).
- (B) Build and recognize models of multiples to investigate squares and perfect square roots (e.g., build rectangular arrays for numbers 1 to 100 and note which can be represented as squares).
- (C) Estimate the square root of a number (e.g., between two consecutive integers).
- (1) Number Sense
- (A) Compare and order positive and negative rational numbers.
- (B) Build and recognize models of perfect squares to find their square roots and estimate the square root of other numbers (e.g., the square root of 12 is between 3 and 4).
- (C) Demonstrate the concept of ratio and proportion with models (e.g., similar geometric shapes, scale models).
- (2) Number Operations
- (A) Solve application problems using ratio and proportion.
- (B) Solve percent application problems (e.g., discounts, tax, finding the missing value of percent/part/whole).
- (C) Simplify numerical expressions with integers, exponents, and parentheses using order of operations.
- (c) **Standard - geometry.** The student will apply the properties and relationships of plane geometry in a variety of contexts.
- (1) Classifying Geometric Figures
- (A) Classify triangles according to their sides and angles.
- (B) Classify quadrilaterals according to their sides and angles (e.g., determine whether all squares are rectangles).
- (2) Identify and compare bisectors, interior, exterior, and vertical angles (e.g., using graph paper, software, protractors to measure angles between parallel lines with a transversal).
- (3) Rectangular Coordinate System
- (A) Locate points on a plane in all four quadrants.
- (B) Identify geometric transformation of figures (rotations, translations, and reflections).
- (1) Classify regular and irregular geometric figures including triangles and quadrilaterals according to their sides and angles
- (2) Identify and analyze the characteristics of the angle relationships formed by parallel lines cut by a transversal (e.g., alternate interior angles, alternate exterior angles, adjacent, and vertical angles).
- (3) Construct geometric figures and identify geometric transformation on the rectangular coordinate plane (e.g., rotations, translations, reflections, magnifications).
- (d) **Standard - measurement.** The student will use measurement to solve problems in a variety of contexts.
- (1) Area and Perimeter
- (A) Develop area and perimeter concepts (e.g., use grids to estimate the area of irregular shapes).
- (B) Apply formulas to solve problems involving perimeter (circumference) and area of polygons and circles.
- (2) Customary and Metric Measurements
- (A) Select and use appropriate tools for measurements in practical applications and make reasonable estimates of measurements in a particular situation using the appropriate unit.
- (B) Use estimates to relate customary and metric measurements to each other.
- (1) Develop and apply the formulas for perimeter and area of triangles and quadrilaterals to solve problems.
- (2) Apply the formula for circumference and area of a circle to solve problems.
- (3) Find the area and perimeter of composite figures to solve application problems.
- (e) **Standard - data analysis and probability.** The student will use probability to formulate and justify predictions from a set of data.
- (1) Use data from a sample to predict possible outcomes and compute simple probabilities as fractions, decimals or percents (e.g., use data from lists, tree diagrams, frequency distribution tables, area models).
- (2) Determine the probability of an event involving "or," "and," or "not" (e.g., on a spinner with 1 blue, 2 red and 2 yellow sections, what is the probability of getting a red or a yellow?).
- (3) Find all possible combinations and permutations involving a limited number of variables.
- (1) Data Analysis: Compare, translate, and interpret between displays of data (e.g., multiple sets of data on the same graph, data from subsets of the same population, combinations of diagrams, tables, charts, and graphs).
- (2) Probability: Determine the probability of an event involving "or," "and," or "not" (e.g., on a spinner with 1 blue, 2 red and 2 yellow sections, what is the probability of getting a red or a yellow?).
- (3) Central Tendency: Compute the mean, median, mode, and range for data sets and understand how additional data or outliers in a set may affect the measures of central tendency.
- 210:15-3-49. Mathematics content standards grade 8**
- (a) **Standard - algebraic reasoning: patterns and relationships.** The student will graph and solve linear equations and inequalities in problem-solving situations.
- (1) Equations

- (A) Model, write, and solve 2-step multi-step linear equations with one variable using a variety of methods to solve application problems.
- (B) Graph and interpret the solution to one- and two-step linear equations on a number line with one variable and on a coordinate plane with two variables.
- (C) Predict the effect on the graph of a linear equation when the slope changes or intercepts change (e.g., make predictions from graphs, identify the slope and y-intercept in the equation  $y = mx + b$  and relate to a graph).
- (2) Inequalities: Model, write, solve, and graph one- and two-step linear inequalities with one variable to solve problems.
- (A) Model, write, and solve 1-step and 2-step linear inequalities with one variable.
- (B) Graph the solution to linear inequalities with one variable on a number line.
- (b) **Standard - number sense and operation.** The student will use numbers and number relationships to solve a variety of problems.
- (1) **Rational Numbers and Proportional Reasoning**
- (A) Compare and order rational numbers (positive and negative integers, fractions, decimals) in real life situations.
- (B) Use the basic operations on rational numbers to solve problems in real life situations (e.g., describe the effect of multiplying whole numbers by a fraction or a decimal less than 1).
- (C) Apply ratios and proportions to solve problems.
- (2) **Exponent**
- (A) Use the rules of exponents, including integer exponents, to solve problems (e.g.,  $7^2 \cdot 7^3 = 7^5$ ).
- (B) Represent and interpret large numbers and numbers less than one in exponential and scientific notation.
- (C) Use estimation strategies (e.g., rounding) to describe the magnitude of large numbers and numbers less than one.
- (1) Number Sense: Represent and interpret large numbers and numbers less than one in exponential and scientific notation.
- (2) Number Operations
- (A) Use the rules of exponents, including integer exponents, to solve problems (e.g.,  $7^2 \cdot 7^3 = 7^5$ ,  $3^{-10} \cdot 3^8 = 3^{-2}$ ).
- (B) Solve problems using scientific notation.
- (C) Simplify numerical expressions with rational numbers, exponents, and parentheses using order of operations.
- (c) **Standard - geometry.** The student will use geometric properties to solve problems in a variety of contexts.
- (1) Construct models, sketch (from different perspectives), and classify solid figures such as rectangular solids, prisms, cones, cylinders, pyramids, and combined forms (e.g., draw a figure that could result from making 1, 2, or 3-cuts in a given solid).
- (2) Develop the Pythagorean Theorem and apply the formula to find the length of missing sides of a right triangle and the length of other line segments.
- (1) Construct models, sketch (from different perspectives), and classify solid figures such as rectangular solids, prisms, cones, cylinders, pyramids, and combined forms.
- (2) Develop the Pythagorean Theorem and apply the formula to find the length of line segments, the shortest distance between two points on a graph, and the length of an unknown side of a right triangle to solve problems.
- (d) **Standard - measurement.** The student will use geometric properties use measurement to solve problems in a variety of contexts.
- (1) Estimate and find the surface area and volume in real world settings (e.g., unwrap a box to explore surface area; use rice, 1 inch cubes, centimeter cubes, cups, etc. to estimate the volume of boxes, irregular shaped objects, containers).
- (2) Apply knowledge of ratio and proportion to solve relationships between similar geometric figures (e.g., build a model of a 3-dimensional object to scale).
- (3) Formulas
- (A) Select and apply appropriate formulas for given situations:
- (i) an equation (e.g.,  $d = rt$ ,  $i = prt$ )
- (ii) measurement problems (e.g.,  $p = 2l + 2w$ ,  $v = lwh$ )
- (B) Find the area of a "region of a region" for simple composite figures (e.g., area of a rectangular picture frame).
- (1) Develop and apply formulas to find the surface area and volume of rectangular prisms, triangular prisms, and cylinders (in terms of pi).
- (2) Apply knowledge of ratio and proportion to solve relationships between similar geometric figures
- (3) Find the area of a "region of a region" for simple composite figures and the area of cross sections of regular geometric solids (e.g., area of a rectangular picture frame).
- (e) **Standard - data analysis, and statistics.** The student will use data analysis, probability and statistics to interpret data in a variety of contexts.
- (1) Select and apply appropriate formats (e.g., line plots, bar graphs, stem and leaf plots, scatter plots, histograms, circle graphs) to display collected data.
- (2) Measures of Central Tendency
- (A) Find the measures of central tendency (mean, median and mode) of a set of data and understand why a specific measure provides the most useful information in a given context.
- (B) Compute the mean, median, and mode for data sets and understand how additional data in a set may affect the measures of central tendency.
- (3) Determine how samples are chosen (random, limited, biased) to draw and support conclusions about generalizing a sample to a population (e.g., is the average height of a men's college basketball team a good representative sample for height predictions?).

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- (1) Data Analysis: Select, analyze, and apply data displays in appropriate formats to draw conclusions and solve problems.
- (2) Probability: Determine how samples are chosen (random, limited, biased) to draw and support conclusions about generalizing a sample to a population (e.g., is the average height of a men's college basketball team a good representative sample for height predictions?).
- (3) Central Tendency: Find the measures of central tendency (mean, median, and mode, and range) of a set of data (with and without outliers) and understand why a specific measure provides the most useful information in a given context.

### 210:15-3-51. Mathematics content skills algebra I

#### (a) **Standard 1 - number sense and algebraic operations.**

The student will use expressions and equations to model number relationships.

- (1) Equations and formulas
  - (A) Translate word phrases and sentences into expressions and equations and vice versa.
  - (B) Solve literal equations involving several variables for one variable in terms of the others.
  - (C) Use the formulas from measurable attributes of geometric models (perimeter, circumference, area and volume), science, and statistics to solve problems within an algebraic context.
  - (D) Solve two-step and three-step problems using concepts such as rules of exponents, rate, distance, ratio and proportion, and percent.
- (2) Expressions
  - (A) Simplify and evaluate linear, absolute value, rational and radical expressions.
  - (B) Simplify polynomials by adding, subtracting or multiplying.
  - (C) Factor polynomial expressions.

(b) **Standard 2 - relations and functions.** The student will use relations and functions to model number relationships.

- (1) Relations and functions
  - (A) Distinguish between linear and nonlinear data.
  - (B) Distinguish between relations and functions.
  - (C) Identify dependent and independent variables, domain and range.
  - (D) Evaluate a function using tables, equations or graphs.
- (2) Linear equations and graphs
  - (A) Solve linear equations by graphing or using properties of equality.
  - (B) Recognize the parent graph of the functions  $y = k$ ,  $y = x$ ,  $y = |x|$ , and predict the effects of transformations on the parent graph.
  - (C) Slope
    - (i) Calculate the slope of a line using a graph, an equation, two points or a set of data points.
    - (ii) Use the slope to differentiate between lines that are parallel, perpendicular, horizontal, or vertical.

(iii) Interpret the slope and intercepts within the context of everyday life (e.g., telephone charges based on base rate [y-intercept] plus rate per minute [slope]).

(D) Develop the equation of a line and graph linear relationships given the following: slope and y-intercept, slope and one point on the line, two points on the line, x-intercept and y-intercept, and a set of data points.

(E) Match ~~appropriate~~ equations to a graph, table, or situation and vice versa.

#### (3) Linear inequalities and graphs

(A) Solve linear inequalities by graphing or using properties of inequalities.

(B) Match ~~appropriate~~ inequalities (with 1 or 2 variables) to a graph, table, or situation and vice versa.

(4) Solve a system of linear equations by graphing, substitution or elimination.

#### (5) Nonlinear functions

(A) Match exponential and quadratic functions to a table, graph or situation and vice versa.

(B) Solve quadratic equations by graphing, factoring, or using the quadratic formula.

#### (c) **Standard 3 - data analysis, probability, and statistics.**

The student will use data analysis, probability, and statistics to formulate and justify predictions from a set of data.

##### (1) Data analysis

(A) Translate from one representation of data to another and understand that the data can be represented using a variety of tables, graph, or symbols and that different modes of representation often convey different messages.

(B) Make valid inferences, predictions, and/or arguments based on data shown on graphs, tables, and charts.

(C) Solve two-step and three-step problems using concept such as probability and measures of central tendency.

(2) Collect data involving two variables and display on a scatter plot; interpret results using a linear model/equation and identify whether the model/equation is a line best fit for the data.

### 210:15-3-52. Mathematics content standards geometry

(a) **Standard 1: Logical Reasoning** - The student will use deductive and inductive reasoning to solve problems.

(1) Identify and use logical reasoning skills (inductive and deductive) to make and test conjectures, formulate counter examples, and follow logical arguments.

(2) State, use, and examine the validity of the converse, inverse, and contrapositive of "if-then statements.

(3) Compare the properties of Euclidean geometry to non-Euclidean geometries (for example, elliptical geometry, as shown on the surface of a globe, does not uphold the parallel postulate).

(b) **Standard 2: Properties of 2-Dimensional Figures** - The student will use the properties and formulas of geometric figures to solve problems.

- (1) Use geometric tools (for example, protractor, compass, straight edge) to construct a variety of figures.
- (2) **Line and Angle Relationships**
  - (A) Use the angle relationships formed by parallel lines cut by a transversal to solve problems.
  - (B) Use the angle relationships formed by two lines cut by a transversal to determine if the two lines are parallel and verify, using algebraic and deductive proofs.
  - (C) Use relationships between pairs of angles (for example, adjacent, complementary, vertical) to solve problems.
- (3) **Polygons and Other Plane Figures**
  - (A) Identify, describe, and analyze polygons (for example, e.g., convex, concave, regular, pentagonal, hexagonal, n-gonal).
  - (B) Apply the interior and exterior angle sum of convex polygons to solve problems, and verify using algebraic and deductive proofs.
  - (C) Develop and apply the properties of quadrilaterals to solve problems (for example, e.g., rectangles, parallelograms, rhombi, trapezoids, kites).
  - (D) Use properties of 2-dimensional figures and side length, perimeter or circumference, and area to determine unknown values and correctly identify the appropriate unit of measure of each.
- (4) **Similarity**
  - (A) Determine and verify the relationships of similarity of triangles, using algebraic and deductive proofs.
  - (B) Use ratios of similar 2-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference, and area.
- (5) **Congruence**
  - (A) Determine and verify the relationships of congruency of triangles, using algebraic and deductive proofs.
  - (B) Use the relationships of congruency of 2-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference, and area.
- (6) **Circles**
  - (A) Find angle measures and arc measures related to circles.
  - (B) Find angle measures and segment lengths using the relationships among radii, chords, secants, and tangents of a circle.

(c) **Standard 3: Triangles and Trigonometric Ratios** - The student will use the properties of right triangles and trigonometric ratios to solve problems.

- (1) Use the Pythagorean Theorem and its converse to find missing side lengths and to determine acute, right, and obtuse triangles, and verify using algebraic and deductive proofs.

(2) Apply the 45-45-90 and 30-60-90 right triangle relationships to solve problems, and verify using algebraic and deductive proofs.

(3) Express the trigonometric functions as ratios and use sine, cosine, and tangent ratios to solve real-world problems.

(4) Use the trigonometric ratios to find the area of a triangle.

(d) **Standard 4: Properties of 3-Dimensional Figures** - The student will use the properties and formulas of geometric figures to solve problems.

(1) **Polyhedra and Other Solids**  
 (A) Identify, describe, and analyze polyhedra (for example, regular, decahedral).

(B) Use properties of 3-dimensional figures; side lengths, perimeter or circumference, and area of a face; and volume, lateral area, and surface area to determine unknown values and correctly identify the appropriate unit of measure of each.

(2) Similarity and Congruence: Use ratios of similar 3-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference of a face, area of a face, and volume.

~~(A) Use ratios of similar 3-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference of a face, area of a face, and volume.~~

~~(B) Use the relationships of congruency of 3-dimensional figures to determine unknown values, such as angles, side lengths, perimeter or circumference of a face, area of a face, and volume.~~

(3) Create a model of a 3-dimensional figure from a 2-dimensional drawing and make a 2-dimensional representation of a 3-dimensional object (for example, nets, blueprints, perspective drawings).

(e) **Standard 5: Coordinate Geometry** - The student will solve problems with geometric figures in the coordinate plane.

~~(1) Use transformations (reflection, rotation, translation) within coordinate geometry.~~

~~(2) Use coordinate geometry to find the distance between two points; the midpoint of a segment; and to calculate the slopes of parallel, perpendicular, horizontal, and vertical lines.~~

~~(3) Given a set of points determine the type of figure formed based on its properties.~~

(1) Find the distance between two points; the midpoint of a segment; and calculate the slopes of parallel, perpendicular, horizontal, and vertical lines.

(2) Properties of Figures

(A) Given a set of points determine the type of figure formed based on its properties.

(B) Use transformations (reflection, rotation, translation) within coordinate geometry.

**210:15-3-53. Mathematics content standards algebra II**

(a) **Standard 1: Number Systems and Algebraic Operations** - The student will perform operations with rational,

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radical, and polynomial expressions, as well as expressions involving complex numbers.

- (1) Rational Exponents
    - (A) Convert expressions from radical notations to rational exponents and vice versa.
    - (B) Add, subtract, multiply, divide, and simplify radical expressions and expressions containing rational exponents.
  - (2) Polynomial and Rational Expressions
    - (A) Divide polynomial expressions by lower degree polynomials.
    - (B) Add, subtract, multiply, divide, and simplify rational expressions, including complex fractions.
  - (3) Complex Numbers
    - (A) Recognize that to solve certain problems and equations, number systems need to be extended from real numbers to complex numbers.
    - (B) Add, subtract, multiply, divide, and simplify expressions involving complex numbers.
- (b) **Standard 2: Relations and Functions** - The student will use the relationships among the solution of an equation, zero of a function, x-intercepts of a graph, and factors of a polynomial expression to solve problems involving relations and functions.
- (1) Functions and Function Notation
    - (A) Recognize the parent graphs of polynomial, exponential, radical, quadratic, and logarithmic functions and predict the effects of transformations on the parent graphs, using various methods and tools which may include graphing calculators.
    - (B) Add, subtract, multiply, and divide functions using function notation.
    - (C) Combine functions by composition.
    - (D) Use algebraic, interval, and set notations to specify the domain and range of functions of various types.
    - (E) Find and graph the inverse of a function, if it exists.
  - (2) Systems of Equations
    - (A) Model a situation that can be described by a system of equations or inequalities and use the model to answer questions about the situation.
    - (B) Solve systems of linear equations and inequalities using various methods and tools which may include substitution, elimination, matrices, graphing, and graphing calculators.
    - (C) Use either one quadratic equation and one linear equation or two quadratic equations to solve problems.
  - (3) Quadratic Equations and Functions
    - (A) Solve quadratic equations by graphing, factoring, completing the square and quadratic formula.
    - (B) Graph a quadratic function and identify the x- and y-intercepts and maximum or minimum value, using various methods and tools which may include a graphing calculator.

- (C) Model a situation that can be described by a quadratic function and use the model to answer questions about the situation.
  - (4) Identify, graph, and write the equations of the conic sections (circle, ellipse, parabola, and hyperbola).
  - (5) Exponential and Logarithmic Functions
    - (A) Graph exponential and logarithmic functions.
    - (B) Apply the inverse relationship between exponential and logarithmic functions to convert from one form to another.
    - (C) Model a situation that can be described by an exponential or logarithmic function and use the model to answer questions about the situation.
  - (6) Polynomial Equations and Functions
    - (A) Solve polynomial equations using various methods and tools which may include factoring and synthetic division.
    - (B) Sketch the graph of a polynomial function.
    - (C) Given the graph of a polynomial function, identify the x- and y-intercepts, relative maximums and relative minimums, using various methods and tools which may include a graphing calculator.
    - (D) Model a situation that can be described by a polynomial function and use the model to answer questions about the situation.
  - (7) Rational Equations and Functions
    - (A) Solve rational equations.
    - (B) Sketch the graph of a rational function.
    - (C) Given the graph of a rational function, identify the x- and y-intercepts, asymptotes, using various methods and tools which may include a graphing calculator.
    - (D) Model a situation that can be described by a rational function and use the model to answer questions about the situation.
- (c) **Standard 3: Data Analysis and Statistics** - The student will use data analysis and statistics to formulate and justify predictions from a set of data.
- (1) Analysis of Collected Data Involving Two Variables
    - ~~(A) Display data on a scatter plot.~~
    - ~~(B) Interpret results using a linear, exponential or quadratic model/equation.~~
    - (A) Interpret data on a scatter plot using a linear, exponential or quadratic model/equation.
    - ~~(C) Identify whether the model/equation is a curve of best fit for the data, using various methods and tools which may include a graphing calculator.~~
  - (2) Measures of Central Tendency and Variability
    - (A) Analyze and synthesize data from a sample using appropriate measures of central tendency (mean, median, mode, weighted average).
    - (B) Analyze and synthesize data from a sample using appropriate measures of variability (range, variance, standard deviation).
    - (C) Use the characteristics of the Gaussian normal distribution (bell-shaped curve) to solve problems.

- (D) Identify how given outliers affect representations of data.
- (3) Identify and use arithmetic and geometric sequences and series to solve problems.

[OAR Docket #09-1063; filed 5-26-09]

**TITLE 235. OKLAHOMA FUNERAL BOARD  
CHAPTER 1. ADMINISTRATIVE  
OPERATIONS**

[OAR Docket #09-953]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
235:1-1-2 [AMENDED]

**AUTHORITY:**  
Oklahoma Funeral Board;  
Title 59 O.S. Section 396.17;  
Title 75 O.S. Section 302(A)(1);  
Title 75 O.S. Section 307

**DATES:**  
**Comment Period:**  
February 2, 2009 through March 10, 2009

**Public Hearing:**  
March 12, 2009

**Submitted to Governor:**  
March 19, 2009

**Submitted to House:**  
March 19, 2009

**Submitted to Senate:**  
March 19, 2009

**Gubernatorial approval:**  
April 21, 2009

**Legislative approval:**  
Failure of the Legislature to disapprove the rules resulted in approval on May 14, 2009

**Final adoption:**  
May 14, 2009

**Effective:**  
June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**  
None

**INCORPORATIONS BY REFERENCE:**  
None

**ANALYSIS:**  
The adopted rules require agenda items to be submitted seven days before a board meeting to allow board members proper time to review the items before the board meeting.

**CONTACT PERSON:**  
Lloyd Brown, Executive Director (405) 522-1790

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**235:1-1-2. Executive Director of the Board**

(a) **Administrative officer.** The Executive Director is the administrative officer for the Board. The Executive Director shall perform all delegated statutory duties as well as other duties as the Board may assign. The Executive Director shall supervise all employees of the Board. The Executive Director

may employ, discipline, or discharge any Board Employee. The Executive Director may delegate, subject to the Executive Director's supervision and responsibility, such administrative duties, as the Director deems appropriate, to subordinate employees. The Executive Director shall be responsible to the Board for maintaining Board records.

(b) **Administrative decisions.** The Executive Director shall render necessary administrative decisions for the Board during such time the Board is not in session.

(1) The administrative decisions must be consistent with Oklahoma Statutes and Board Rules.

(2) Parties affected by the administrative decision may appeal to the Board by requesting placement on the agenda for the next regular or special meeting except that an administrative decision denying permission to write the State Board examination for lack of documented proof of required educational credits shall not be appealable to the Board.

(3) Such administrative decisions shall have the full force and authority of a Board decision until reversed or modified by the Board in open meeting.

(c) **Schedule of meetings.** The Executive Director shall schedule all Board meetings, file notices of Board meetings as required by the Oklahoma Open Meeting Law, and prepare an agenda for each Board meeting to be posted at the Board office in advance of the meeting, and be provided to each Board member. All applications or other items requiring Board action must be received and date-stamped by Board staff at least seven (7) calendar days prior to a Board meeting to be considered at that meeting. Anyone may request the Board consider an item received after this time by requesting in writing to appear before the Board. Nothing in this section shall prohibit the Board from taking any action allowed by law on its own motion.

[OAR Docket #09-953; filed 5-18-09]

**TITLE 235. OKLAHOMA FUNERAL BOARD  
CHAPTER 10. FUNERAL SERVICES  
LICENSING**

[OAR Docket #09-954]

**RULEMAKING ACTION:**  
PERMANENT final adoption

- RULES:**
- Subchapter 1. General Provisions  
235:10-1-2 [AMENDED]
  - Subchapter 3. Qualification and Requirements for Licensure  
235:10-3-1 [AMENDED]  
235:10-3-2 [AMENDED]  
235:10-3-5 [AMENDED]
  - Subchapter 5. Licensing Fees  
235:10-5-1 [AMENDED]
  - Subchapter 7. Licensure Renewal, Revocation, and Suspension  
235:10-7-2 [AMENDED]
  - Subchapter 11. Minimum Standards of Performance  
235:10-11-1 [AMENDED]
  - Subchapter 13. Continuing Education  
235:10-13-10 [AMENDED]
  - Subchapter 14. Crematories [NEW]  
235:10-14-1 [NEW]

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**Final adoption:**

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**SUPERSEDED EMERGENCY ACTIONS:**

None

**INCORPORATIONS BY REFERENCE:**

None

**ANALYSIS:**

The adopted rules make the rules consistent with the statutes, provide clarity on the ownership of establishments, clarify the grandfather clause, establish fees for various licenses, prohibit selling of body parts, set standards for licensees, increase the standards of continuing education, and add cremation requirements to the rules.

**CONTACT PERSON:**

Lloyd Brown, Executive Director (405) 522-1790

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 235:10-1-2. Definitions

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

**"Apprentice"** means an individual who has registered as an apprentice with the Board, and is an employee of a funeral service establishment, or a commercial embalming establishment.

**"At-need"** means after the individual died.

**"Board"** means the Oklahoma Funeral Board.

**"Casket"** means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

**"Commercial Embalming Establishment"** means a fixed place of business with a preparation room and other facilities and equipment required to embalm, transport, or ship

dead human remains, but limited to serving licensed funeral establishments, both in and outside the State of Oklahoma.

**"Cremation"** means the technical process, using heat, that reduces dead human remains to bone fragments. The reduction takes place through heat and evaporation. The cremation process shall include, but not be limited to, the processing and pulverization of the bone fragments.

**"Cremation Chamber"** means the enclosed space contained within a machine that has been duly manufactured for the sole purpose of cremating dead human remains within which the cremation is performed.

**"Cremation Container"** means a casket or other container designed to transport a deceased human body and for placement in a cremation chamber during cremation.

**"Direct disposition"** means the disposal of dead human remains without ritual, ceremony, or other procedures normally included in a funeral service. Direct disposition may or may not be followed by a memorial service.

**"Embalmer"** means any individual licensed to engage in the practice of embalming. Any person who performs the duties of an embalmer as outlined in these rules, or who holds himself out to the public in any manner whatsoever as an embalmer must be licensed by the Board.

**"Full-time employee"** means a full-time employee at a funeral service establishment, or the commercial embalming establishment which is his principal place of employment as evidenced by payroll and employment records.

**"Funeral director"** means any individual licensed to engage in the practice of funeral directing as outlined in these rules.

(A) Any individual who holds himself out to the public in any manner whatsoever that he is a funeral director shall be licensed by this Board.

(B) Any individual who uses in conjunction with his name or business any of the words "undertaker", "mortician", "funeral home", "funeral parlor", "funeral chapel", "funeral consultant", or other title implying that he is in the business of funeral directing herein shall be licensed by this Board.

**"Funeral Director in Charge - FDIC"** an individual licensed as a funeral director designated by a funeral service establishment, commercial embalming establishment, or crematory who is responsible for the legal and ethical operation of the establishment and is accountable to the Board.

**"Funeral service"** means a ritual or ceremony conducted with a body or bodies present with said ritual or ceremony conducted prior to final disposition. A funeral service shall be conducted by a licensed funeral director under the supervision of a licensed funeral service establishment.

**"Funeral service establishment"** means a fixed place of business used and equipped for funeral services, or for the retail sale or display of funeral service merchandise, or used to embalm, transport, or ship dead human remains, and to provide for the care and disposal of dead human remains. Any fixed place of business held out to the public as a funeral service establishment shall be inspected and licensed by the Board

"Funeral service merchandise" means those products and services normally provided by funeral establishments, including but not limited to burial supplies and equipment.

(A) Funeral service merchandise includes any items of service or merchandise offered by the funeral service establishment as required to be listed on the General Price List mandated by the Federal Trade Commission with the exception of outer burial containers.

(B) Funeral service merchandise excludes the sale by an organization of cemetery land or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches or outer burial containers.

"Human remains" means the body of a dead human being, deprived of life, but not yet entirely disintegrated.

"License" means a document issued by the Board certifying qualifications under the laws of the State of Oklahoma to practice as an embalmer or funeral director, or to operate a funeral service establishment or a commercial embalming establishment, or to operate a crematory.

"Licensees" means individuals who have met all of the requirements to be licensed by the State of Oklahoma to practice as funeral directors, or embalmers and are properly registered with the Board.

"Memorial service" means a ritual or ceremony conducted without the presence of a body or bodies which may be conducted before or after final disposal.

"Personal supervision" means the physical presence of a licensed funeral director or embalmer at the specified time and place of the providing of acts funeral service, practice of embalming, or practice of funeral directing.

"Practice of embalming" means the work of disinfecting or preserving dead human remains, entire or in part, by arterial embalming, or otherwise, for the preparation and the disposition, or for the care of dead human remains for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work.

"Practice of funeral directing" means the work of preparing for the burial or disposal of dead human remains, otherwise than by embalming, or for the care of dead human remains for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work or being in the general control, supervision or management of the operations of a funeral service establishment.

"Practicum Student" means a student currently enrolled in an accredited Funeral Service Program located in Oklahoma working in a funeral establishment to satisfy educational requirements.

"Pre-need arrangements" means arrangements made for final disposition prior to the occurrence of a death.

"Temporary Container" means a receptacle composed of cardboard, plastic or similar material designed to temporarily store cremated remains until the remains are placed in an urn or other permanent container.

SUBCHAPTER 3. QUALIFICATION AND REQUIREMENTS FOR LICENSURE

235:10-3-1. Qualifications for licensing individuals

To be licensed in Oklahoma as a funeral director, embalmer, or both, an individual must meet the following minimum requirements:

- (1) The individual must be twenty (20) years of age.
- (2) The individual must be of good moral character.
- (3) ~~The individual must not have any felony convictions.~~ The Board may refuse to issue a license to an individual convicted of any felony, or a misdemeanor related to funeral service licensing act, the prepaid funeral benefits act, funeral services, or pertaining to the custody, care, or disposal of dead human remains, unfair trade practices, or fraud.
- (4) ~~The individual must not have had any misdemeanor convictions related to funeral services or pertaining to the custody, care or disposal of dead human remains, or unfair trade practices, or fraud.~~
- (45) The individual must be a legal resident of Oklahoma, and a citizen of the United States, or a permanent resident of the United States.
- (56) The individual shall have completed the following educational requirements:
  - (A) The individual is a graduate of a program of mortuary science accredited by the American Board of Funeral Service Education.
  - (B) The individual shall have completed a total of sixty (60) college semester hours of credit at an accredited institution of higher education.
    - (i) Such institution must be accredited by a regional accrediting agency and recognized by the U.S. Department of Education as a valid and legal accrediting agency.
    - (ii) When the institution so accredited extends credit in quarter hours, each quarter hour shall equal 2/3rds of one semester hour.
    - (iii) Courses applied to completing the accredited mortuary science program in excess of the minimum requirements for an accredited program by the American Board of Funeral Service Education may be applied to the (60) total semester hours of college, provided such credits are earned at a regionally accredited institution.
- (67) Individuals who have earned a bachelor degree in funeral service from a regionally accredited institution and American Board of Funeral Service Education accredited mortuary program shall be deemed to have met the educational requirements set for in sections (A) and (B).
- (78) The individual shall have successfully passed the National Board Examination of the International Conference of Funeral Service Examining Boards with an average grade of seventy five percent (75%) or better on the Arts section for applicants for a funeral director license, and applicants for an embalmers license shall have earned an average of seventy five percent (75%) or better on the Science section.

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(89) The individual shall have successfully passed the Oklahoma Law examination with a grade of seventy five percent (75%) or better. The Oklahoma Law examination shall cover the Oklahoma Funeral Services Licensing Act and the Prepaid Funeral Benefits Act, and the Rules of the Board. The Oklahoma law written examination shall not be administered until the applicant has completed all educational requirements and other examination requirements with proof of such completion on file in the Board office. Rejection of an application to take the written examination for failure to complete educational requirements, or failure to file proper proof of completion of educational requirements is not appealable to the Board.

(940) The applicant must have paid any and all fees due and payable prior to licensing.

(1044) The individual must have served and completed an embalmer and/or funeral director apprenticeship(s) in the State of Oklahoma or has completed an apprenticeship the Board determines to be substantially equivalent to that required by Oklahoma.

(1142) Once all requirements set forth above have been met, the individual may apply for a license as a funeral director, embalmer, or both.

### 235:10-3-2. Requirements for licensing funeral service establishments

To be licensed by the Board a funeral service establishment or a commercial embalming establishment must meet the following minimum requirements:

(1) **Ownership.** The establishment shall be operated by a sole owner, a partnership, a limited liability partnership, a limited partnership, a limited liability company, or a subsidiary of a corporation, a partnership, a limited liability partnership, a limited partnership, or a limited liability company, or by a corporation chartered in the State of Oklahoma.

(2) **Fixed place.** The establishment shall have a fixed place of business with a specific street address or physical location and shall conform to local zoning ordinances as evidenced by an occupancy permit issued by the proper local governmental entity authorizing the occupancy of a funeral service establishment at that location. Only one establishment license shall be issued to a specific address. If the establishment will contain a preparation room which does not discharge into a municipal sanitary sewer it must also secure permission from the appropriate county and/or state agency for any such discharge from the embalming room prior to being eligible to receive a funeral establishment or commercial embalming establishment license from this Board. Any establishment which has been issued an establishment license under a rule of the Board having different requirements than this sub-section for a fixed place will be permitted to continue to be licensed under the rules pursuant to which the establishment was initially licensed, except as provided under sub-section (15).

(3) **Inspected.** The establishment shall be inspected by a representative of the Board prior to being initially licensed and periodically as determined by the Board.

(4) **Statutes and Rules.** Each establishment shall have available a current copy of the Oklahoma Statutes and Rules related to the practice of funeral directing and embalming available for public inspection.

(5) **Preparation room.**

(A) The establishment shall have a preparation room. Such preparation room shall meet the following minimum requirements:

(i) **Construction.** The walls, floor, and ceiling must be constructed, and of such materials and finished in a way that they may be cleaned and disinfected. The room must be of sufficient size and dimension to accommodate an embalming table, a sink that drains freely with hot and cold running water connections, an instrument table, cabinet, and shelves. The embalming table must have a rust proof metal, porcelain, or fiberglass top, with edges raised at least 3/4 inches around the entire table and drain opening at the lower end.

(ii) **Ventilation.** The preparation room shall be heated and air-conditioned. The preparation room must be properly ventilated with an exhaust fan that provides at least five room air exchanges per hour. All fumes must be ventilated to the outside atmosphere. The construction must be such that odors from the preparation room cannot enter the rest of the establishment.

(iii) **No public use.** The room shall not have a passageway available for public use.

(iv) **Equipment.** The room shall contain sufficient supplies and equipment for normal operation. Nothing in this subsection shall require embalming chemicals to be stored in the preparation room. The room shall have no excess equipment stored, other than equipment necessary for preparing dead human remains, and performing necessary restorative art work. There shall be storage shelves or cabinets for all supplies, instruments, and equipment.

(v) **Openings covered.** All outside openings shall be covered with screens.

(vi) **Interior view.** Measures must be taken to prevent a view of the interior of the room through any open door or window.

(vii) **Embalmer's log.** Each funeral establishment or commercial embalming service shall maintain in the preparation room of that establishment, or within a reasonable proximity of the preparation room, a log book. The log book shall list the name of each human remains received at this location including the date and time the remains were received, the care or preparation of the remains (i.e., bathe, disinfect, refrigerate, or embalm), the date and time that the embalming occurred, the disposition of the remains, and the

name, signature, and license number of the embalmer(s) and apprentice(s). If the remains were prepared at another location, that location shall be listed in lieu of the name and signature of the embalmer(s) and apprentice(s). The log book must be available at all times for inspection by the Board.

(B) **Exceptions.** A funeral establishment operated in conjunction with another licensed funeral establishment, with same ownership, shall be exempt from maintaining a preparation room provided it is located within 60 miles of the main establishment and can be practically served by the main establishment.

(6) **Selection room.** The establishment shall have a selection room. Such room shall be devoted solely to the purpose of providing a means for the public to make a reasonable selection of funeral service merchandise. Such room shall be of adequate size and furnishings. Such selection room shall meet the following minimum requirements:

(A) **Casket and outer burial container price lists.** The funeral provider must offer a printed or typewritten price list to people who inquire in person about the offering or prices of funeral merchandise including caskets, alternative containers and outer burial containers. The price list must be offered upon the beginning of discussion of, but in any event before showing the funeral merchandise. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner.

(B) **Caskets.** Each funeral establishment shall maintain an inventory of not less than five adult caskets at the location, or five quarter panel or end cut display units provided by a commercial casket manufacturer. Any establishment which has been issued an establishment license under a rule of the Board having different requirements than this sub-section for the number of caskets in inventory will be permitted to continue to be licensed under the rules pursuant to which the establishment was initially licensed, except as provided under sub-section (15).

(C) **Equipment.** The selection room shall have no excess equipment stored, other than equipment necessary for the proper display of funeral service merchandise.

(D) **Condition.** The room shall be maintained in a clean, neat, and orderly fashion at all times.

(7) **Other rooms.** The establishment shall have adequate areas for public viewing of dead human remains and necessary offices for conducting the business affairs of the establishment. The establishment may have other rooms, offices, and other facilities, including restrooms for the staff and public lounge areas. All other rooms and facilities shall be maintained in a clean, neat, and orderly fashion at all times.

(8) **Vehicles.** The establishment shall have the necessary automotive vehicles to provide adequate service to

the public. This shall not prohibit the establishment from arranging to lease, borrow, or otherwise arrange for extra vehicles when needed.

(9) **Licensed funeral director.**

(A) Each funeral service establishment shall have at least one full-time licensed funeral director employed to be designated as the Funeral Director-in-Charge of the operation of the establishment and a sufficient number of other licensed individuals to adequately serve the public.

(B) If an individual owner, partners, or corporation officers are not licensed funeral directors, then the owner, partners, or the corporation must employ a full-time licensed funeral director to serve as Funeral Director-in-Charge of the establishment.

(C) No licensed funeral director may serve as the Funeral Director-in-Charge of more than one (1) funeral service establishment without the express written authorization of the Board. With the written order of the Board a licensed funeral director, upon good cause shown that such is in the public interest, may serve as a Funeral Director-in-Charge of more than one (1) funeral service establishment but in no event may any such licensed funeral director be the Funeral Director-in-Charge of more than three (3) such funeral service establishments. Provided all of the establishments are under the same ownership, and no establishment included in the application is more than a 60 miles radius from the most centrally located establishment contained in the application.

(D) The funeral director-in-charge shall reside and maintain a permanent residence within 60 miles of the funeral establishment, commercial embalming establishment, or crematory.

(10) **Licensed embalmer.** Each establishment must either employ a licensed embalmer full-time or have an embalmer available to embalm dead human remains within six (6) hours after the establishment has assumed custody of the body. The embalmer shall be listed on the establishment application, renewal form, and in the Embalmer's Log Book.

(11) **Transferability.** No establishment license is transferable from one person to another, or from one location to another. In case of the sale, lease, or relocation to a new location, or a change of name of the establishment, the establishment license may remain in force by mutual consent of the buyer and seller for a period of (30) thirty days or until the next regularly scheduled Board meeting, and at such time the license shall expire. The Funeral Director-in-Charge must notify the Board office in writing and within ten days of change of ownership, change of Funeral Director-in-Charge, change of address, or change of name. The purchaser, lessee, or owner must notify the Board office to request an inspection, and issuance of a new license. Upon purchase, lease or change of address, change of name, change of Funeral Director-in-Charge a new establishment license application must be submitted with fee.

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(12) **Requirement to practice.**

(A) The issuance of a funeral service establishment license to an individual not licensed as a funeral director does not entitle the individual to practice funeral directing.

(B) In the event the Funeral Director-in-Charge becomes no longer in charge of said funeral establishment then such Funeral Director-in-Charge has the responsibility of notifying the Board of such change within ten (10) business days. Upon such notice a new establishment license application must be submitted to the Board for approval.

(13) **License expiration.** All establishment licenses issued expire on the thirty-first of December for the year issued.

(14) **Inspection.** Every funeral service establishment, commercial embalming establishment, or crematory, shall be at all times subject to inspection by the Board. Inspections are to be reasonable in regard to time and manner.

(15) **Grandfather.** Any establishment which has been issued an establishment license under a rule of the Board having different requirements, then such Establishment is permitted to continue to be licensed under the rules pursuant to which the establishment was initially licensed. The Establishment license of such grandfathered establishment is not transferable. At such time as a change of ownership, purchase, lease, or change of address of such grandfathered funeral establishment is made then such establishment must meet the current requirements of this subchapter.

(16) **Application.** Any person or entity who desires to operate a funeral service establishment, commercial embalming establishment, or crematory must submit an application for an original license, or if appropriate, an application for a renewal license on forms provided by the Board.

(A) Each application for an original license shall include, at a minimum, the following:

(i) The current and previous name, if any, for a funeral service establishment, commercial embalming establishment, or crematory;

(ii) The address of the physical location and telephone number of the funeral service establishment, commercial embalming establishment, or crematory;

(iii) The name and license number of the Funeral Director in Charge;

(iv) The name of the current owner and, if applicable, all previous owners for the past sixty (60) months of the funeral establishment, commercial embalming establishment, or crematory;

(v) Whether the funeral service establishment, commercial embalming establishment, or crematory is a sole proprietorship, corporation, partnership, a limited liability partnership, limited partnership, a limited liability company, or a subsidiary of a corporation, a partnership, limited

liability partnership, limited partnership, a limited liability company, or other business entity;

(vi) The name and address of each person owning five (5) percent or more of the funeral service establishment, commercial embalming establishment, or crematory, or corporation common stock, or of the equity capital or membership interest of a limited liability company, a partnership, a limited liability partnership, a limited partnership, or sole proprietorship;

(vii) If a corporation, partnership, limited liability partnership, limited partnership, or limited liability company;

(I) The state and date of incorporation or formation;

(II) The name and address of the registered agent or agent appointed to receive service of process;

(III) The name, address, and title of each officer, director, general partner, or member and

(IV) A copy of the certificate of incorporation, articles of organization, or certificate or agreement of formation, and any other document filed with the Oklahoma Secretary of State, which allows the entity to do business in Oklahoma.

(viii) Whether the applicant, or any individual required to be disclosed under this section, has ever been convicted of, or entered a plea of guilty or no contest, to a felony, or to a misdemeanor related to funeral services, including the:

(I) Felony or misdemeanor charged;

(II) Date of conviction or plea;

(III) Court having jurisdiction over the felony or misdemeanor;

(IV) Probation officer's name, address, and telephone number, if applicable.

(ix) Whether the applicant, or any individual required to be disclosed under this section, has received any adverse ruling from any court of competent jurisdiction or any administrative tribunal involving honesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to funeral services, including the case number and the court or administrative body in which it was filed.

(x) Whether the applicant, or any individual required to be disclosed under this section, has ever had an application for a license, registration, certificate, or endorsement denied or rejected by any state licensing authority, including the:

(I) Reason for the suspension or revocation;

(II) Date of the denial or rejection; and

(III) Name and address of the state licensing authority that denied or rejected the application.

(xi) Whether the applicant, or any individual required to be disclosed under this section, has ever

had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority, including the:

- (I) Reason for the suspension or revocation;
- (II) Date of the suspension or revocation; and
- (III) Name and address of the state licensing authority that suspended or revoked the license.
- (xii) Whether the applicant, or any individual required to be disclosed under this section, has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority.

(B) Renewal applications shall include any changes in the above information from the original application or the previous renewal application.

(17) **Renewal license.** Once issued, all original funeral service establishments, commercial embalming establishments, and crematories shall expire on December 31 of the year of issue. Thereafter, except as provided in 235:10-3-2(11) said establishment may make application for renewal of the existing original license. The renewal application shall contain information as deemed appropriate by the Board.

(18) **Grounds for refusal.** The board may refuse to issue an original license or renew a license:

- (A) For any felony conviction, or a misdemeanor conviction related to funeral service, by any individual required to be disclosed under this sub-section, may be grounds to deny the application.
- (B) For any answer in the affirmative to 235:10-3-2 (16)(A)(viii,ix,x,xi,xii), by any individual required to be disclosed in this sub-section.
- (C) If the Board finds the application contains false or misleading information.
- (D) If the Application is incomplete or improperly completed.
- (E) Failure to pay the license application fee.
- (F) Failure to comply with all other rules as prescribed in Section 235.

**235:10-3-5. Apprentice qualifications and registration**

(a) Qualifications. In order to register with the Board as an apprentice, each individual must meet all of the following conditions:

- (1) Age. The applicant must be seventeen (17) years of age.
- (2) Education. The applicant must be a high school graduate, or possess a Graduate Equivalent Diploma (G.E.D.).
- (3) Sound moral character. The applicant must be of sound moral character.
  - ~~(A) **No felony conviction.** The applicant must not have a felony conviction of any kind.~~
  - ~~(B) **No misdemeanor convictions.** The applicant must not have a misdemeanor conviction related to~~

~~funeral service, or pertaining to the custody, care or disposal of dead human remains, or unfair trade practices, or fraud.~~

~~(A) The Board may refuse registration to an individual who has been convicted of a felony, or a misdemeanor related to funeral services or pertaining to the custody, care or disposal of dead human remains, or unfair trade practices, or fraud.~~

~~(B) Failure to reveal such conviction at the time of application will result in termination of registration by operation of law.~~

~~(C) **Cancellation.** Failure to reveal such conviction [(A) and (B) of this paragraph] at the time of application will result in termination of registration of the apprenticeship by operation of law.~~

(b) **Registration.** Each registration must be accomplished by completing an application form supplied by the Board office, accompanied by:

- (1) **Documented proof.** A diploma, transcript, G.E.D. Certificate, or other documented proof, acceptable to the Board, proving completion of high school requirements.
- (2) **Affidavit.** An employment affidavit form provided for the Board completed by the apprentice and the establishment at which he will be employed.
- (3) **Fee.** The required registration fee at the beginning of each year of apprenticeship.

(c) **Apprenticeship.** After qualifying and being registered by the Board, the serving of the apprenticeship for purposes of being licensed shall require the following:

- (1) **Employment.** Employment at a licensed funeral establishment for a period of 12 months.
  - (A) **No part-time supervision.** No apprentice may be supervised or trained by a part-time licensed funeral director or embalmer.
  - (B) **Place of service.** The apprenticeship for licensing as a funeral director and embalmer may be served at the same time at a funeral service establishment, nothing shall prohibit an apprenticeship in embalming from being served at a commercial embalming establishment.
- (2) **Reports.** Apprentices must properly file twelve (12) monthly reports in the format prescribed by the Board documenting their employment and completion of embalming and funeral directing experiences.
  - (A) **Due date.** Each report is due the 1st and must be filed no later than the 10th day of the month it is due.
  - (B) **Postmark.** The postmark or electronic date stamp shall determine the date of filing for the monthly reports and case reports.
  - (C) **Late reports.** Reports received late shall not count toward the total number required for licensing.
- (3) **Cancellation.** An apprenticeship shall automatically be cancelled by the failure to file two monthly reports, unless an exception has been granted in writing by the Board.
- (4) **Renewal.** Subject to other provisions of this Sub-section, an apprentice registration is valid only for 12

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months. Apprenticeship registration may be renewed up to four times if such application is accompanied with an official transcript showing that such applicant is a graduate from or then an active student enrolled in an accredited school of mortuary science, and payment of the required fee.

(5) **Supervision.** No apprentice shall perform the practice of embalming or the practice of funeral directing unless the apprentice is doing so under the personal supervision of a licensed embalmer or funeral director.

(6) **Assistance.** An apprentice shall, under personal supervision, assist in the embalming of at least twenty-five (25) human remains and assist in the direction of at least twenty-five (25) funerals.

(d) **Practicum student requirements.** Practicum students must be participating in a scheduled, supervised and accredited program for practicum students established by the accredited school of mortuary science. Practicum students must have a letter of agreement with the participating funeral service establishment where the practicum is to be conducted. No registration of practicum students is required by this Board.

### SUBCHAPTER 5. LICENSING FEES

#### 235:10-5-1. License and other Board fees

(a) The following shall be the fees charged for the licenses, registrations and examinations required by the Funeral Services Licensing Act:

- (1) Funeral Director License or Renewal - \$75.00
- (2) Embalmer License or Renewal - \$75.00
- (3) Registration or Extension of Funeral Director/Embalmer Apprentice - \$150.00
- (4) Oklahoma Law Examination - \$100.00
- (5) State Board Arts Examination - \$100.00
- (6) State Board Science Examination - \$100.00
- (7) Funeral Establishment License or Renewal - \$250.00
- (8) Commercial Embalming Establishment License or Renewal - \$250.00
- (9) Reciprocal License for Funeral Director or Embalmer - \$150.00
- (10) Change of Funeral Director in Charge - \$500.00 anytime during the year
- (11) Crematory License Renewal - \$250.00
- (12) Original Funeral Establishment License Fee - \$750.00
- (13) Original Commercial Embalming Establishment Fee - \$750.00
- (14) Original Crematory License Fee - \$750.00
- (15) Change Establishment or Crematory Name - \$250.00 anytime during the year.

(b) **Administrative service fees.** Fees for service exceeding normal maintenance of Board records shall be as determined by the Board in open meeting. No such service fee may exceed the amount of

- (1) Mailing list of establishments - \$15.00
- (2) Mailing list of individual licensees - \$15.00

(3) Duplicate licenses - \$15.00 per license

(4) Photocopies - per page - \$.25

(5) Postage/shipping - net cost

(c) **Renewal fees.** All renewal license fees shall be due and payable on December 31 for the following calendar year.

(d) **Double fee.** All renewal license fees, if not paid by December 31 for the following calendar year, ~~shall be doubled,~~ the license shall expire and the fee doubled and if the fee is not paid on or before April 30 of the subsequent year, the licensee shall be in default and the license shall terminate automatically. No practice of funeral directing or embalming will be permitted on an expired or terminated license.

(e) **Non-refundable.** No fees paid to the Board shall be refundable.

(f) **Initial fee.** The initial funeral director and/or embalmer license fee shall become due and payable with the application for licensure. If the initial license is issued to the licensee after July 1 of each calendar year, the applicant shall be required to pay one-half (50%) of the current initial license fee.

(g) **Examination fee.** Examination fees are due and must be paid prior to the examination.

(h) **Returned check.** Any fee paid by a check which is returned to the Board from the bank shall then be paid by money order, Cashier's check, or cash within ten (10) days after the check has been returned from the bank, plus a "returned check processing fee" of \$20.00.

### SUBCHAPTER 7. LICENSURE RENEWAL, REVOCATION, AND SUSPENSION

#### 235:10-7-2. Prohibited acts

The following prohibited acts shall constitute grounds for the suspension or revocation of any license or registration issued by the Board.

(1) **Material misrepresentation.** Material misrepresentation to the public of facts, requirements of Oklahoma Statutes, State Board Rules, or any rule or regulation pertaining directly to the custody, care, or disposal of dead human remains. Material misrepresentation is also construed to include a person knowingly and willfully signing a certificate as having embalmed, cremated, or prepared a dead human body for disposition when, in fact, the services were not performed as indicated. A material misrepresentation also includes misrepresentation to the Board of completion of continuing education requirements when the requirements were not met.

(2) **Conviction of a crime.** A felony conviction or plea of guilty or nolo contendere in a felony matter, or any misdemeanor pertaining to the custody, care or disposal of dead human remains, or involving funeral service, or unfair trade practices, or fraud.. A copy of the record of conviction, judgment and sentence certified by the clerk of court entering the conviction shall be conclusive evidence of conviction. However, anyone who has surrendered their license or has had their license suspended or revoked because of a conviction of a felony or misdemeanor where substance abuse or mental illness is the underlying cause

of the crime, may appeal to have his or her license reinstated. In determining whether to reinstate the license of such an individual, the Board may consider the length of time since the plea or conviction, education since the plea or conviction, recovery status since the plea or conviction if the underlying crime was alcohol-or drug-related, and the public safety of allowing the individual to be licensed.

(3) **Price lists.**

(A) Failure to give a printed or typewritten General Price List (GPL) for retention to persons who inquire in person about the funeral goods or funeral services offered by the funeral establishment. The GPL must be presented upon beginning discussion of any of the following: the prices of funeral goods or funeral services; the overall type of funeral service or disposition; or specific funeral goods or funeral services offered by the funeral establishment.

(B) Failure to offer a printed or typewritten price list to persons who inquire in person about the offerings or prices of caskets or alternative containers, or outer burial containers before showing the caskets. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner.

(4) **Statement of goods and services selected.** Failure to give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) the funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) specifically itemized cash advance items. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a statement of the actual charges shall be provided before the final bill is paid; and

(C) the total cost of the goods and services.

(5) **Pre-need Requirements.** Failure to comply with the requirements of Oklahoma Statutes and Rules of the State Insurance Commission pertaining to pre-need funeral service arrangements.

(6) **Non-licensed director.** The practice of funeral directing by an individual not licensed as funeral director.

(7) **Non-licensed embalming.** Embalming of any dead human remains by an individual not licensed as an embalmer.

(8) **Non-registered apprentice.** The holding out by any person that such person is an active registered apprentice when such person is not an active registered apprentice.

~~(9) **Failure to release dead human remains.** Failure to immediately release dead human remains to an individual legally entitled to take custody of such a dead human remains or to an agent for such individual.~~

~~(9) **Failure to discharge financial obligation.** Failure to pay any vendor or third party obligation, within 90 days, that arises out of a Statement of Goods and Services that has been signed by the authorized person or failure to satisfy a judgment rendered by a court of proper jurisdiction, within 90 days or as ordered by the court, in favor of a vendor or third party provider as designated on the Statement of Goods and Services or in connection with goods and services provided for a specific buyer.~~

(10) **Desecration.** Damage, abuse, desecration or the unauthorized removal of tissue, bones, or organs of any human remains in the custody of a licensed funeral service establishment, commercial embalming establishment, crematory, funeral director, embalmer, or apprentice. Desecration shall not include the removal of blood, body fluids, body tissue, or other body parts in the normal course of embalming or restoration requested by authorizing agent. Desecration also includes the simultaneous cremation of more than one human dead body without express written approval of the authorizing agent, or cremating human remains without the permit requires by 63 O.S. §1-329.

(11) **Solicitation.** Solicitation of business, either personally or by an agent, from a dying individual or the relatives of a dead or individual with a terminal condition as defined by the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act, other than through general advertising.

(12) **Used casket.** Using any casket or part thereof which has previously been used as a receptacle for, or in connection with, the burial, cremation, or other disposition of dead human remains, without making the required disclosure to the individual making the selection.

(13) **Charging.** for service or merchandise not contracted for or failing to provide the services or merchandise contracted for or making substitution for services or merchandise contracted for without the authorization of the customer.

(14) **Failure to file.** Failure to file a death certificate, cremation permit, disinterment permit or any other necessary permit as required by law in a timely manner.

(15) **Failure to submit application for establishment license.** Failure to notify the Board of a change of ownership, sale, purchase, lease, change of name, change of address, or change of funeral director in charge within ten (10) business days.

(16) **Suspension or revocation.** The suspension or revocation by another state of a licensee to practice funeral directing and or embalming. A certified copy of the record of suspension or revocation of the state making such a suspension or revocation shall be conclusive evidence thereof.

(17) **False or misleading advertising.** The use of false or misleading advertising or advertising a name other than the name the individual or establishment is licensed as.

(18) **Failure to comply with Licensing Act.** Failure to comply with any applicable provisions of the Funeral

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Services Licensing act at the time of issuance or renewal or improper issuance or renewal of a license or registration.

(19) **Child Support Statute.** Failure to comply with the child support statute provisions of 43 O.S. §139.1 et al.

(20) **Selling of bodies or body parts.** No funeral establishment or any of its licensees, agents or employees shall accept, solicit, or offer to accept any payment, gratuity, commission or compensation of any kind for referring potential tissue donors to a tissue bank or tissue broker.

## SUBCHAPTER 11. MINIMUM STANDARDS OF PERFORMANCE

### 235:10-11-1. Minimum standards of performance

(a) The following minimum standards of performance shall be required of each licensed embalmer in the State of Oklahoma in each instance in which he/she is authorized or required to embalm a dead human remains.

(1) **Licensed embalmer; licensed establishment.** The embalming procedure shall be performed only by licensed embalmers. Embalming shall be performed only in properly equipped and licensed funeral service establishment or commercial embalming establishments, in hospitals, or in such facilities as may be designated by the medical examiner or by the state health officials in the event of a disaster of major proportions. The embalmer may be assisted by a registered apprentice, or practicum student, or he may supervise a registered apprentice or practicum student as the registered apprentice or practicum student performs the embalming procedure.

(2) **Protective devices.** In order to prevent the embalmer or registered apprentice from becoming unwitting carriers of pathogenic organisms into the community, they shall be required to utilize such protective devices as required by the OSHA Bloodborne Pathogen Standards.

(3) **Clothing.** Clothing exposed to contamination by pathogenic organisms shall either be burned or thoroughly cleaned and disinfected before delivery to any person, or before any further utilization.

(4) **Technique.** The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under the prevailing conditions.

(5) **Washing body.** The entire body shall be washed with an antiseptic soap or detergent. Fingernails, hair (including mustache and beard) shall be thoroughly cleaned and made presentable, either before or immediately after arterial injection.

(6) **Body orifices.** Body orifices (ears, nostrils, mouth, anus, and vagina) shall be treated with appropriate topical disinfectants either before or immediately after arterial injection.

(7) **Arterial fluid.** The arterial fluid to be injected shall be one commercially prepared and marketed.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of at least 18 inches (mercury) vacuum.

(B) Concentrated, commercially prepared cavity fluid and contains preservative chemicals shall be injected and evenly distributed through the aspirated cavities.

(C) Should distention and/or purge occur after treatment, aspiration and injection as required above shall be repeated.

(8) **Hypodermic injection.** The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be hypodermically injected with disinfectant fluid for maximum disinfection results.

(9) **Incomplete arterial circulation.** On bodies in which the arterial circulation is incomplete or impaired by advanced decompositions, burns, trauma, autopsy, or any other cause, the embalmer shall be required to hypodermically inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(10) **High risk.** In the event that the procedures in of this Section leave a dead human body in a condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior surface of the body a standard embalming chemical, and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(11) **State Anatomical Board requirements.** Dead human bodies donated to the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(12) **Not authorized.** Nothing in this Section shall be interpreted to require embalming if the next-of-kin does not authorize embalming.

(13) **Supplemental procedures.** Nothing in this Section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to be accepted in the funeral service profession which are not specifically mentioned in this section.

(14) **Disposal within 24 hours.** Unembalmed dead human bodies shall be ~~buried or otherwise~~ legally disposed of within 24 hours after death unless ~~refrigeration facilities are available for storage of the body for a longer period of time.~~ the body is placed in a designated body refrigeration chamber which maintains a constant temperature of 40 degrees fahrenheit or less. The body shall remain in the refrigerated area until such time as legal disposition is to occur. Once removed from refrigeration, either embalming or disposition shall occur within eight hours of said removal. No public viewing of unembalmed bodies shall be permitted 24 hours after death has occurred. Nothing in this section shall prevent a licensed establishment from requiring a viewing for the purpose of identification at such time as the establishment deems appropriate. Nothing in this section shall require a funeral

home to purchase, install, or provide such refrigeration facilities not currently in existence and use.

(15) **Highest level of disinfection.** No funeral service establishment or licensed embalmer shall take into its care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfection and protein stabilization possible.

(16) **Variations.** Reasonable variations may be permitted as long as the objective stated in this Section is accomplished.

(b) The following minimum standards of performance shall be required of each licensed funeral director in the State of Oklahoma. The practice of funeral directing shall be construed to consist of the following functions, which may be performed only by a licensed funeral director.

(1) Selling or offering to sell funeral services on an at-need basis.

(2) Planning or arranging, on an at-need basis, the details of a funeral service with the family or friends of the decedent or any other person responsible for such service; setting the time of the service.

(3) Establishing the type of service to be rendered.

(4) Obtaining vital information for the filing of death certificates and obtaining necessary permits, provided that non-licensed personnel may assist the funeral director in performing such tasks.

(5) Making, negotiating, or completing the financial arrangements for a funeral service on an at-need basis. The requirements of this subsection shall not prohibit any of the following:

- (A) requiring a sales contract to be signed;
- (B) requiring the signing of a promissory note for the balance of funeral services and/or merchandise charges due;
- (C) requiring the signing of a chattel mortgage on real or personal property as security for the unpaid funeral services and/or merchandise charges; or
- (D) making available to the party the services of a financial institution.

(6) Directing, being in charge or apparent charge of, or directly supervising a visitation or viewing. Such function shall not require that a licensed funeral director be physically present throughout the visitation or viewing, provided that the funeral director is readily available by telephone for consultation.

(7) Directing, being in charge or apparent charge of, or directly supervising, any funeral service held in a funeral establishment, cemetery, or elsewhere. The responsibility of the funeral director for the personal supervision of a dead human body shall end at the point when the following shall occur - when the remains or casketed remains is inaccessible to the public, to include but not limited to:

- (A) the lid is placed on the outside enclosure or crypt;
- (B) the casket is covered by earth if no outside enclosure is used; or

(C) the body is released to the next-of-kin or their authorized agent

(8) Directing, being in charge or apparent charge of, or supervising, directly or indirectly, any memorial service contracted for.

(9) Using in connection with one's name or employment the words or terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, picture or combination of any of the above, that when considered in the context in which used would imply that such person is engaged in the practice of funeral directing or that such person is holding himself or herself out to the public as being engaged in the practice of funeral directing; provided, however, that nothing in this paragraph shall prevent using the name of any owner, officer, or corporate director of a funeral establishment, who is not a licensee, in connection with the name of the funeral establishment with which such individual is affiliated, so long as such individual's affiliation is properly specified.

(c) The practice of funeral directing shall not be construed to consist of the following functions:

(1) The phoning in or faxing of obituary notices; ordering of flowers or merchandise; delivery of death certificates to attending physicians; or clerical preparation of death certificates, insurance forms, and any clerical tasks that record the information compiled by the funeral director or that are incidental to any of the functions specified above.

(2) Furnishing standard printed price lists and other disclosure information to the public by telephone or by providing such lists to persons making inquiry.

SUBCHAPTER 13. CONTINUING EDUCATION

235:10-13-10. Continuing education requirements

(a) Beginning July 1, 2006, and each year thereafter, each applicant for renewal of a funeral director or embalmer license in Oklahoma, shall submit the renewal fee and documentation as prescribed by the Board of each continuing education course the licensee attended during the year. Every licensed funeral director, and/or licensed embalmer, shall attend obtain a minimum of six (6) contact hours during each calendar year before their annual license renewal. One (1) contact hour shall be construed as 50 minutes of learning activity. In at least one (1) hour of this continuing education, the Licensee shall be physically present at the location of the Presentation. One (1) hour of the required continuing education shall cover Ethics.

(b) Each continuing education provider and course shall be approved by the: Academy of Professional Funeral Service Practice (the Academy), the funeral licensing Boards of Texas, Kansas, Arkansas, New Mexico, and Missouri, or by the Oklahoma Funeral Board based on criteria similar to those established by the Academy. The Board shall not charge duplicate fees to review provider applications or courses approved by the Academy or the funeral licensing Boards of Texas, Kansas, Arkansas, New Mexico, and Missouri.

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(c) A licensee may not receive credit for repeating the same course during the same calendar year. A maximum of six (6) hours may be carried over and applied to the required hours for the following year.

(d) Individuals issued original or reciprocal licenses shall complete the continuing education requirements in the first full calendar year following the issuance of an original or reciprocal license.

## **SUBCHAPTER 14. CREMATORIES**

### **235:10-14-1. Requirements**

(a) Unembalmed human remains awaiting cremation must be placed in refrigerated storage at 40 degrees Fahrenheit or less. All crematories will have available refrigerated storage facilities with a capacity equal to or greater than their average daily case load. If storage facilities are full, additional remains should not be accepted. Storage facilities should not be in public view.

(b) From receiving through storage, cremation, processing, packaging and release, proper identification must accompany the remains at all times.

(c) Cremators licensed by the Funeral Board shall be used exclusively for the cremation of human remains.

(d) Upon completion of the cremation, and insofar as practicable, all of the recoverable residue of the cremation process shall be removed from the cremation chamber. If possible, the noncombustible materials or items shall be separated from the cremated remains and disposed of, in a lawful manner, by the crematory. The cremated remains shall be reduced by motorized mechanical device to granulated appearance appropriate for final disposition.

(e) The cremated remains with proper identification shall be placed in a temporary container or urn, unless specific written authorization has been received from the authorizing agent which directs otherwise.

(f) If the cremated remains will not fit within the dimensions of a temporary container or urn, the remainder of the cremated remains shall be returned to the authorizing agent or its representative in a separate container attached to the first container or urn identifying such containers as belonging together.

(g) The walls and floor of the cremator work area must be constructed, and of such materials, and finished in a way that they may be cleaned and disinfected.

(h) The cremator area shall not have a passageway for public use.

(i) Records will be maintained that contain the following:

- (1) Name of deceased
- (2) Name and address of Authorized Representative
- (3) Cremation number
- (4) Cremation date
- (5) Processing date
- (6) Funeral home handling cremation
- (7) Disposition of cremated remains

(j) No human remains may be cremated without first obtaining a cremation permit from the proper agency of the state where death occurred.

*[OAR Docket #09-954; filed 5-18-09]*

## **TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 4. RULES OF PRACTICE AND PROCEDURE**

*[OAR Docket #09-1044]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 9. Administrative Proceedings

Part 3. Individual Proceedings

252:4-9-32. Individual proceedings filed by others [AMENDED]

### **AUTHORITY:**

Environmental Quality Board powers and duties, 27A O.S. § 2-2-101; Executive Director powers and duties, 27A O.S. § 2-3-201; Filing and disposition of petitions for declaratory rulings, 75 O.S. §307

### **DATES:**

#### **Comment period:**

January 16, 2009, through February 15, 2009

#### **Public hearing:**

February 27, 2009

#### **Adoption:**

February 27, 2009

#### **Submitted to Governor:**

March 9, 2009

#### **Submitted to House:**

March 9, 2009

#### **Submitted to Senate:**

March 9, 2009

#### **Gubernatorial approval:**

March 24, 2009

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

#### **Final adoption:**

May 1, 2009

#### **Effective:**

July 1, 2009

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

N/A

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

N/A

#### **ANALYSIS:**

The proposed amendments are intended to address a gap in the DEQ's procedural rules pertaining to petitions for declaratory rulings. As currently written, the procedural rules provide that any person negatively impacted by a DEQ order may file a petition for a declaratory ruling. However, the rule does not specify the time frame within which the petition must be filed. The proposed amendment establishes that the petition must be filed with the DEQ within twenty (20) days of receipt of the order.

#### **CONTACT PERSON:**

Please send written comments to Martha Penisten (e-mail: Martha.Penisten@deq.ok.gov) or to the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7184, fax (405) 702-7101.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

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

[OAR Docket #09-1045]

**SUBCHAPTER 9. ADMINISTRATIVE PROCEEDINGS**

**PART 3. INDIVIDUAL PROCEEDINGS**

- 252:4-9-32. Individual proceedings filed by others**
- (a) **Request for administrative hearing in response to Order.** A request for an individual proceeding initiated by the Respondent named in an Order shall be in writing and shall specifically set forth the Respondent's objections to the Order.
  - (b) **Administrative hearing on Tier III permits.** An individual proceeding on a proposed permit for a Tier III application may be requested in accordance with 27A O.S. § 2-14-304(C)(1).
  - (c) **Style.** The style of the case shall be in accordance with the format in Appendix D.
  - (d) **Content.** All requests for individual proceedings must be in writing, contain a brief statement of the basis of the request and the name and address of each requester, and be signed by the requester or an authorized representative.
  - (e) **Declaratory ruling.** Any person who alleges that any DEQ rule or order interferes with or impairs, or threatens to interfere with or impair, his/her legal rights may petition the DEQ, formally requesting a declaratory ruling on the applicability of the rule or order. After the petition is filed, the DEQ shall provide a copy to the Board.
    - (1) **Time.** Any person who requests a declaratory ruling on the applicability of an order must file the petition within twenty (20) working days of receipt of the order.
    - (2) **Form and content of petition.** All petitions shall be in writing and filed with the Administrative Law Clerk. The petition shall include the information and follow the format in Appendix B.
    - (3) **Determination.** Petitions for declaratory rulings shall be decided by the DEQ. Rulings shall state the findings of fact and conclusions of law upon which they are based. If the DEQ refuses to make a ruling or begin an individual proceeding within 30 days, the petition shall be deemed to have been denied. If the DEQ begins an individual proceeding on the petition, it shall offer an opportunity for a hearing to the petitioner. After the DEQ issues a ruling or the Executive Director issues a final order, the DEQ shall provide a copy of the ruling or final order to the Board at its next available meeting.
    - (4) **Mailing.** The DEQ shall mail a copy of the ruling or final order to the petitioner.

[OAR Docket #09-1044; filed 5-22-09]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 9. Excess Emission Reporting Requirements
- 252:100-9-1. Purpose [AMENDED]
- 252:100-9-1.1. Applicability [NEW]
- 252:100-9-2. Definitions [AMENDED]
- 252:100-9-3.1. Excess emission reporting requirements [AMENDED AND RENUMBERED TO 252:100-9-7]
- 252:100-9-3.3. Demonstration of cause [AMENDED AND RENUMBERED TO 252:100-9-8]
- 252:100-9-7. Excess emission reporting requirements [AMENDED AND RENUMBERED FROM 252:100-9-3.1.]
- 252:100-9-8. Affirmative defenses [AMENDED AND RENUMBERED FROM 252:100-9-3.3.]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

October 17, 2007, through January 21, 2009  
February 27, 2009

**Public hearing:**

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July 16, 2008  
October 15, 2008  
January 21, 2009  
February 27, 2009

**Adoption:**

February 27, 2009

**Submitted to Governor:**

March 9, 2009

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March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

**Final adoption:**

May 1, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The Department is proposing to amend OAC 252:100-9, Excess Emission Reporting Requirements, in order to clarify its requirements and to make them more consistent with EPA guidelines. The proposed amendments will establish affirmative defenses that may relieve air contaminant sources of monetary penalties associated with excess emissions from periods of startup, shutdown, or malfunction. The proposed amendments also provide exceptions to the immediate notice requirements for certain low quantity excess emissions that are not likely to pose a significant threat to public health and for emissions that are the result of startup or shutdown activities.

**CONTACT PERSON:**

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.

# Permanent Final Adoptions

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:

## SUBCHAPTER 9. EXCESS EMISSION REPORTING REQUIREMENTS

### 252:100-9-1. Purpose

This subchapter sets forth requirements for the reporting of excess emissions and establishes affirmative defense provisions for facility owners and operators for excess emissions.

### 252:100-9-1.1. Applicability

This subchapter applies to the owners and operators of air contaminant sources that are subject to emission limitations in OAC 252:100, an enforceable permit, an administrative order or a judicial order.

### 252:100-9-2. Definitions

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

**"Bypass"** means intentionally avoiding the use of air pollution control equipment.

**"Excess emissions"** means the emission of regulated air pollutants or opacity in excess of an applicable limitation or requirement as specified in the applicable ~~limiting Subchapter rule(s), enforceable permit, or administrative order of the DEQ or judicial order.~~ This term does not include fugitive VOC emissions covered by an existing leak detection and repair program that is required by a federal or state regulation.

**"Excess emission episode"** means a continuous period of excess emissions occurring from one emission unit.

**"Excess emission event"** means the period of time during which excess emissions occurred, either continuously or intermittently, as a result of the same primary cause. An excess emission event may include one or more excess emission episodes.

**"Malfunction"** means ~~any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.~~

**"Primary cause"** means the fundamental aspect of the cause that can logically be identified. In the event of a series of causes, one leading to another, the fundamental cause is the primary cause.

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Shutdown"** means the cessation of operation of any air pollution control equipment, process or process equipment.

**"Startup"** means the setting into operation of any air pollution control equipment, process or process equipment.

**"Technological limitation"** means operating constraints deliberately and necessarily designed into a piece of pollution control equipment or process equipment to prevent damage to the equipment and/or to prevent hazards to operating or maintenance personnel.

**"Working day"** means 8:00 a.m. to 4:30 p.m. each day except Saturday, Sunday, or a legal holiday for state employees as proclaimed by the Governor.

### 252:100-9-3.1. Excess emission reporting requirements [AMENDED AND RENUMBERED TO 252:100-9-7]

(a) **Immediate notice.** Excess emissions shall be reported to the Division as soon as the owner or operator of the facility has knowledge of such emissions, but no later than 4:30 p.m. the next working day. Notification may be made by fax (1-405-702-4101), telephone (1-877-277-6236), or any other method acceptable to the Division.

(b) **Written report.**

(1) ~~Within ten working days after the immediate notice is given, a written report shall be submitted describing the extent of the excess emissions and response actions taken by the facility. The written report shall include all of the following data:~~

~~(A) The date and time that the excess emissions occurred.~~

~~(B) The duration or expected duration of the excess emissions.~~

~~(C) The processes and equipment involved.~~

~~(D) The amount by which the total emissions exceed the applicable limitation or requirement, expressed in units of the applicable limitation or requirement, including the data and calculations used to compute the magnitude of emissions.~~

~~(E) The cause of the excess emissions, if known, including the reason for the maintenance, startup or shutdown, if applicable.~~

~~(F) The applicable limitation(s) or requirement(s) exceeded.~~

~~(G) The steps taken to correct the cause, if applicable, and mitigate the amount or concentration of the excess emissions.~~

~~(H) Any additional information that may be required by the Division.~~

(2) ~~If the owner or operator of a facility concludes that the startup or shutdown of air pollution control or process equipment results in excess emissions solely as a result of technological limitations, the owner or operator shall notify the Division in writing of such conclusion. The notice shall contain the reasons and data upon which the owner or operator bases the conclusion that such excess emissions occur as a result of technological limitations and shall be submitted with the written report required in (1) of this subsection. Thereafter, the owner or operator may~~

file quarterly excess emission reports in place of the report required in (1) of this subsection. Quarterly reports shall include the information required in (1) of this subsection and shall be submitted within 30 days after the end of each calendar quarter.

(e) **Certification**

(1) Any written report submitted pursuant to (b)(1) or (b)(2) of this Section or 252:100-9-3.3 shall contain certification of truth, accuracy, and completeness. This certification shall be signed by a responsible official or designee and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in this document are true, accurate, and complete."

(2) The report required under (b)(1) of this Section may be submitted without a certification if an appropriate certification is provided within ten working days thereafter, together with any corrected or supplemental information concerning the excess emissions.

**252:100-9-3.3. Demonstration of cause [AMENDED AND RENUMBERED TO 252:100-9-8]**

(a) **Malfunctions.** Excess emissions caused by malfunction are exempt from compliance with air emission limitations established in permits, rules, and orders of the DEQ if the owner or operator complies with the requirements of 252:100-9-3.1 and (e) of this Section and demonstrates that:

(1) The excess emissions were caused by a sudden and not reasonably preventable failure of air pollution control equipment, process equipment or a process to operate in a normal or usual manner.

(2) The excess emissions did not stem from an activity or event that could have been reasonably foreseen and avoided or planned for, and could not have been avoided by better operation and maintenance practices.

(3) To the maximum extent practicable, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions; provided, however, that this provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(4) Repairs were made in an expeditious fashion when the operator knew or should have known that an applicable emission limitation was being exceeded. Off shift labor and overtime were utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable.

(5) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of malfunction; however, this provision shall not be construed to require the use or installation of additional or redundant pollution control equipment not otherwise required.

(6) Reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality.

(7) Emission monitoring systems capable of producing valid data were kept in operation if at all possible.

(8) The owner or operator's actions in response to the malfunction were documented by properly signed, contemporaneous operation logs, or other relevant evidence.

(9) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance of the facility.

(b) **Maintenance, start-up or shutdown.** Excess emissions that result from maintenance, start-up or shutdown are exempt from compliance with air emission limitations established in permits, rules, and orders of the DEQ if the owner or operator complies with the requirements of 252:100-9-3.1 and (e) of this Section and demonstrates that:

(1) The periods of excess emissions were short and infrequent and could not have been prevented through careful planning and design.

(2) The excess emissions were not part of a recurring pattern indicative of inadequate operation or maintenance.

(3) If the excess emissions were caused by a bypass, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(4) The facility was operated in a manner consistent with good practice for minimizing emissions; provided, however, that this provision shall not be construed to require the use or installation of additional or redundant pollution control equipment not otherwise required and that this provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(5) Reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality.

(6) Emissions monitoring systems capable of producing valid data were kept in operation if at all possible.

(7) The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(c) **Demonstration deadlines.** A demonstration must be made within 30 days after the occurrence has ended. Owners and operators who report quarterly under 252:100-9-3.1(b)(2)(relating to technological limitations) may submit their demonstrations with their quarterly reports.

(d) **Burden of proof.** The owner or operator has the burden of proving that the criteria identified in subsection (a) for malfunctions or in subsection (b) for maintenance, start-up or shutdown occurrences are satisfied.

(e) **Exceptions.**

(1) The Division will not exempt sources from complying with any NSPS or NESHAP requirements.

(2) Excess emissions occurring more than 1.5 percent of the time that a process operated in a calendar quarter may be indicative of inadequate design, operation, or maintenance, and the Division may initiate further investigation.

(3) Excess emissions resulting from malfunctions, maintenance, start ups or shutdowns will be subject to the DEQ's power to require corrective action or order any other action necessary under the circumstances, if

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~~the emissions cause or contribute to a condition of air pollution.~~

### **252:100-9-7. Excess emission reporting requirements**

(a) **Immediate notice.** Except as provided in OAC 252:100-9-7(a)(1), the owner or operator of a source of excess emissions shall notify the Director as soon as possible but no later than 4:30 p.m. the following working day of the first occurrence of excess emissions in each excess emission event. Notification may be made by telephone (1-877-277-6236), by email ([excessemissions@deq.ok.gov](mailto:excessemissions@deq.ok.gov)), by web (<http://www.deq.state.ok.us/excessemissions>) or by other method as approved in writing by the Director prior to the excess emission event.

- (1) Immediate notification shall not be required for:
    - (A) excess emission events with a primary cause of startup or shutdown as defined in OAC 252:100-1-3;
    - or
    - (B) excess emissions that do not exceed ten percent (10%) opacity above the applicable opacity limit or standard; or
    - (C) excess emissions that do not exceed ten percent (10%) of the applicable non-opacity emission limit or standard and are less than two hundred (200) pounds of the relevant regulated pollutant during any twenty-four (24) hour period.
  - (2) In any event, no excess emission shall be exempt from the immediate notification requirements of OAC 252:100-9-7(a), if the emission is:
    - (A) in excess of a limit of a hazardous air pollutant as defined in OAC 252:100-7-1.1 or a toxic air contaminant as listed in Appendix O of this Chapter; or
    - (B) in excess of a limit of a criteria pollutant or ozone precursor emitted from a source located in an area designated as nonattainment for the relevant criteria pollutant.
  - (3) Any required immediate notice shall include:
    - (A) the company name,
    - (B) the facility name,
    - (C) the event date,
    - (D) the event start time,
    - (E) the emission unit,
    - (F) the primary cause, if known, and
    - (G) the opacity and/or pollutant(s) emitted.
  - (4) If an immediate notice is submitted and the owner or operator discovers that no excess emission has occurred, the owner or operator shall retract the immediate notice in writing within thirty (30) days of submission of the immediate notice.
- (b) **Excess emission event report.** No later than thirty (30) calendar days after the start of any excess emission event, the owner or operator of an air contaminant source from which excess emissions have occurred shall submit a report for each excess emission event describing the extent of the event and the actions taken by the owner or operator of the facility in response to this event. After receiving a written request prior to the thirty (30) day deadline, the Director may grant an extension. The report shall include:

- (1) The date and start time of each excess emission event.
  - (2) The start time and duration of each excess emission episode in the excess emission event.
  - (3) The common name and the permit established identifier(s) from which the excess emissions occurred.
  - (4) The applicable authorized emission limits, related to the air contaminant sources involved in the event, including:
    - (A) any applicable permit number(s) and condition(s); and/or
    - (B) any applicable rule, administrative order provision, or judicial order provision.
  - (5) The amount by which the total emissions exceeded the applicable limitation or requirement, expressed in units of the applicable limitation or requirement, including the data and calculations used to compute the magnitude of said event. Include the total mass of any quantifiable air contaminants released in excess of the applicable limitation or requirement. Good practice and methods must be used to provide reasonably accurate representations for excess emissions.
  - (6) The primary cause of the event, including the reason for any relevant startup or shutdown.
  - (7) The immediate action taken to address the excess emission event and the corrective action(s) taken to address the primary cause of the excess emission event. If no corrective actions are taken, the report shall include a detailed explanation for that conclusion.
  - (8) The corrective action(s) taken to address a reoccurrence of the excess emission event.
  - (9) Any additional information that may be requested by the Division.
- (c) **Ongoing events.** If an excess emission event is ongoing at the time the excess emission event report required by OAC 252:100-9-7(b) is submitted, the owner or operator shall submit a final excess emission event report within thirty (30) calendar days after the end of the ongoing event. If an excess emission event is ongoing for one or more calendar quarters, the owner or operator shall file updated excess emission event reports within thirty (30) calendar days after the end of each calendar quarter until the event has ended. The updated reports shall be clearly identified as updated reports.
- (d) **Alternative reporting.** Owners or operators of air contaminant sources subject to the excess emission reporting requirements of OAC 252:100-9-7(b) and the reporting requirements of 40 CFR Parts 60, 61 and 63 may submit a written request to the Director for a case-by-case determination allowing alternative reporting. The written request shall include an alternative reporting plan and explain the extent to which the federal reporting requirements duplicate the requirements of this subchapter. A written determination on an alternative reporting request shall be made within ninety (90) days after such request is received by the Director. If no determination is made within the ninety (90) day period, the owner or operator making such request may operate under the proposed alternative reporting plan until the Director issues a determination.

(e) **Certificate of truth, accuracy and completeness required.** Any report filed pursuant to this subchapter shall contain a certification of truth, accuracy and completeness. This certification shall include an original signature by a responsible official or designee and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in this document are true, accurate and complete."

**252:100-9-8. Affirmative defenses**

(a) **General.** All periods of excess emissions regardless of cause are violations of the Act and rules promulgated thereunder, the Oklahoma Clean Air Act and rules promulgated thereunder, and applicable permit or other authorization of the DEQ. An affirmative defense is provided to owners and operators for civil or administrative penalty actions for excess emissions during periods of startup, shutdown and malfunction.

(b) **Affirmative defenses for excess emissions during malfunctions.** To establish the affirmative defense and to be relieved of a civil or administrative penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the requirements of OAC 252:100-9-7 and establish by a preponderance of the evidence:

- (1) The excess emissions were caused by a sudden and not reasonably preventable breakdown of air pollution control equipment or process equipment, or the failure of a process to operate in the normal or usual manner.
- (2) The excess emissions did not stem from any activity or event that could have been planned for or reasonably foreseen and avoided.
- (3) Repairs were made as expeditiously as possible.
- (4) The amount and duration of the excess emissions, including any bypass, were minimized to the extent practicable during periods of such emissions.
- (5) Reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality.
- (6) The reason(s) any monitoring systems were not kept in operation, if applicable.
- (7) The owner or operator's actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence.
- (8) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance.
- (9) To the maximum extent practicable, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions; provided, however, that this provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(c) **Affirmative defenses for excess emissions during startup and shutdown.** To establish the affirmative defense and to be relieved of a civil or administrative penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the requirements of OAC 252:100-9-7 and establish by a preponderance of the evidence:

(1) The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through reasonable planning and design.

(2) The excess emissions were not part of a recurring pattern indicative of inadequate operation or maintenance.

(3) If the excess emissions were caused by a bypass, the bypass was unavoidable to prevent loss of life, personal injury or severe property damage.

(4) The frequency and duration of operation in startup and shutdown periods were minimized to the extent practicable.

(5) Reasonable steps were taken to minimize the impact of excess emissions on ambient air quality.

(6) The reason(s) any monitoring systems were not kept in operation, if applicable.

(7) The owner or operator's actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence.

(8) The facility was operated in a manner consistent with good practice for minimizing emissions; provided, however, that this provision shall not be construed to require the use or installation of additional or redundant pollution control equipment not otherwise required and that this provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions.

(d) **Affirmative defenses prohibited.** The affirmative defense provisions of this section shall not be available for:

(1) Claims for injunctive relief.

(2) SIP limits or permit limits that have been set taking into account potential emissions during startup and shutdown, including, but not limited to, limits that indicate they apply during startup and shutdown, and limits that explicitly indicate they apply at all times or without exception.

(3) Excess emissions that cause an exceedance of the NAAQS or PSD increments.

(4) Failure to meet federally promulgated emission limits, including, but not limited to, 40 CFR Parts 60, 61 and 63.

(5) Violations of requirements that derive from 40 CFR Parts 60, 61 and 63.

(e) **Affirmative defense determination.** In making any determination whether a source established an affirmative defense, the Director shall consider the information within the notification required in OAC 252:100-9-7 and any other information the Director deems necessary and relevant, which may include, but is not limited to, physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment. This section should not be construed as limiting EPA or citizens' authority under the Act.

[OAR Docket #09-1045; filed 5-22-09]

# Permanent Final Adoptions

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

[OAR Docket #09-1046]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 33. Control of Emission of Nitrogen Oxides  
252:100-33-1.1. Definitions [AMENDED]  
252:100-33-1.2. Applicability [AMENDED]  
52:100-33-2. Emission limits [AMENDED]

### AUTHORITY:

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

### DATES:

#### Comment period:

December 17, 2007, through January 17, 2008  
June 16, 2008, through July 16, 2008  
September 15, 2008, through October 15, 2008  
December 21, 2008, through January 21, 2009  
February 27, 2009

#### Public hearing:

January 17, 2008  
July 16, 2008  
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#### Gubernatorial approval:

March 24, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

#### Final adoption:

May 1, 2009

#### Effective:

July 1, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

N/A

#### ANALYSIS:

The Department proposes to amend OAC 252:100-33 to resolve issues regarding emission standards for nitrogen oxides from fuel-burning equipment. The changes clarify what types of fuel are covered by the rule, address emission standards for fuel-burning equipment that uses more than one type of fuel and address equipment with technological limitations. The proposed revision to OAC 252:100-33-1.1 adds a definition for solid fossil fuel. The proposed revision renumbers what was OAC 252:100-33-2 to 252:100-33-2(a) and adds a new paragraph (4) which provides a formula for setting nitrogen oxides (NO<sub>x</sub>) emission limits for equipment that burns a combination of fuel types. The proposed revision also adds a new subsection (b) which sets requirements for fuel-burning equipment that because of technological limitations cannot meet the standards in subsection (a) during startup and/or shutdown. Other changes of a nonsubstantive nature are also proposed.

#### CONTACT PERSON:

Cheryl Bradley, Department of Environmental Quality, Air Quality Division, 707 North Robinson, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, (405) 702-4218.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

## SUBCHAPTER 33. CONTROL OF EMISSION OF NITROGEN OXIDES

### 252:100-33-1.1. Definitions

The following terms, when used in this ~~Subchapter sub-~~chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**New fuel-burning equipment**" means any fuel-burning equipment that was not in being on February 14, 1972, or any existing fuel-burning equipment that was altered, replaced, or rebuilt after February 14, 1972, resulting in ~~an increase~~ increased in nitrogen oxide emissions of nitrogen oxides with the following exceptions.

(A) New fuel-burning equipment for gas turbines means any gas turbine that was not in being on July 1, 1977, or any existing gas turbine that was altered, replaced, or rebuilt after July 1, 1977, resulting in ~~an increase~~ increased in nitrogen oxide emissions of nitrogen oxides; and

(B) New fuel-burning equipment for direct-fired processes means any direct-fired fuel-burning equipment or processes that were not in being on July 1, 1977, or any existing direct-fired fuel-burning equipment or processes that were altered, replaced, or rebuilt after July 1, 1977, resulting in ~~an increase~~ increased in nitrogen oxide emissions of nitrogen oxides.

"**Solid fossil fuel**" means solid fossil fuel such as coal and any solid fuel derived from naturally occurring coal or petroleum.

"**Three-hour average**" means the arithmetic average of sampling results or continuous emission monitoring data from three contiguous one-hour periods.

### 252:100-33-1.2. Applicability

(a) This ~~Subchapter sub-~~chapter applies to new fuel-burning equipment that meets both of the following criteria.

(1) The fuel-burning equipment has a rated heat input of ~~50 million (MM) Btu/hr~~ MMBTU/hr or greater.

(2) The equipment burns solid fossil fuel, gaseous fuel, or liquid fuel, or a combination thereof.

(b) Glass-melting furnaces that are subject to BACT requirements contained in a currently applicable Air Quality Division permit are exempt from the requirements of ~~this Subchapter~~ OAC 252:100-33-2. The NO<sub>x</sub> emissions from this equipment shall not cause or contribute to an exceedance of any NAAQS or PSD increment.

**252:100-33-2. Emission limits**

(a) Fuel-burning equipment subject to this subchapter shall meet the following emission limitations except as provided in OAC 252:100-33-1.2(b) and 252:100-33-2(b).

(a1) Gas-fired fuel-burning equipment. ~~Nitrogen oxide emissions~~ Emissions of nitrogen oxides (calculated as nitrogen dioxide) from any new gas-fired fuel-burning equipment shall not exceed ~~0.20 lb/MMBtu~~ 0.20 lb/MMBTU (86 ng/J) heat input, three-hour average.

(b2) Liquid-fired fuel-burning equipment. ~~Nitrogen oxide emissions~~ Emissions of nitrogen oxides (calculated as nitrogen dioxide) from any new liquid-fired fuel-burning equipment shall not exceed ~~0.30 lb/MMBtu~~ 0.30 lb/MMBTU (129 ng/J) heat input, three-hour average.

(c3) Solid fossil fuel-burning equipment. ~~Nitrogen oxide emissions~~ Emissions of nitrogen oxides (calculated as nitrogen dioxide) from any new solid fossil fuel-burning equipment shall not exceed ~~0.70 lb/MMBtu~~ 0.70 lb/MMBTU (300 ng/J) heat input, three-hour average.

(4) Combination of fuels burned. When different types of fuels are burned simultaneously in any combination, the NO<sub>x</sub> standard (calculated as nitrogen dioxide in lb/MMBTU heat input, three-hour average) for the fuel-burning equipment shall be determined by proration unless a secondary fuel is used in de minimis quantities (less than 5% of total BTU input annually). Compliance shall be determined using the following formula where X is the percent of total heat input derived from gaseous fuel, Y is the percent of total heat input derived from liquid fuel, and Z is the percent of total heat input derived from solid fuel: NO<sub>2</sub> limit = 0.2X + 0.3Y + 0.7Z / (X + Y + Z).

(b) If fuel-burning equipment, due to technological limitations, cannot meet the requirements of OAC 252:100-33-2(a) during startup and/or shutdown, the fuel-burning equipment shall comply with BACT for startup and/or shutdown as contained in a currently applicable Air Quality Division permit. The NO<sub>x</sub> emissions during startup and/or shutdown of this equipment shall not cause or contribute to an exceedance of any NAAQS or PSD increment. Approval of technological limitations by the Director in an Air Quality Division permit does not mean automatic approval by the EPA.

[OAR Docket #09-1046; filed 5-22-09]

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

[OAR Docket #09-1047]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. Introduction  
252:606-1-2. Definitions [AMENDED]  
252:606-1-4. Date of federal regulations incorporated [AMENDED]  
Subchapter 7. Biosolids Permit Requirements [REVOKED]

252:606-7-1. Permit required [REVOKED]  
252:606-7-2. Permit applications [REVOKED]  
252:606-7-3. Certification required [REVOKED]  
252:606-7-4. Sludge (biosolids) management plan [REVOKED]  
252:606-7-5. Permit modifications [REVOKED]  
252:606-7-6. Restrictions applicable to all land application [REVOKED]  
252:606-7-7. Laboratory analyses [REVOKED]  
252:606-7-8. Compliance required [REVOKED]  
252:606-7-9. Monitoring wells [REVOKED]  
Subchapter 8. Biosolids Requirements [NEW]  
252:606-8-1. Permits and prohibitions [NEW]  
252:606-8-2. Permit applications [NEW]  
252:606-8-3. Sludge (biosolids) management plan [NEW]  
252:606-8-4. Class A biosolid production [NEW]  
252:606-8-5. Class B biosolid production [NEW]  
252:606-8-6. Land application of biosolids [NEW]  
Subchapter 9. Land Application of Biosolids [REVOKED]  
252:606-9-1. Prohibitions [REVOKED]  
252:606-9-2. Land application exceptions and alternatives [REVOKED]  
252:606-9-3. Site use for land application [REVOKED]  
252:606-9-4. pH and nutrient limits [REVOKED]  
252:606-9-5. Soil sampling [REVOKED]

**AUTHORITY:**

Environmental Quality Board powers and duties, 27A O.S., §2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., §2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

**DATES:**

**Comment period:**

December 1, 2008, through January 13, 2009

**Public hearing:**

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March 9, 2009

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March 9, 2009

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March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

**Final adoption:**

May 1, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

40 CFR Part 116 (Hazardous Substances List)  
40 CFR Part 117 (Reportable Quantities for Hazardous Substances)  
The following from 40 CFR PART 122 (NPDES PERMIT REGULATIONS):

- 122.1 (b) - (scope of NPDES permit requirements)
- 122.2 - (definitions)
- 122.3 - (exclusions)
- 122.4 - (prohibitions)
- 122.5 - (effect of permit)
- 122.6 - (continuation of expiring permits)
- 122.7 (b) and (c) - (confidential information)
- 122.21 - (application for a permit)
- 122.22 - (signatories)
- 122.24 - (concentrated aquatic animal production facilities)
- 122.25 - (aquaculture projects)
- 122.26 - (stormwater discharges)
- 122.27 - (silviculture)
- 122.28 (a) and (b) - (general permits)
- 122.29 - (new sources and new dischargers)
- 122.30 - What are the objectives of the storm water regulations for small MS4s?
- 122.31 - As a tribe, what is my role under the NPDES storm water program?

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122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

122.33 - If I am an operator of a regulated small MS4, how do I apply for an NPDES permit and when do I have to apply?

122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

122.36 - As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?

122.41 - (permit conditions)

122.42 - (conditions for specified categories of permits)

122.43 - (establishing permit conditions)

122.44 - (establishing permit limitations, standards and other conditions)

122.45 - (calculating permit conditions)

122.46 - (permit duration)

122.47 (a) - (schedules of compliance)

122.48 - (monitoring requirements)

122.50 - (disposal into wells)

122.61 - (permit transfer)

122.62 - (permit modification)

122.63 - (minor modifications of permits)

122.64 - (permit termination)

122 - Appendices A through I

The following from 40 CFR PART 124 (Procedures for Decision making):

124.1 - (introduction)

124.2 - (definitions)

124.3 (a), (c), and (d) - (application for a permit)

124.5 (a),(c),(d) and (f) - (modification of permits)

124.6 (a),(c),(d) and (e) - (draft permit)

124.7 - (statement of basis of conditions where no fact sheet is adopted)

124.8 - (fact sheet)

124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) - (public notice)

124.11 - (public comments and requests for hearings)

124.12 (a) and (c) - (public hearings)

124.13 - (obligation of protestors, etc., to raise all issues)

124.14 - (reopening)

124.15 - (issuance & effective dates of permits)

124.17 (a) and (c) - (response to comments)

124.51 (a) and (b) - (specific permitting procedures-purpose and scope)

124.52 - (permits required on a case-by-case basis)

124.56 - (fact sheets)

124.57 (a) - (public notice)

124.59 - (comments from government agencies)

124.62 - (decision on variances)

124.66 - (thermal variance procedures)

The following from 40 CFR PART 125 (criteria and standards for NPDES):

Subpart A (technology-based treatment),

Subpart B (criteria for aquaculture projects),

Subpart D (fundamentally different factors),

Subpart H (alternative effluent limitations),

Subpart I (new cooling water intakes), and

Subpart J (existing cooling water intakes).

40 CFR Part 129 (Toxic Pollutant Effluent Standards)

40 CFR Part 136 (testing and laboratory)

40 CFR § 401-471 (Effluent Guidelines and Standards)

40 CFR § 110.6 (notice of oil discharge) and

40 CFR Part 302 (Reportable Quantities and Notification).

The following provisions of 40 CFR that are applicable to biosolids are hereby incorporated by reference, subject to any modifications and additional requirements specified in this Chapter:

The following Sections from Part 503, Subpart A (General Provisions):

503.1 (Purpose and applicability)

503.2 (Compliance period)

503.3 (Permits and direct enforceability)

503.4 (Relationship to other regulations)

503.5 (Additional or more stringent requirements)

503.6(a)-(e),(g)-(j) (Exclusions)

503.7 (Requirement for a person who prepares biosolids)

503.8 (Sampling and analysis)

503.9 (General definitions)

The following Sections from Part 503, Subpart B (Land Application):

503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)

503.11 (Special definitions)

503.12 (General requirements)

503.13 (Pollutant limits)

503.14 (Management practices)

503.15 (Operational standards - pathogens and vector attraction reduction)

503.16(a) (Frequency of monitoring)

503.17(a) (Recordkeeping)

503.18 (Reporting)

The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):

503.30 (Scope)

503.31 (Special definitions)

503.32(a), (b) (Pathogens)

503.33(a), (b)(1)-(11) (Vector attraction reduction)

The following Sections from Part 503 Subpart E (Incineration)

503.40 (Applicability)

503.41 (Special definitions)

503.42 (General requirements)

503.43 (Pollutant (Metal) limits)

503.44 (Operational standard - total hydrocarbons)

503.45 (Management practices)

503.46 (Frequency of monitoring)

503.47 (Recordkeeping)

503.48 (Reporting)

The following Appendices from Part 503:

Appendix A (Procedure to determine the annual whole biosolids application rate for a biosolids)

Appendix B (Pathogen treatment processes)

**Incorporating rules:**

OAC 252:606-1-4

**Availability:**

The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

**ANALYSIS:**

The Department proposes to combine its two subchapters concerning biosolids into one subchapter. The rules modifications will create rules to govern facilities that wish to create Class A Biosolids pursuant to federal requirements. Additionally, the Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2007, to July 1, 2008.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.ok.gov) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, OK 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:**

## SUBCHAPTER 1. INTRODUCTION

### 252:606-1-2. Definitions

In addition to terms defined in Title 27A of the Oklahoma Statutes, the following words or terms, when used in this Chapter, have the following meaning unless the context clearly indicates otherwise:

**"Approved laboratory"** means a laboratory accepted by the DEQ laboratory accreditation program.

**"Beneficial use"** means the use of biosolids or wastewater through land application for the purpose of soil conditioning,

or crop or vegetative fertilization, or erosion control, or the use of wastewater for dust suppression where fugitive dust control would otherwise be an air quality problem, in a manner which does not pollute or tend to pollute the waters of the State of Oklahoma, environment or pose a risk to human health.

**"Best professional judgment"** or **"BPJ"** means the technical opinion developed by a permit drafter after consideration of all reasonably available and pertinent data or information which forms the basis for the terms and conditions of a discharge permit, and the use of sound engineering analysis of the industry, the nature and quantity of potential pollutants which may be produced and of the proposed treatment plant.

**"Biosolids"** means primarily organically treated wastewater materials from municipal wastewater treatment plants that are suitable for recycling as a ~~soil amendment~~ amendments. This term is within the meaning of "sludge" referenced in 27A O.S. § 2-6-101(11). Biosolids are divided into the following classes:

(A) Class A Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32 (a);

(B) Class B Biosolids meets the pathogen reduction requirements of 40 CFR § 503.32 (b).

**"Bypass"** means the intentional or unintentional diversion of waste streams from any portion of a treatment, disposal or collection facility.

**"Control tests"** means chemical, physical or bacteriological tests, including visual observations made by or under the supervision of an operator to control plant performance, determine the quality of plant effluent and determine stream conditions.

"CFR" means the Code of Federal Regulations.

**"DEQ"** means the Oklahoma Department of Environmental Quality.

**"Discharge point"** means the point at which pollutants, wastewater or stormwater enters waters of the state or become waters of the state.

"EPA" means the United States Environmental Protection Agency.

**"Generator"** or **"operator"** means authorized person under whose ownership or management authority, biosolids are used or disposed.

**"Impoundment"** or **"Surface impoundment"** have the same meaning used in OAC 252:616-1-2.

**"Laboratory checks"** means chemical, physical or bacteriological tests, including visual observations made on samples submitted by the operator or other authorized representatives to confirm the quality of the samples or to standardize plant control tests and procedures.

**"Land application"** means the application of biosolids onto a land surface; injection below land surface; or spreading biosolids onto land surface followed by incorporation into the soil. Land application does not include the disposal of biosolids in a municipal solid waste landfill permitted by the DEQ, or the use of Class A biosolids whose production is permitted by the DEQ.

**"Listed metal"** means those metals listed in Tables I, II, and III of 40 CFR, Part 503.13.

**"Loading rate"** means the amount (concentration or mass) of constituents or parameters applied to a unit area per application.

"NRCS" means Natural Resources Conservation Service.

"OAC" means Oklahoma Administrative Code.

"OS" means Oklahoma Statutes.

**"Oklahoma Water Quality Standards"** means the Oklahoma Water Resources Board rules (OAC 785:45) which classify waters of the state, designate beneficial uses for which the various waters of the state must be maintained and protected, and prescribe the water quality required to sustain designated uses.

**"Operating records and reports"** means the daily record of data connected with the operation of the system compiled in a monthly report on forms approved by the DEQ.

**"Prior converted cropland"** means those croplands as defined or used in the Federal Swampbuster Provisions located at Title 16, United States Code- USC, §§ 3821 through 3823.

"USC" means United States Code.

"USGS" means United States Geological Survey.

**252:606-1-4. Date of federal regulations incorporated**

When reference is made to 40 CFR it means, unless otherwise specified, the volume of 40 CFR as published on July 1, ~~2007~~ 2008.

**SUBCHAPTER 7. BIOSOLIDS PERMIT REQUIREMENTS [REVOKED]**

**252:606-7-1. Permit required [REVOKED]**

~~Any person who intends to land apply biosolids or incinerate biosolids must obtain a permit.~~

**252:606-7-2. Permit applications [REVOKED]**

~~All permit applications must be typed or computer printed and include:~~

- ~~(1) the name, address, and telephone number of the applicant or the applicant's authorized representative;~~
- ~~(2) name, mailing address, and telephone number of the generator or operator and the land applier, if different, and contact person from each source;~~
- ~~(3) a brief description of the biosolids including a list of the major commercial or industrial facilities that discharge to the municipal treatment system;~~
- ~~(4) a description of disposal practices and locations of any sites for transfer of the biosolids for treatment, land application, and/or disposal;~~
- ~~(5) laboratory test results of a representative soil sample from each proposed site in the permit application. The composite soil samples must be tested, and background levels set, for the metals listed in Tables 1 and 3 of 40 CFR § 503.13(b), pH, and the nutrients—nitrogen (N), ammonia (NH<sub>4</sub>), nitrates (NO<sub>3</sub>), potassium (K) and phosphorus (P).~~
- ~~(6) a list of environmental state or federal permits held by the applicant.~~

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## 252:606-7-3. Certification required [REVOKED]

When required by the DEQ, the operator must certify that the land application system has been designed according to OAC 252:656 and will be operated according to this Chapter.

## 252:606-7-4. Sludge (biosolids) management plan [REVOKED]

A sludge management plan must be submitted with the permit application and include the following:

- (1) a copy of the permit application;
- (2) a breakdown of the anticipated types and volumes of biosolids generated;
- (3) daily generation and annual production of semi-solids, solids as total volume and percent solids converted to dry tons;
- (4) laboratory analysis including TCLP reports showing whether the biosolids are hazardous and the chemical and physical properties of biosolids to be land applied including concentrations of metals (listed and other), and any other pollutants;
- (5) the amount of biosolids from each source expected to be used or disposed during each year of operation;
- (6) a description of treatment methods including pathogen treatment and vector attraction reduction, including plant operational controls and recordkeeping forms that document biosolids treatment;
- (7) identification of specific sites and identifying name for each;
- (8) documentation of the applicant's right to use the site, including time restrictions, if any;
- (9) land use descriptions of adjacent property;
- (10) finding descriptions, legal descriptions, and latitude and longitude of each site;
- (11) distance to nearest residence;
- (12) topography of the site;
- (13) soil types, permeability, infiltration and drainage patterns;
- (14) proposed methods of field types, tillage, crop types and patterns, crop utilization, expected yield and final use of crop;
- (15) irrigation practices, if any;
- (16) depth to groundwater, including highest seasonal groundwater level, and any other data available;
- (17) records of previous land application conducted at the site, including data on the cumulative metal loading;
- (18) results of any sampling, analyses or monitoring previously performed by the applicant at the site, including metal and nutrient assessment, based on an annual and lifetime use;
- (19) access controls;
- (20) narrative description of buffer zones and other methods to be used to control surface drainage, stormwater runoff, and erosion at each site;
- (21) information on how biosolids will be transported from the point of generation to the land application or disposal including transfer and storage information and a map showing the location of sources of the biosolids, proposed

transportation routes, and the location of related containment, storage, and transfer facilities;

- (22) equipment to be used;
- (23) narrative description of proposed land application method and related details including depth and frequency of incorporation or injection;
- (24) estimated application rate, frequencies, rest periods between applications, and estimated life of the site. Include calculations on which estimates are based for cumulative metal loading rates;
- (25) emergency response plan describing the actions to be taken by the applicant including notice for corrective action and remediation associated with spills and releases;
- (26) NRCS soil map of each specific site which shows soil classification, suitability, and soil profiles to a depth of sixty (60) inches;
- (27) highway map which shows the location of each specific site to communities, cities, towns schools, highway access roads and airports;
- (28) quadrangle topographic map or maps that is an original U.S.G.S. 7.5 minutes series (or 15 minute series if the 7.5 series has not yet been printed) with the following clearly marked:
  - (A) boundary of the site;
  - (B) public water supply sources and treatment facilities;
  - (C) pipelines and utility easements;
  - (D) oil or gas wells or drilling sites;
  - (E) wellhead delineation areas;
  - (F) groundwater flow direction;
  - (G) waters of the state with special emphasis for "scenic rivers";
  - (H) parks, recreation areas and any government owned land dedicated for special purposes (for example, wildlife refuges)
  - (I) identification of the 100 year flood plain or floodway if it affects the proposed site;
  - (J) any area inhabited by an endangered or threatened wildlife or plant species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(e); and
  - (K) any additional information determined necessary by the DEQ.

## 252:606-7-5. Permit modifications [REVOKED]

For all changes in permitted sites, methods of land application and treatment, the generator or operator must obtain a permit modification as required by 27A O.S. § 2-6-501(B).

## 252:606-7-6. Restrictions applicable to all land application [REVOKED]

- (a) **Storage time.** Except facilities permitted by the DEQ (excluding transfer stations), biosolids cannot be stored for greater than six (6) months without prior written approval from the DEQ and in no case longer than one (1) year.
- (b) **Weather.** Do not land apply when the ground is frozen or saturated.

~~(e) **Endangered or threatened species.** Land application cannot occur if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(e), or the critical habitat of such species.~~

~~(d) **Topography.** A land application site must have minimal slope or be contoured to prevent ponding and soil erosion. No application can occur on land having a slope exceeding five percent (5%) but less than ten percent (10%) unless erosion or runoff controls are implemented for liquid biosolids. Land having a slope greater than ten percent (10%) may be utilized for land application of dewatered and dried biosolids only with DEQ approval.~~

~~(e) **Off-site hauling.** A generator or operator must prevent biosolids and mud from a land application site from being carried off site. If necessary, biosolids hauling vehicles must be cleaned prior to leaving the site and the rinse water disposed of in accordance with DEQ rules.~~

~~(f) **Manner.** Land apply sludge in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day. Do not store or land apply, or allow to runoff, sludge or wastewater to wetlands or waters of the state. Discharges to waters of the state are prohibited without a discharge permit under OAC 252:606.~~

**252:606-7-7. Laboratory analyses [REVOKED]**

~~All laboratory analyses required by this Chapter must be performed by laboratories certified by the DEQ.~~

**252:606-7-8. Compliance required [REVOKED]**

~~All permittees must operate the land application site pursuant to the terms of the DEQ issued permit.~~

**252:606-7-9. Monitoring wells [REVOKED]**

~~The DEQ may require monitor wells and boreholes in connection with the land application of biosolids. These wells must be designed, constructed and plugged in accordance with OAC 785:35.~~

**SUBCHAPTER 8. BIOSOLIDS REQUIREMENTS**

**252:606-8-1. Permits and prohibitions**

(a) Any person or entity that intends to produce a Class A or a Class B biosolid must obtain a permit and an approved sludge management plan from the DEQ.

(b) For all changes in permitted uses, sites, methods of land application, treatment and sludge management plans the generator or operator must obtain a permit modification as required by 27A O.S. § 2-6-501(B).

(c) Surface disposal under Part 503, Subpart C of 40 CFR, is specifically prohibited. This prohibition does not apply to disposal of biosolids in a municipal solid waste landfill that is permitted by the DEQ.

**252:606-8-2. Permit applications**

A permit application to produce Class A or Class B biosolids must be typed or computer printed and include:

- (1) the name, address, and telephone number of the applicant or the applicant's authorized representative;
- (2) the name, mailing address, and telephone number of the generator or operator and the land applier, if different, and contact person from each source;
- (3) a brief description of the biosolids including a list of the major commercial or industrial facilities that discharge to the municipal treatment system;
- (4) a description of the use or disposal practices and locations of any sites for transfer of the biosolids for treatment, use, land application, and/or disposal;
- (5) laboratory test results of a representative soil sample from each proposed site in the permit application. The composite soil samples must be tested, and background levels set, for the metals listed in Tables 1 and 3 of 40 CFR § 503.13(b), pH, and the nutrients - nitrogen (N), ammonia (NH<sub>4</sub>), nitrates (NO<sub>3</sub>), potassium (K) and phosphorus (P); and
- (6) a list of environmental state or federal permits held by the applicant.

**252:606-8-3. Sludge (biosolids) management plan**

(a) All sludge management plans must be submitted with the permit application and include the following:

- (1) a breakdown of the anticipated types and volumes of biosolids generated;
- (2) daily generation and annual production of semi-solids, solids as total volume and percent solids converted to dry tons;
- (3) laboratory analysis including TCLP reports showing whether the biosolids are hazardous and the chemical and physical properties of biosolids to be land applied including concentrations of metals (listed and other), and any other pollutants;
- (4) the amount of biosolids from each source expected to be used or disposed during each year of operation;
- (5) a description of treatment methods including pathogen treatment and vector attraction reduction, including plant operational controls and recordkeeping forms that document biosolids treatment;
- (6) irrigation practices, if any; and
- (7) a demonstration that the biosolids shall not be stored for greater than six (6) months without prior written approval from the DEQ, and in no case longer than one (1) year, prior to use, land application or disposal.

(b) In addition to the requirements listed in subsection (a) above, Class A sludge management plans must be submitted with the following additional information:

- (1) the proposed schedule for the laboratory analysis to determine the presence or absence of fecal coliform or salmonella;
- (2) the amount of Class A biosolids expected to be generated and produced each year;
- (3) proposed application process for the Class A biosolids;

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- (4) a list of proposed uses for the Class A biosolids;
  - (5) whether the Class A biosolids will be made available to the general public;
  - (6) a fact sheet describing the proper uses and agronomic rates of the Class A biosolids that shall be distributed when the general public is receiving the Class A biosolids; such fact sheets shall not be required when the generator itself uses the Class A biosolids; and
  - (7) description of the storage of the Class A biosolids until used or distributed.
- (c) In addition to the requirements listed in subsection (a) above, Class B sludge management plans must be submitted with the following additional information:
- (1) information on how biosolids will be transported from the point of generation to the use, land application or disposal site, including transfer and storage information and a map showing the location of sources of the biosolids, proposed transportation routes, and the location of related containment, storage, and transfer facilities;
  - (2) the amount of biosolids from each source expected to be used or disposed during each year of operation;
  - (3) identification of specific sites and identifying name for each;
  - (4) documentation of the applicant's right to use the site, including time restrictions, if any;
  - (5) land use descriptions of adjacent property;
  - (6) finding description(s), legal description(s), and latitude and longitude of each site;
  - (7) distance to nearest residence;
  - (8) topography of the site;
  - (9) soil types, permeability, infiltration and drainage patterns;
  - (10) proposed methods of field types, tillage, crop types and patterns, crop utilization, expected yield and final use of crop;
  - (11) depth to groundwater, including highest seasonal groundwater level, and any other data available;
  - (12) records of previous land application conducted at the site, including data on the cumulative metal loading;
  - (13) results of any sampling, analyses or monitoring previously performed by the applicant at the site, including metal and nutrient assessment, based on an annual and lifetime use;
  - (14) access controls;
  - (15) narrative description of buffer zones and other methods to be used to control surface drainage, stormwater runoff, and erosion at each site;
  - (16) documentation demonstrating how the biosolids will be incorporated into the soil before the end of each working day;
  - (17) documentation that the biosolids will not be land applied within two (2) feet of the highest seasonal water table nor applied to the land within one hundred (100) feet of a stream or body of water;
  - (18) documentation that the biosolids will not be land applied within two hundred fifty (250) feet of a public or private water supply;
  - (19) equipment to be used;
  - (20) narrative description of proposed land application method and related details including depth and frequency of incorporation or injection;
  - (21) estimated application rate, frequencies, rest periods between applications, and estimated life of the site. Include calculations on which estimates are based for cumulative metal loading rates;
  - (22) emergency response plan describing the actions to be taken by the applicant, including notice for corrective action and remediation associated with spills and releases;
  - (23) NRCS soil map of each specific site which shows soil classification, suitability, and soil profiles to a depth of sixty (60) inches;
  - (24) highway map which shows the location of each specific site as relative to communities, cities, towns, schools, highway access roads and airports;
  - (25) quadrangle topographic map or maps that is an original U.S.G.S. 7.5 minute series (or 15 minute series if the 7.5 series has not yet been printed) with the following clearly marked:
    - (A) boundary of the site;
    - (B) public water supply sources and treatment facilities;
    - (C) pipelines and utility easements;
    - (D) oil or gas wells or drilling sites;
    - (E) wellhead delineation areas;
    - (F) groundwater flow direction;
    - (G) waters of the state with special emphasis for "scenic rivers";
    - (H) parks, recreation areas and any government owned land dedicated for special purposes (for example, wildlife refuges);
    - (I) identification of the 100-year flood plain or floodway if it affects the proposed site;
    - (J) any area inhabited by an endangered or threatened wildlife or plant species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c); and
    - (K) any additional information determined necessary by the DEQ.

### **252:606-8-4. Class A biosolid production**

(a) The construction of facilities to produce a Class A biosolid shall be permitted by the DEQ and meet the requirements located in OAC 252:656-19.

#### **(b) Compost.**

- (1) Composted Class A biosolids are produced by:
  - (A) combining the biosolids produced at a wastewater treatment plant with wood chips or other source of carbon approved by the DEQ;
  - (B) the materials being heated, through the controlled biological decomposition of organic material that has been sanitized through the generation of heat and processed to further reduce pathogens in accordance with the requirements contained in 40 CFR, Part 503, and stabilized to the point that the material is beneficial to plant growth through:

- (i) the within-vessel composting method or the static aerated pile composting method where the temperature of the sewage sludge is maintained at 55E Celsius (131E Fahrenheit) or higher for three (3) or more consecutive days; or
- (ii) the windrow composting method wherein the temperature of the sewage sludge is maintained at 55E Celsius (131E Fahrenheit) or higher for fifteen (15) or more days. During the period when the compost is maintained at 55E Celsius (131E Fahrenheit) or higher for fifteen (15) or more days, there shall be a minimum of five (5) turnings of the windrow;
- (C) the combined material being removed to a second location to complete the curing process; and
- (D) being processed or tested to demonstrate that the material meets the pathogen reduction requirements of 40 CFR§ 503.32 (a) and the vector attraction reduction requirements of 40 CFR§ 503.33 prior to use.
- (2) Upon completion of the process, the compost may be used as described in the sludge management plan.
- (c) **Other Class A biosolid production methods.**
  - (1) For all other Class A production methods, the following requirements must be met:
    - (A) The applicant shall submit to the DEQ a plan for the production of the Class A biosolids, which must receive approval from the DEQ;
    - (B) The applicant shall perform a pilot study on the DEQ approved process for at least one (1) year to determine that the process meets the requirements of 40 CFR§ 503.32 (a) and 40 CFR§ 503.33;
    - (C) The Class A biosolid production method shall include a process for the biosolids to be dewatered, unless a waiver of the dewatering requirement is granted by the DEQ;
    - (D) The process shall be approved by EPA; and
    - (E) The applicant shall receive a final approval from the DEQ before distributing the Class A biosolid.
  - (2) Upon completion of the requirements at OAC 252:606-8-4(c)(1), the Class A biosolid may be used as described in the sludge management plan.

**252:606-8-5. Class B biosolid production**

- (a) The construction of facilities to produce Class B biosolids shall be permitted by the DEQ and meet the requirements located in OAC 252:656.
- (b) Prior to use, the Class B biosolids shall be processed and/or tested and must meet the pathogen reduction requirements of 40 CFR § 503.32 (b) and vector attraction reduction requirements of 40 CFR § 503.33.
- (c) Class B biosolids may be disposed in a landfill permitted by the DEQ or may be land applied pursuant to the requirements of state law and the requirements of this subchapter, in accordance with the DEQ approved sludge management plan.

**252:606-8-6. Land application of biosolids**

- (a) **Compliance.** All permittees shall operate a land application site pursuant to the terms of the DEQ issued permit and DEQ approved sludge management plan.
- (b) **Requirements.**
  - (1) **Certification.** When required by the DEQ, the owner, generator or operator must certify that the land application system will be operated according to this Chapter.
  - (2) **One applier.** A land application site shall be used by only one land applier at a time unless the DEQ approves other users.
  - (3) **Subsequent use for land application.** The DEQ may approve a previously used land application site for subsequent land application.
  - (4) **Multiple sources.** A land applier who owns or operates more than one source facility or surface impoundment may utilize the same land application site for the application of biosolids from the multiple facilities or impoundments with prior written approval of the DEQ.
  - (5) **Topography.** A land application site must have minimal slope or be contoured to prevent ponding and soil erosion. No application can occur on land having a slope exceeding five percent (5%) but less than ten percent (10%) unless erosion or runoff controls are implemented for liquid biosolids. Land having a slope greater than ten percent (10%) may be utilized for land application of dewatered and dried biosolids only with DEQ approval.
  - (6) **Off-site hauling.** The owner, generator or operator must prevent biosolids and mud from a land application site from being carried off-site. If necessary, biosolids hauling vehicles must be cleaned prior to leaving the site and the rinse water disposed of in accordance with DEQ rules.
  - (7) **Manner.** Land apply sludge in a manner to prevent surface runoff and to control objectionable odors. Incorporate sludge into the soil before the end of each working day. Do not store or land apply, or allow to run off, sludge or wastewater to wetlands or waters of the state. Discharges to waters of the state are prohibited without a discharge permit under OAC 252:606.
  - (8) **pH limits.** Any site with soil having a natural pH of less than 5.5 cannot be used for the land application of biosolids unless the soil pH is amended prior to application of biosolids. Documentation of soil amendment must be placed in the land applier's compliance records.
  - (9) **Phosphorus and nitrogen.** Annual biosolids land application rate cannot exceed nitrogen and phosphorus rates for the crop grown and cannot be applied in rates that result in phytotoxicity.
  - (10) **Soil sampling.**
    - (A) **Sample and analysis.** All background and annual soil sampling and analyses must be of a composite sample taken from an area 80 acres or less in size for each site proposed or used for the land application of biosolids. The DEQ may approve larger sampling areas on a case by case basis. Soil testing procedures applicable for use in the local area in accordance with

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Oklahoma State University soil testing guidance or the local NRCS may be used.

**(B) Operational soil monitoring.** A land applier must collect representative soil samples and have them analyzed as follows:

(i) For soil pH and the nutrients - nitrogen (N), ammonia (NH<sub>4</sub>), nitrates (NO<sub>3</sub>), potassium (K) and phosphorus (P) prior to the next annual application of biosolids;

(ii) For metals in Table 3 of 40 CFR § 503.13(b) after every third year of use prior to the fourth year of use; and

(iii) For all required background metals prior to the fourth year of biosolids application on each site.

**(11) Laboratory analyses.** All laboratory analyses required by this Chapter must be performed by an approved laboratory.

**(12) Monitoring wells.** The DEQ may require monitor wells and boreholes in connection with the land application of biosolids. These wells must be designed, constructed and plugged in accordance with OAC 785:35.

**(c) Restrictions.**

**(1) Weather.** Do not land apply when the ground is frozen or saturated.

**(2) Endangered or threatened species.** Land application cannot occur if it is likely to adversely affect a threatened or endangered species listed under Section 4 of the federal Endangered Species Act, 16 U.S.C. 1533(c), or the critical habitat of such species.

**(3) Metal and selenium concentration limits.** A land applier must notify the DEQ by telephone within 24 hours and follow up with a written report if the metal or selenium concentrations exceed those in 40 CFR § 503.13(b)(3) (Table 3) or risk the revocation of the land application permit. Municipal biosolids that exceed the metal or selenium concentration limits set forth in 40 CFR, § 503.13(b)(1) (Table 1) cannot be land applied, but may be:

(A) incinerated at an incinerator permitted by the DEQ; or

(B) disposed at a solid waste landfill permitted by the DEQ for such waste disposal. Any biosolids disposed in a landfill must meet the pathogen and vector reduction requirements of this Subchapter.

**(4) Heavy Metals.** The DEQ shall not approve the land application of biosolids that contains heavy metals above the concentration ranges normal to biosolids or sludges with a demonstrated effectiveness on Oklahoma soils, unless the permittee provides a study on the effects of the biosolids on a variety of Oklahoma soils and crops found at the location of the proposed land application site. Said study shall:

(A) be conducted by a qualified research institute familiar with crops and soils in Oklahoma and approved by the DEQ;

(B) be included with the sludge management plan; and

(C) demonstrate the effect of the sludge during four (4) growing seasons.

**(5) Biosolids generated outside the State of Oklahoma.** For municipal biosolids, whether Class A or Class B generated outside the State of Oklahoma, the biosolids produced shall meet all federal and state statutory requirements and the DEQ shall receive and approve test results demonstrating the quality of the biosolids, including samples of each load of biosolids performed by an independent laboratory approved by the DEQ and an agreement that the DEQ may perform random quality assurance sampling at the site of the generation of the biosolids prior to any biosolids coming into the State of Oklahoma.

**(6) Karst soils.** The use of land application sites that overlie areas subject to karstification (i.e. sink holes or underground streams generally occurring in areas underlain by limestone, gypsum or dolomite), is prohibited, unless approved by the DEQ.

## SUBCHAPTER 9. LAND APPLICATION OF BIOSOLIDS [REVOKED]

### 252:606-9-1. Prohibitions [REVOKED]

~~Surface disposal under Part 503, Subpart C of 40 CFR, is specifically prohibited. This prohibition does not apply to disposal of biosolids in a municipal solid waste landfill that is permitted by the DEQ.~~

### 252:606-9-2. Land application exceptions and alternatives [REVOKED]

~~(a) **Metal and selenium concentration limits.** Municipal biosolids that exceed the metal or selenium concentration limits set forth in 40 CFR, § 503.13(b)(1) (Table 1) cannot be land applied, but may be:~~

~~(1) incinerated at an incinerator permitted by the DEQ; or~~

~~(2) disposed at a solid waste landfill permitted by the DEQ for such waste disposal. Any biosolids disposed in a landfill must meet the pathogen and vector reduction requirements of this Subchapter.~~

~~(b) **Notification.** A land applier must notify the DEQ by telephone within 24 hours and follow up with a written report if the metal or selenium concentrations exceed those in 40 CFR § 503.13(b)(3) (Table 3) or risk the revocation of the land application permit.~~

### 252:606-9-3. Site use for land application [REVOKED]

~~(a) **One applier.** A land application site must be used by only one land applier at a time unless the DEQ approves other users.~~

~~(b) **Subsequent use for land application.** The DEQ may approve a previously used land application site for subsequent land application.~~

~~(c) **Multiple sources.** A land applier who owns or operates more than one source facility or surface impoundment may utilize the same land application site for the application~~

of biosolids from the multiple facilities or impoundments with prior written approval of the DEQ.

**252:606-9-4. pH and nutrient limits [REVOKED]**

(a) **pH limits.** Any site with soil having a natural pH of less than 5.5 cannot be used for the land application of biosolids unless the soil pH is amended prior to application of biosolids. Documentation of soil amendment must be placed in the land applicator's compliance records.

(b) **Phosphorus and nitrogen.** Annual biosolids land application rate cannot exceed nitrogen and phosphorus rates for the crop grown and cannot be applied in rates that result in phytotoxicity.

**252:606-9-5. Soil sampling [REVOKED]**

(a) **Sample and analysis.** All background and annual soil sampling and analyses must be of a composite sample taken from an area 80 acres or less in size for each site proposed or used for the land application of biosolids. The DEQ may approve larger sampling areas on a case by case basis. Soil testing procedures applicable for use in the local area in accordance with Oklahoma State University soil testing guidance or the local NRCS may be used.

(b) **Operational soil monitoring.** A land applicator must collect representative soil samples and have them analyzed as follows:

- (1) For soil pH and the nutrients — nitrogen (N), ammonia (NH<sub>4</sub>), nitrates (NO<sub>3</sub>), potassium (K) and phosphorus (P) prior to the next annual application of biosolids;
- (2) For metals in Table 3 of 40 CFR § 503.13(b) after every third year of use prior to the fourth year of use; and
- (3) For all required background metals prior to the 4th year of biosolids application on each site.

[OAR Docket #09-1047; filed 5-22-09]

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

[OAR Docket #09-1048]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Introduction
- 252:616-1-2. Definitions [AMENDED]
- Subchapter 3. Permit Procedures
- 252:616-3-4. Applications [AMENDED]
- Subchapter 13. Closure Standards
- 252:616-13-1. Termination of activities [AMENDED]
- Appendix A. Application for Permit to Discharge and/or Treat Industrial Wastewater of Sludge General Information [REVOKED]
- Appendix B. Application for Permit to Discharge and/or Treat Industrial Wastewater or Sludge Surface Impoundments and Septic Tanks [REVOKED]
- Appendix C. Application for Permit to Land Apply Industrial Wastewater and/or Sludge [REVOKED]
- Appendix C. Table of Rainfall and Evaporation Data [NEW]

- Appendix D. Class III Surface Impoundment Design [REVOKED]
- Appendix D. Class III Surface Impoundment Design [NEW]

**AUTHORITY:**

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

**DATES:**

**Comment period:**

December 1, 2008, through January 13, 2009

**Public hearing:**

January 13, 2009, and February 27, 2009

**Adoption:**

February 27, 2009

**Submitted to Governor:**

March 9, 2009

**Submitted to House:**

March 9, 2009

**Submitted to Senate:**

March 9, 2009

**Gubernatorial approval:**

March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

**Final adoption:**

May 1, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The Department proposes to modify its rules to require secondary containment for above-ground tank systems that are constructed pursuant to the requirements of this chapter. Additionally, the rules propose to tighten the closure requirements for industrial wastewater systems, propose to revoke the Appendices A, B and C that contain the permit forms and Appendix D. Appendices A and B will not be replaced, while Appendix C is replaced with a rainfall and evaporation data chart previously located in another section and Appendix D is replaced concerning Class III Surface Impoundments to make clean up changes.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.ok.gov) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:**

**SUBCHAPTER 1. INTRODUCTION**

**252:616-1-2. Definitions**

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

**"Beneficial use"** means in the context of land application the use of sludge or wastewater through land application for the purpose of soil conditioning, crop vegetative fertilization, or erosion control, or the use of wastewater for dust suppression where fugitive dust control would otherwise be an air quality problem, in a manner which does not pollute or tend to pollute

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waters of the state of Oklahoma, the environment or pose a risk to human health.

**"Berm"** means a man-made barrier designed to control waste and/or stormwater within a surface impoundment or to retard or contain runoff in a given area.

**"Bypass"** means the intentional or unintentional diversion of waste streams from any portion of a facility.

**"Cathodic protection"** means protecting a metal from electrochemical corrosion or rusting by using it as the cathode of a cell with a sacrificial anode.

**"Cell"** means a part of a surface impoundment system that shares a wall and berm with another impoundment area.

**"DEQ"** means the Oklahoma Department of Environmental Quality.

**"Engineer"** means a professional engineer registered in the state of Oklahoma.

**"Flexible membrane liner"** means a manufactured liner material composed of plastics, resins or other flexible materials, which is designed and manufactured to be used to control the seepage or release of waste through the liner material.

**"Flow-through surface impoundment"** means a surface impoundment designed and constructed with an outfall structure which allows the controlled discharge of wastewater out of the impoundment.

**"Freeboard"** means the vertical distance from the surface water level to the overflow elevation (outfall structure or the lowest part of the surrounding berm) in a surface impoundment.

**"Hydraulic conductivity"** means the coefficient of proportionality that describes the rate at which a fluid can move through a permeable medium. It is a function of both the medium and of the fluid flowing through it; also defined as the quantity of water that will flow through a unit cross-sectional area of porous material per unit of time under a hydraulic gradient of 1.00 (measured at right angles to the direction of flow) at a specified temperature.

**"Industrial wastewater treatment permit"** shall include any permit for construction, operation, treatment, storage or disposal required under this Chapter.

**"Land application"** means the controlled application of treated industrial wastewater or sludge onto the land surface for beneficial use.

**"Liner"** means a barrier which is designed, constructed and installed in a surface impoundment and which has appropriate chemical and physical properties to ensure that such structures control the seepage or release of waste and wastewater from the impoundment.

**"Monitoring well"** means all borings, wells, piezometers, or other means of retrieving a soil, waste, wastewater or vapor sample from the subsurface.

**"Oklahoma Water Quality Standards"** means the rules promulgated by the Oklahoma Water Resources Board and contained in OAC 785:45 which classify waters of the state, designate beneficial uses for which the various waters of the State shall be maintained and protected, and prescribe the water quality standards required to sustain designated uses.

**"OPDES"** means the Oklahoma Pollution Discharge Elimination System Act at 27A O.S. § 2-6-201 *et seq.*

**"Operator"** means the person responsible for the maintenance and operation of a surface impoundment, or disposal or wastewater treatment system and responsible for keeping records and providing reports to the DEQ.

**"Outfall"** means the point where monitoring shall occur for the purpose of evaluating compliance with rules, permits or orders of the DEQ.

**"Person"** means any individual, company, corporation, government agency, municipality, or any other entity.

**"Permeability"** means the rate at which liquids pass through soil or other materials in a specified direction.

**"Receiving water"** means that portion of any waters of the State into which wastewater is or may be released, leached, or discharged.

**"Sanitary wastewater"** means and includes but is not limited to wastewater from drinking fountains, showers, toilets, lavatories, and kitchens.

**"Surface impoundment"** means a native soil or lined basin either below or above ground level which is designed, maintained and/or operated to store, recycle, treat and/or dispose of industrial wastewater or stormwater, and shall include but is not limited to lagoons, excavations, basins, diked areas, pits and ponds.

**"Tank system"** means any subsurface disposal system which involves the storage and treatment of wastewater.

**"Total retention surface impoundment"** means a surface impoundment designed and constructed without an outfall structure.

**"U.S.C."** means United States Code.

**"Waste class"** means the following classification of wastewater, including stormwater:

(A) Class I: containing or suspected to contain pollutants for which the toxicity, concentration and volume pose a significant risk of harm to humans, aquatic life, wildlife or the environment, either through high potential to migrate in groundwater or the likelihood, if discharged, to significantly degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards. These wastewaters require the most restrictive environmental protection measures.

(B) Class II: containing or suspected to contain pollutants for which the toxicity, concentration and volume pose a moderate risk of harm to humans, aquatic life, wildlife, or the environment, either through the potential to migrate in groundwater or a reasonable possibility, if discharged, to degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards.

(C) Class III: containing or suspected to contain pollutants which do not pose a substantial risk of harm to humans, aquatic life, wildlife, or the environment because of a relative immobility in groundwater or a general lack of direct toxicity, and which are not likely, if discharged, to degrade the beneficial uses of the receiving water as designated in the Oklahoma Water Quality Standards.

(D) Class IV: containing only sanitary wastewater from industrial facilities. Class IV wastewaters are not subject to this Chapter, but are governed by OAC 252:641 (under 5,000 gpd) or by OAC 252:656 (5,000 gpd or more).

(E) Class V: industrial wastewater not otherwise classified.

"Waste containment system" means storage tanks, containers and other storage reservoirs, transfer lines, pumps, fittings, overflow prevention devices, and any associated anti-corrosion measures and leak prevention or detection systems.

SUBCHAPTER 3. PERMIT PROCEDURES

252:616-3-4. Applications

(a) **Form.** Submit legible applications on the appropriate DEQ Form 1, Form 2SI and 2L, as needed (see Appendices) approved forms.

(b) **Signature Applications.** Signature applications shall be signed by the owner, and by the operator if different.

(c) **Construction plans are required.** Submit construction plans to the DEQ at least 120 days before starting on-site construction or modifying any new or existing surface impoundment or wastewater treatment system. Include the proposed wastewater characteristics, treatment processes and other pertinent information.

(d) **Construction certification.**

(1) An Engineer must certify that tank systems and surface impoundments have been designed and constructed according to this Chapter. The certification must include:

(~~1A~~) a chronological description of major construction activities;

(~~2B~~) plans and specifications of record for each industrial wastewater unit;

(~~3C~~) a description of quality control tests, results and inspections;

(~~4D~~) a statement that the wastewater system will protect humans, aquatic life, wildlife and the environment; and

(~~5E~~) for surface impoundments, certification that the liner was constructed properly and not damaged by freezing, desiccation or other damage during construction.

(2) An engineer certification is not required for a single cell total retention surface impoundment system that holds only Class III wastewater designed pursuant to the requirements of Appendix D of this Chapter.

(e) **Construction report.** For tank systems and surface impoundments that will contain Class III, Class IV or V wastewater, the owner/operator shall submit a written report that construction was completed in accordance with the requirements of the permit. It is not required that this report be prepared by an engineer.

(f) **Financial responsibility.** The applicant must demonstrate to the satisfaction of the DEQ the financial capability

for operation, maintenance, replacement and closure for the facility.

(g) **Transfer.** Applications and unexpired permits may be transferred upon showing the transferee has legal authority and financial accountability, and that both parties agree to the transfer.

(h) **Permit.** Applicants must comply with the terms of the permits that are issued. Permits shall contain a description of all wastewater treatment units to be constructed at the facility. Permits may contain provisions more stringent than these rules in order to meet Oklahoma Water Quality Standards.

SUBCHAPTER 13. CLOSURE STANDARDS

252:616-13-1. Termination of activities

(a) **Intent to close.** The owner or operator shall notify the DEQ, in writing, of intent to close a surface impoundment, tank system or land application site at least 90 days before closing operation of the treatment unit. Failure to comply with the operational and/or maintenance requirements contained in this chapter may be construed as "intent to close" and require closure of the surface impoundment, tank system or land application site. Closure activities cannot begin without written DEQ approval.

(b) **Contents of notice.** Notice of intent to close must include:

(1) the name, address and title of person(s) who will remain in charge of or otherwise have continuing management responsibility of the facility or site and who will retain an ownership interest in personal or real property affected by the permitted operation;

(2) a detailed schedule of proposed closure activities; and

(3) the forwarding addresses and names of each present owner or operator under the current permit.

(c) **Waiver of closure requirements.** Closure requirements may be waived under the following conditions:

(1) **Facilities subject to federal closure regulations.** The DEQ may waive some or all closure requirements if the surface impoundment(s), tank system(s) or land application site(s) must be closed under federal regulations (e.g., RCRA regulations). When such a waiver is requested, the owner or operator must submit a copy of the closure plan to the Water Quality Division.

(2) **Other facilities.** The DEQ may waive some closure requirements on a case by case basis according to the characteristics of the industrial wastewater system and the wastewater or sludge contained within it or land applied. The owner or operator must, in the notice of intent to close, describe the intended closure activities and specify the closure requirements to be considered for waiver. Following review, the DEQ will notify the owner or operator in writing which closure requirements are waived. If a waiver of any closure requirements is granted, certification of closure must follow the requirements of 252:616-13-4(d).

**APPENDIX A. APPLICATION FOR PERMIT TO DISCHARGE AND/OR TREAT INDUSTRIAL WASTEWATER OF SLUDGE GENERAL INFORMATION [REVOKED]**

Return to:  
Oklahoma Department of  
Environmental Quality

Water Quality Division  
707 N. Robinson  
P.O. Box 1677  
Oklahoma City, OK 73101-1677

Revised August 1999  
Previous editions  
are obsolete.

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PDES Permitting Section

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Oklahoma DEQ

Application for Permit to Discharge and/or Treat Industrial  
Wastewater or Sludge

## **Form 1 - General Information**

**PLEASE DETACH THESE INSTRUCTIONS AND RETURN ONLY THE  
COMPLETED APPLICATION FORMS THEMSELVES.**

This form must be completed by all persons applying for a permit under DEQ's Industrial OPDES Permit Program. Form 2C, 2D, 2L and/or 2S must also be filled out; see Item II of the Form 1 Line-by-Line Instructions to determine which specific forms you will need.

See Form 1, Attachment 1 for instructions for the submittal of applications and the public notice requirements.

**Form 1, Attachment 1  
Public Notice and Application Requirements**

A public notice is not required for a Tier I permit application. The Oklahoma Uniform Environmental Permitting Act, O.S. 27A §2-14-301 requires that upon filing a Tier II or Tier III application with the Department, the applicant shall publish notice of the filing as legal notice in one newspaper local to the proposed new site or existing facility. For Tier III applications, the publication shall also include notice of a thirty-day opportunity to request, or give the date, time and place for, a process meeting on the permitting process.

According to OAC 252:2-15, the following is required for a Tier I, II, or III application: two (2) copies of Tier I applications must be filed with the DEQ; three (3) copies of Tier II and Tier III applications must be filed with the DEQ and one copy must be placed for public review in the county in which the facility is located.

Use the following table as guidance for determining the public notice and application requirements for the facility. Select the category appropriate to the facility and follow the public notice and application requirements. If a public notice is necessary, instructions for completing the public notice are given in the following pages.

Question	Yes No	Tier I, II, or III	Public Notice Requirements	Applications
Is the facility applying for a renewal of an expiring permit for an industrial, non-discharging impoundment or septic tank system?		Tier I	None	Two (2) copies of the application must be filed with the DEQ.
Is the facility applying for a renewal of an expiring permit with minor or no change for land application of sludge and/or wastewater?				
Is the facility applying for a new discharge permit or renewal of an expiring discharge permit for a minor facility?		Tier II	The applicant must publish notice of the filing as legal notice in one newspaper local to the proposed new site or existing facility.	Three (3) copies of the application must be filed with the DEQ and one copy must be placed for public review in the county in which the facility is located.
Is the facility applying for a renewal of an expiring discharge permit for a major facility?				
Is the facility applying for a new permit for an industrial, non-discharging impoundment or septic tank system?				
Is the facility applying for a new permit or major modification of an existing permit for land application of sludge and/or wastewater?				
Is the facility applying for a new discharge permit for a major facility?		Tier III	The applicant must publish notice of the filing as legal notice in one newspaper local to the proposed new site or existing facility. The publication must also include notice of a thirty-day opportunity to request (or give the date, time and place for) a process meeting on the permitting process.	Three (3) copies of the application must be filed with the DEQ and one copy must be placed for public review in the county in which the facility is located.

**Instruction for Completing the Public Notice**

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## for Tier II and Tier III Applications

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The Notice Must Contain the Following Information:

- (1) Name and address of the applicant;
- (2) Name, address and legal description (i.e., ¼, ¼, ¼, Section, Township, Range, County) of the site, facility and/or activity;
- (3) Purpose of notice;
- (4) Type of permit or permit action being sought;
- (5) Description of activities to be regulated;
- (6) Locations where the application may be reviewed;
- (7) Names, addresses and telephone numbers of contact persons for the DEQ and for the applicant;
- (8) Description of public participation opportunities and time period for comment and requests;
- (9) Any other information required by DEQ rules; and
- (10) Any information the applicant deems relevant.

Templates for the public notice which fulfills the above requirements appears on the following sheets, and should be used as a guideline in preparing your own notice. Choose the notice appropriate to the facility and application. Instructions appear in brackets { } and should not be included in the notice to be published. Square brackets [ ] indicate spaces where information should be inserted.

If you have any other questions concerning public notice requirements or preparation of the public notice, please contact the PDES Permitting Section at (405) 702-8100.

{Instructions in brackets should not be included in the Notice to be published.}

{If your application is a Tier II application and uses only Forms 1, 2S and/or 2L, use paragraphs one, two, and three, and seven, eight, and nine below.}

{If your application is a Tier II application and uses Forms 1, 2C or 2D, and/or 2S and/or 2L, use paragraphs four through nine below.}

**OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIER II NOTICE OF FILING**

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**A Tier II application for a [new/renewal of an] OPDES permit to operate an industrial wastewater treatment system has been filed with the Department of Environmental Quality (DEQ) by [Company Name], [Street, Route, or Other Specific Identifier], [City, State].**

**The applicant requests a permit to treat industrial wastewater by [Impoundment(s), Septic Tank(s), and/or Land Application] at their [Name of facility/plant/quarry/mine/etc., if different than Company Name] facility, located in the [Legal Location], Oklahoma, or at [Street Address/General Location].**

**The wastewater to be treated will consist of [Wastewater Description(s)]. The permit, if issued, would establish guidelines for the operation of the industrial wastewater treatment system.**

**A Tier II application for a [new/renewal of an] OPDES permit to discharge industrial wastewater has been filed with the Department of Environmental Quality (DEQ) by [Company Name], [Street, Route, or Other Specific Identifier], [City, State].**

**The applicant requests a permit to discharge wastewater from their [Name of facility/plant/quarry/mine/etc., if different than Company Name] facility, located in the [Legal Location], Oklahoma, or at [Street Address/General Location].**

**The discharge, which will consist of [Wastewater Description(s)], will be to [Receiving Stream(s)], in the [Legal Location(s) of Discharge Point(s)], Oklahoma. The permit, if issued, would establish effluent limitations on the discharge.**

**The application may be reviewed at [Address where the application has been made available for review].**

**After reviewing the application the DEQ will prepare either a draft permit or draft denial. At that time, notice of the prepared draft will be made by the Department and the public will be given the opportunity to review it, submit written comments, or request a public meeting within thirty days.**

**For additional information, contact the applicant's representative, [Facility Contact] at [Facility Contact's Phone Number] or [Facility Contact's Address], or the Industrial Permitting Unit of the Water Quality Division of the Department's central office, located at 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-8100.**

{If your application is a Tier III application, use the Notice below.}

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OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
TIER III NOTICE OF FILING

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A Tier III application for a new OPDES permit to discharge industrial wastewater has been filed with the Department of Environmental Quality (DEQ) by [Company Name], [Street, Route, or Other Specific Identifier], [City, State].

The applicant requests a permit to discharge wastewater from their [Name of facility/plant/quarry/mine/etc., if different than Company Name] facility, located in the [Legal Location], Oklahoma, or at [Street Address/General Location].

The proposed discharge, which will consist of [Wastewater Description(s)], will be to [Receiving Stream(s)], in the [Legal Location(s) of Discharge Point(s)], Oklahoma. The permit, if issued, would establish effluent limitations on the proposed discharge.

The application may be reviewed at [Address where the application has been made available for review].

Any person may now request a process meeting on the permitting process through which this application will go. The request must be in writing and must be made within 30 days after the date of this publication. Address the request to the DEQ contact listed below. If the DEQ finds that a sufficient degree of public interest in the application exists, it will hold the requested meeting after advance notice of the meeting's time, date, and place has been given.

Regardless of whether a process meeting is held, the DEQ will prepare either a draft permit or draft denial. At that time, notice of the prepared draft will be made by the Department and the public will be given the opportunity to review it, submit written comments, or request a public meeting within thirty days.

For additional information, contact the applicant's representative, [Facility Contact] at [Facility Contact's Phone Number] or [Facility Contact's Address], or the Industrial Permitting Unit of the Water Quality Division of the Department's central office, located at 707 N. Robinson, P.O. Box 1677, Oklahoma City, OK 73101-1677, (405) 702-8100.

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DESCRIPTION OF INDUSTRIAL PERMIT APPLICATION FORMS	FORM I PACKAGE TABLE OF CONTENTS
<p>The Industrial Permit Application Forms are:</p> <p>Form 1 - General Information (included in this package):</p> <p>Form 2 - Industrial Pollutant Discharge and/or Wastewater Treatment:</p> <p>2C. Discharge: Existing Manufacturing, Commercial and Mining Operations (not included in this package).</p> <p>2D. Discharge: New Manufacturing, Commercial and Mining Operations (not included in this package), and</p> <p>2S. Surface Impoundments (Pits, Ponds, Lagoons, etc.), Septic Tank Systems and Other Treatment/Disposal Methods (not included in this package).</p> <p>2L. Land Application of Sludge or Wastewater (not included in this package)</p>	<p>Section A. General Instructions</p> <p>Section B. Instructions for Form 1</p> <p>Section C. Activities Which Do Not Require Regular Discharge Permits</p> <p>Section D. Glossary</p> <p>Form 1</p>

SECTION A - GENERAL INSTRUCTIONS

Who Must Apply	
<p>These application forms must be filled out by anyone applying for a new industrial discharge or wastewater treatment permit or for a renewal or major modification of an existing permit from the Oklahoma Department of Environmental Quality (DEQ).</p> <p>A discharge permit must be obtained prior to commencing any discharge of a pollutant into waters of the State, from any facility, source or activity subject to the jurisdiction of DEQ (as outlined below). When a facility or activity is owned by one person but operated by another person, it is the operator's duty to obtain a permit.</p> <p>The Oklahoma Pollutant Discharge Elimination System Act, 27A O.S. Supp. 1996, §2-6-201 et seq. (the OPDES Act) provides that it shall be unlawful to discharge any pollutant to waters of the State without first obtaining a permit from the Executive Director of DEQ. DEQ has jurisdiction over point source and nonpoint discharges to waters of the State including:</p> <p>A. All point source discharges of pollutants and storm water to waters of the State which originate from municipal, industrial, commercial, mining, transportation and utilities, construction, trade, real estate and finance, services, public administration, manufacturing and all other sources, facilities and activities, except as provided in 27A O.S. §1-3-101, subsections D and E;</p> <p>B. All nonpoint source discharges and pollution of waters of the State, except as provided in 27A O.S. §1-3-101, subsections D, E and F;</p> <p>C. Surface water and groundwater quality and protection and water quality certifications;</p> <p>E. Discharges of pollutants and storm water, surface impoundment and land application of wastes and sludge from:</p> <ol style="list-style-type: none"> <li>1. Commercial manufacturers of fertilizers, grain and feed products, and chemicals, and over manufacturing of food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products;</li> <li>2. Dairy waste and wastewater associated with milk production facilities, but not including discharges to waters of the United States from concentrated animal feeding operations at such facilities;</li> <li>3. Slaughterhouses, but not including feedlots at such facilities;</li> <li>4. Animal aquaculture and fish hatcheries;</li> </ol> <p>F. Storm water discharges required by EPA NPDES regulations to obtain a permit for facilities which store grain, feed, seed, fertilizer and agricultural chemicals;</p> <p>G. Deleterious substances from Corporation Commission regulated facilities and activities which enter point source discharges of pollutants or storm water from a facility or activity regulated by DEQ;</p> <p>H. Point source discharges of pollutants to waters of the United States during site remediation of underground storage tanks;</p>	<p>I. Point source discharges of pollutants to waters of the United States during site remediation of aboveground storage tanks used in connection with the retail sale of flammable liquids into fuel tanks;</p> <p>J. Discharge or release of deleterious substances or solid or hazardous waste or other pollutants from rolling stock and rail facilities;</p> <p>K. Point and nonpoint source discharges of pollutants and storm water to waters of the State from:</p> <ol style="list-style-type: none"> <li>1. Refineries, petrochemical manufacturing plants and natural gas liquid extraction plants;</li> <li>2. Manufacturing of oil and gas related equipment and products;</li> <li>3. Bulk terminals, aboveground and underground storage tanks not subject to the jurisdiction of the Corporation Commission;</li> <li>4. Other facilities, activities and sources not subject to the jurisdiction of the Corporation Commission or Department of Agriculture as specified in 27A O.S. §1-3-101, subsections D and E;</li> </ol> <p>L. Environmental regulation of any entity or activity, and the prevention, control and abatement of any pollution, not subject to the specific statutory authority of another state environmental agency.</p> <p>In addition, it shall be unlawful for any person to carry on any of the following activities with regard to industrial wastewater or sludge without first securing a permit from DEQ:</p> <p>A. The construction, installation, operation and closure of any industrial surface impoundment or treatment system, or the use of any existing unpermitted surface impoundment or treatment system that is within the jurisdiction of DEQ and which is proposed to be used for the containment or treatment of industrial wastewater or sludge;</p> <p>B. The construction, installation or operation of any industrial or commercial facility subject to the permitting authority of DEQ, the operation of which would cause an increase in the discharge of waste into the waters of the State or would otherwise alter the physical, chemical or biological properties of any waters of the State in any manner not already lawfully authorized; or</p> <p>C. The construction or use of any new outfall for the discharge of any industrial waste or pollutant into the waters of the State.</p> <p>If you have any questions about whether you need a permit or if you need information as to whether a particular permit program is administered by DEQ or another agency, or if you need to obtain application forms, contact DEQ at the address and phone number listed below under <b>Where to File</b>.</p> <p>Upon your request, and based upon information supplied by you, DEQ will determine whether you are required to obtain a permit for a particular facility. Be sure to contact DEQ if you have a question, because state and federal laws provide that you may be heavily penalized if you do not apply for a permit when a permit is required.</p> <p>Form 1 of the Industrial Permit Application Forms collects general information applying to all facilities. You must fill out Form 1. In addition, you must fill</p>

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## SECTION A - GENERAL INSTRUCTIONS (continued)

out one or more of the supplementary forms (Forms 2C, 2D, 2S, and 2L), as appropriate to the activities at your facility. Item B of Form 1 will guide you to the appropriate supplementary forms.

You should note that there are certain exclusions to the permit requirements listed above. The exclusions are described in detail in Section C of the instructions. If your activities are excluded from permit requirements then you do not need to complete Form 1 or any of the Forms 2. Depending on the nature of your activity, however, you may have to complete some other application form.

In addition to issuing regular individual permits, DEQ also issues several types of general permits. These general permits are set forth in Appendices A through C and E through F of OAC 252:605. If you have questions about whether these types of permits are applicable to your activity or if you need to obtain application forms, contact DEQ.

### Where to File

Completed applications must be filed with DEQ's central office at the following address:

Water Quality Division  
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY  
707 N. Robinson  
P.O. Box 1677  
Oklahoma City, OK 73101-1677  
(405) 702-8100

See Form 1, Attachment 1 for guidance with the number of applications submitted and placement of application for public review.

### When to File

An application for a new or modified permit should be submitted at least 180 days before the date on which the discharge or other activity requiring a permit (e.g., construction of a surface impoundment, installation of a treatment system, etc.) is to commence.

An application for renewal of an existing permit shall be submitted at least 180 days before the existing permit expires.

Different submittal dates may be required under the terms of applicable general permits.

The filing of an application itself shall not be construed as authority to carry on such activity. Activities being carried on without a permit are unlawful and shall be subject to applicable enforcement provisions and penalties contained in the Environmental Quality Code. Unauthorized activities must cease until a proper permit or other written authorization is obtained from DEQ.

State and federal regulations provide that you may not begin construction of any industrial surface impoundment or treatment system; any industrial or commercial facility, the operation of which would cause an increase in the discharge of waste into the waters of the State; or any new outfall for the discharge of industrial waste or pollutants into the waters of the State, without first securing a permit under the applicable program. Please note that if you are required to obtain a permit before beginning construction, as described above, you may need to submit your permit application well in advance of the applicable deadlines listed above.

### Fees

No application fees are required when filing for a regular individual industrial permit. Instead, all holders of a regular individual industrial permit are required to pay an annual permit fee over the life of the permit. Such fee shall be due upon receipt of an invoice mailed by the Department annually. Upon payment of the annual fee, the Department shall continue in effect the permit for one year but in no case past the expiration of such permit. Failure to pay such fee may result in suspension or termination of the permit.

### Availability of Information to Public

Information contained in these application forms will, upon request, be made available to the public for inspection and copying. This includes any information submitted on the forms themselves and any attachments used to supply information required by the forms. You may, however, request confidential treatment for certain supplemental information you may be asked to provide during the drafting of the permit. Such requests shall be handled in accordance with the Oklahoma Open Records Act.

### Completion of Forms

Unless otherwise specified in instructions to the forms, each item in each form must be answered. To indicate that each item has been considered, enter "NA," for not applicable, if a particular item does not fit the circumstances or characteristics of your facility or activity.

If you have previously submitted information to DEQ, to another state agency or to EPA which answers a question, you may either repeat the information in the space provided or attach a copy of the previous submission. Some items in the form require narrative explanation. If more space is needed to answer a question, attach a separate sheet entitled "Additional Information."

### Public Notice Requirement

Upon filing a Tier II or Tier III application for a permit (including an application for a permit renewal), you must publish notice of the filing in a newspaper local to the area of the facility site. Proof of publication should be filed with the Department within ten (10) days after the application is filed or the application may be deemed incomplete. Instructions for filing the public notice are given in Form 1, Attachment 1.

## SECTION B - FORM 1 LINE-BY-LINE INSTRUCTIONS

This form must be completed by all applicants.

### Completing This Form

Please type or print in the unshaded areas only. Abbreviate if necessary to stay within the space allowed for each item. Use one space for breaks between words, but not for punctuation marks unless they are needed to clarify your response.

#### Item A

Indicate the permit action requested by marking the appropriate box.

#### Item B

Answer each question to determine which supplementary forms you need to fill out. Be sure to check the glossary in Section D of these instructions for the legal definitions of the bold faced words. Check Section C of these instructions to determine whether your activity is excluded from permit requirements.

If you answer "no" to every question, then you do not need a regular individual industrial permit, and you do not need to complete and return any of these forms. However, you may still require one of the other types of permits administered by

DEQ (as outlined under Who Must Apply in Section A). If you have questions about whether you need one of these permits or if you need to obtain application forms, contact DEQ.

If you answer "yes" to any question for which a form number is listed, then you must complete and file the supplementary form. (The applicable form number follows each question and is enclosed in parentheses.)

#### Item C

Enter the facility's official or legal name. Do not use a colloquial name.

#### Item D

Give the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application and who can be contacted by reviewing offices if necessary.

SECTION B - FORM 1 LINE BY LINE INSTRUCTIONS (continued)

Item E

Give the complete mailing address of the office where correspondence should be sent. This often is not the address used to designate the location of the facility or activity. Also list the telefax number, if you have one.

Item F

Give the address or location of the facility identified in Item C of this form. If the facility lacks a street name or route number, give the most accurate alternative geographic information. Also give the legal description of the facility's location to the nearest 10 acres (¼, ¼, ¼, Section, Range, Township). If you do not know the legal description of location, it should be available from county records of property deeds, or can be determined from a topographic map. Alternately, if you are filing for permit renewal, you can find the legal description of location in your previous permit.

Item G-1

Give the full legal name of the person, firm, public organization, or any other entity which operates the facility described in this application. This may or may not be the same name as the facility. The operator of the facility is the legal entity which controls the facility's operation rather than the plant or site manager. Do not use a colloquial name.

Item G-2

Indicate whether the entity which operates the facility also owns it by marking the appropriate box.

Item G-3

Enter the appropriate letter to indicate the legal status of the operator of the facility. Indicate "public" for a facility solely owned by local government(s) such as a city, town, county, parish, etc.

Items G-4 through G-9

Enter the telephone number, address and telefax number of the operator identified in Item G-1.

Item H

Indicate whether the facility is located on Indian Lands.

Item I

Give the number of each presently effective permit issued to the facility for each program or, if you have previously filed an application but have not yet received a permit, give the number of the application, if any. If you have more than one currently effective permit for your facility under a particular permit program, you may list additional permit numbers on a separate sheet of paper. List any relevant environmental federal (e.g., permits under Section 404 of the Clean Water Act or the Surface Mining Control and Reclamation Act), state (e.g., state permits for new air emission sources in nonattainment areas under Part D of the Clean Air Act or state permits under Section 404 of the Clean Water Act), or local permits or applications under "other."

Item J

Provide a plat or topographic map or maps of the area extending at least to one mile beyond the property boundaries of the facility which clearly show the following:

- (1) The legal boundaries of the facility;
- (2) The location and ID number of each of your existing and proposed intake and discharge structures;
- (3) All hazardous waste management facilities (including surface impoundments and land application sites);
- (4) Each monitoring well or well where you inject fluids underground; and
- (5) All springs and surface water bodies in the area, plus all drinking water wells within 1/4 mile of the facility which are identified in the public record or otherwise known to you.

If an intake or discharge structure, hazardous waste disposal site, or injection well associated with the facility is located more than one mile from the plant, include it on the map, if possible. If not, attach additional sheets describing the location of the structure, disposal site, or well, and identify the U.S. Geological Survey (or other) map corresponding to the location.

On each map, include the map scale, a meridian arrow showing north, and latitude and longitude at the nearest whole second. On all maps of rivers, show the direction of the current. Use a 7-1/2 minute series map published by the U.S. Geological Survey, which may be available at a local engineering supply company or can be obtained from the Oklahoma Geological Survey at the address listed below. If a 7-1/2 minute series map has not been published for your facility site, then you may use a 15 minute series map published by the U.S. Geological Survey. If neither a 7-1/2 nor 15 minute series map has been published for your facility site, use a plat map or other appropriate map, including all the requested information; in this case, briefly describe land uses in the map area (e.g., residential, commercial).

You may trace your map from a geological survey chart, or other map meeting the above specifications. If you do, your map should bear a note showing the number or title of the map or chart it was traced from. Include the names of nearby towns, water bodies, and other prominent points.

The Oklahoma Geological Survey's address is:

Oklahoma Geological Survey  
100 E. Boyd  
Norman, OK 73019  
405) 325-3035

Item K

List, in descending order of significance, up to four 4-digit standard industrial classification (SIC) codes which best describe your facility in terms of the principal products or services you produce or provide. Also, specify each classification in words. These classifications may differ from the SIC codes describing the operation generating the wastes.

SIC code numbers are descriptions which may be found in the "Standard Industrial Classification Manual" prepared by the Executive Office of the President, Office of Management and Budget, which may be available at your local library or can be ordered from the Government Printing Office, Washington, D.C. Use the current edition of the manual. If you have any questions concerning the appropriate SIC code for your facility, contact DEQ.

Item L

Briefly describe the nature of your business (e.g., products produced or services provided). List all manufacturing or production processes, and industrial operations. Processes and operations may be described in general terms (for example, "strip mine," "distillation tower," "vehicle wash," or "transfill of tank trucks"). Do not include office operations.

Also list intermediate and final products produced (if any), and daily quantity produced. Give the date the facility began operations, the approximate number of employees at the facility and the routine hours of operation, including number of shifts.

Item M

State statutes provide for severe penalties for submitting false information on this application form.

27A O.S. 1996, §2-6-206(G)(4) provides that, "Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act... shall upon conviction be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than two (2) years, or by both."

# Permanent Final Adoptions

## SECTION B - FORM 1 LINE BY LINE INSTRUCTIONS (continued)

All applications must be signed by the applicant. Signatures must be original signatures; photostatic copies of signatures will not be accepted. Permit applications must be signed as follows:

- (A) If the applicant is a private corporation, the application must be signed by:
  - (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or
  - (ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (B) If the applicant is a partnership, sole proprietorship or individual person, the application must be signed, respectively, by a general partner, the proprietor or the individual.
- (C) If the applicant is a municipality, political subdivision, the state or federal government or other public agency or entity, the application

must be signed by the principal executive officer of the entity or the ranking elected official.

Any person signing an application form must make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that the facility to be permitted possesses or shall acquire a right to the use of the property or properties on which discharging facilities, activities or discharge sources are located and the property on which the proposed discharge point or points are located, including the access route thereto, and that the facility to be permitted shall maintain such right of use and access for the duration of the permit term.

## SECTION C - ACTIVITIES WHICH DO NOT REQUIRE REGULAR POLLUTANT DISCHARGE PERMITS

You are not required to obtain a regular individual industrial discharge permit from DEQ if your discharge is in one of the following categories. However, you may be required to secure another type of permit from DEQ or to secure a permit from another agency.

- A. DISCHARGES INTO PUBLICLY OWNED TREATMENT WORKS (POTW). The introduction of sewage, industrial wastes, or other pollutants into a POTW does not require a regular industrial discharge permit from DEQ. You must comply with all applicable pretreatment standards promulgated under Section 307(b) of CWA, which may be included in the permit issued to the POTW. If you have a plan or an agreement to switch to a POTW in the future, this does not relieve you of the obligation to apply for and receive an industrial discharge permit until you have stopped discharging pollutants into waters of the State.
- B. DISCHARGES FROM AGRICULTURAL AND SILVICULTURAL ACTIVITIES. Most discharges from agricultural and silvicultural activities to waters of the State do not require discharge permits from DEQ. These include point and nonpoint discharges from agricultural crop production, agricultural services, livestock production, silviculture, feed yards, livestock markets, forestry and nurseries, etc. Such activities may, however, be subject to EPA permitting requirements. The facilities or activities listed below do require discharge permits from DEQ:
  - 1. Commercial manufacturers of fertilizers, grain and feed products and chemicals, food and kindred products, tobacco, paper, lumber, wood, textile mill and other agricultural products.
  - 2. Dairy waste and wastewater associated with milk production facilities, but not including concentrated feeding operations at such facilities.
  - 3. Slaughterhouses, but not including feedlots at such facilities.
  - 4. Animal aquaculture and fish hatcheries. Discharge from an aquatic animal production facility using only pond culture requires a general discharge permit from DEQ. This permit has its own application form; contact DEQ for the appropriate form. Discharge from all

other animal aquaculture and fish hatcheries requires a regular industrial discharge permit.

- 5. Facilities which store grain, feed, seed, fertilizer, and agricultural chemicals that are required by federal NPDES regulations to obtain a permit for storm water discharges. Such facilities only fall under DEQ jurisdiction with respect to such storm water discharges.
- C. DISCHARGES FROM PUBLICLY OWNED TREATMENT WORKS (POTW). Most POTWs do not require regular industrial discharge permits. In general, POTWs are regulated by the Municipal PDES Permitting Unit of DEQ's Water Quality Division, contact them for the appropriate application forms. However, POTWs which treat only industrial wastes do require regular industrial discharge permits.
- D. OPERATIONS COVERED BY GENERAL DISCHARGE PERMITS. General discharge permits have been established for certain categories of operations for which the same general conditions exist. Each category of general permit has its own application form; contact DEQ for the appropriate form. The categories of general permits are:
  - 1. Petroleum Storage and Transfer (PST) Facilities.
  - 2. Groundwater Remediation Projects Associated With Leaking Underground Storage Tanks Containing Hydrocarbons. All other groundwater remediation projects require regular industrial discharge permits.
  - 3. Aquatic Animal Production (Pond Culture Only). See B-4 above.
  - 4. Hydrostatic Test Projects. Most hydrostatic test projects fall under the jurisdiction of the Corporation Commission, and thus must be permitted through EPA rather than DEQ. DEQ has direct jurisdiction over and has a general permit for hydrostatic test projects at the following facilities and activities: refineries, petrochemical manufacturing plants, natural gas liquid extraction plants, manufacturing of oil and gas related equipment and products, bulk terminals, aboveground and underground tanks not subject to Corporation Commission jurisdiction, and other facilities and activities not subject to Corporation Commission jurisdiction.

## SECTION D - GLOSSARY

NOTE: This Glossary includes terms used in the instructions and in Forms 1, 2C, 2D, 2S, and 2L. If you have any questions concerning the meaning of any of these terms, please contact DEQ.

**ANIMAL FEEDING OPERATION** means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- A. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period; and
- B. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

Note: In Oklahoma, animal feeding operations are regulated by the Department of Agriculture, rather than the DEQ. Thus, such facilities do not require permits from DEQ.

**ANIMAL UNIT** means a unit of measurement for any animal feeding operation calculated by adding the following numbers: The number of slaughter and feeder cattle multiplied by 1.0; Plus the number of mature dairy cattle multiplied by 1.4; Plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4; Plus the number of sheep multiplied by 0.1; Plus the number of horses multiplied by 2.0.

SECTION D - GLOSSARY (continued)

**APPLICATION** means the DEQ standard forms for applying for a permit, including any additions, revisions, or modifications to the forms.

**AQUATIC ANIMAL PRODUCTION FACILITY** means a hatchery, fish farm, or other facility which contains, grows or holds aquatic animals in either of the following categories:

- A. Cold water fish species or other cold water aquatic animals including, but not limited to, the Salmonidae family of fish (e.g., trout and salmon) in ponds, raceways or other similar structures which discharge at least 30 days per year; or
- B. Warm water fish species or other warm water aquatic animals including, but not limited to the Ameiuridae, Cetrarchidae, and Cyprinidae families of fish (e.g., respectively, catfish, sunfish, and minnows) in ponds, raceways, or other similar structures which discharge at least 30 days per year.

**AQUIFER** means a formation that contains sufficient saturated, permeable material to yield significant quantities of water to wells and springs. This implies an ability to store and transmit water; unconsolidated sands and gravels are typical examples.

**BEST MANAGEMENT PRACTICES (BMP)** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State or United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

**BIOLOGICAL MONITORING TEST** means any test which includes the use of aquatic algal, invertebrate, or vertebrate species to measure acute or chronic toxicity, and any biological or chemical measure of bioaccumulations.

**BOARD** means the Environmental Quality Board.

**BYPASS** means the intentional or unintentional diversion of waste streams from any portion of a treatment, disposal or collection facility.

**CELL** means a part of a surface impoundment system that shares a wall or berm with another impoundment area.

**CLEAN WATER ACT** means the federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq., as amended.

**COMPLETE APPLICATION** means an application which contains all information required by any appropriate form, applicable rules, requested by DEQ staff, filed with the appropriate DEQ service and that all appropriate fees have been paid to and received by the DEQ.

**COMPLIANCE SCHEDULE** means a schedule of time for initiation and completion of remedial measures set forth in a Department Permit or Order and includes an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with the limitations and conditions of a pollutant discharge permit.

**CONCENTRATED ANIMAL FEEDING OPERATION** means an animal feeding operation which meets the criteria set forth in either (A) or (B) below or which the Director designates as such on a case-by-case basis:

- A. More than the numbers of animals specified in any of the following categories are confined:
  - 1. 1,000 slaughter or feeder cattle,
  - 2. 700 mature dairy cattle (whether milked or dry cows),
  - 3. 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
  - 4. 500 horses,
  - 5. 10,000 sheep or lambs,
  - 6. 35,000 turkeys,
  - 7. 100,000 laying hens or broilers (if the facility has a continuous overflow watering),
  - 8. 30,000 laying hens or broilers (if the facility has a liquid manure handling system),
  - 9. 5,000 ducks, or
  - 10. 1,000 animal units; or
- B. More than the following numbers and types of animals are confined:

- 1. 300 slaughter or feeder cattle,
- 2. 200 mature dairy cattle (whether milked or dry cows),
- 3. 750 swine each weighing over 25 kilograms (approximately 55 pounds),
- 4. 150 horses,
- 5. 3,000 sheep or lambs,
- 6. 16,500 turkeys,
- 7. 30,000 laying hens or broilers (if the facility has continuous overflow watering),
- 8. 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
- 9. 1,500 ducks, or
- 10. 300 animal units; AND

Either one of the following conditions are met: Pollutants are discharged into waters of the State through a man-made ditch flushing system or other similar manmade device ("man-made" means constructed by man and used for the purpose of transporting wastes); or Pollutants are discharged directly into waters of the State which originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

Note: In Oklahoma, concentrated animal feeding operations are regulated by the Department of Agriculture, rather than the DEQ. Thus, such facilities do not require permits from DEQ.

**CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY** means an aquatic animal production facility which meets the criteria in either (A) or (B) below or which the Director designates as such on a case-by-case basis:

- A. Facilities which:
  - 1. Produce more than 9,090 harvest weight kilograms (approximately 20,000 pounds) of cold water fish species or other cold water aquatic animals per year; and
  - 2. Feed more than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
- B. Facilities which produce more than 45,454 harvest weight kilograms (approximately 100,000 pounds) of warm water fish species or other warm water aquatic animals per year; provided, however, that the aquatic animals are not held in closed ponds which discharge only during periods of excess runoff.

**CONTACT COOLING WATER** means water used to reduce temperature which comes into contact with a raw material, intermediate product, waste product other than heat, or finished product.

**CONTAINER** means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

**CONTINUOUS DISCHARGE** means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

**COUNCIL** means the Water Quality Management Advisory Council.

**CWA** means the Clean Water Act.

**DEPARTMENT** means the Oklahoma Department of Environmental Quality.

**DEQ** means the Oklahoma Department of Environmental Quality.

**DIKE** means any embankment or ridge of either natural or manmade materials used to prevent the movement of liquids, sludges, solids or other materials.

**DIRECT DISCHARGE** means the discharge of a pollutant to waters of the State.

**DIRECTOR** or **EXECUTIVE DIRECTOR** means the Executive Director of the Oklahoma Department of Environmental Quality.

## SECTION D - GLOSSARY (continued)

**DISCHARGE** when used without qualification means the discharge of a pollutant.

**DISCHARGE OF A POLLUTANT** means:

1. Any addition of any pollutant or combination of pollutants to waters of the United States or to waters of the State from any point source.
2. Includes additions of pollutants into the waters of the State, including waters of the United States from:
  - a. surface runoff which is collected or channeled by man;
  - b. discharges through pipes, sewers, or other conveyances owned by a federal agency or division of the federal government, state, municipality, or other person which do not lead to a treatment works; and
  - c. discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works.
4. Does not include an addition of pollutants by an indirect discharger.
5. Means any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, or leaching of pollutants into any waters of the State or into a location where they may enter waters of the State.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by an indirect discharger. Discharge shall also mean any release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, or leaching of pollutants into any waters of the State, into a location where they may enter waters of the State or elsewhere.

**DISCHARGE POINT** means the point at which pollutants or wastewater or storm water enters waters of the State or becomes waters of the State.

**DISPOSAL** (in the RCRA program) means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

**DISPOSAL FACILITY** (in the RCRA program) means a facility or part of a facility at which hazardous waste is intentionally placed into or on land or water, and at which hazardous waste will remain after closure.

**DISPOSAL SYSTEM** means a system for disposing of wastewater, including treatment systems.

**DOMESTIC WASTEWATER** means and includes but is not limited to wastewater from drinking fountains, showers, toilets, lavatories, and kitchens.

**DRAFT PERMIT** means a document prepared under 40 CFR §124.6 or applicable Department rules indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit. A notice of intent to terminate a permit and a notice of intent to deny a permit, as discussed in 40 CFR §124.5 and applicable Department rules, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR §124.5 and corresponding Department rules, is not a draft permit. A proposed permit is not a draft permit.

**EFFLUENT LIMITATION** means any restriction imposed by the Executive Director on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters of the United States, the waters of the contiguous zone, waters of the State, or the ocean.

**EFFLUENT LIMITATIONS GUIDELINES** means a regulation published by the EPA under Section 304(b) of the Clean Water Act to adopt or revise effluent limitations.

**EXISTING SOURCE** or **EXISTING DISCHARGER** (in the NPDES program) means any source which is not a new source or a new discharger.

**FACILITY** or **ACTIVITY** means any OPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the OPDES program.

**FLEXIBLE MEMBRANE LINER** means a manufactured liner material composed of plastics, resins or other flexible materials, which is designed and manufactured to be used to control the seepage or release of waste through the liner material.

**FLOW-THROUGH SURFACE IMPOUNDMENT** means an impoundment designed and constructed with an outfall structure which allows the controlled discharge of wastes or wastewater out of the impoundment.

**FLUID** means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

**FREEBOARD** means the distance between the water surface in an impoundment and the top of the lowest part of the surrounding berm.

**GENERAL PERMIT** means an NPDES permit issued under §122.28 authorizing a category of discharges under the CWA within a geographical area, or a general permit issued by the Department through rulemaking procedures as allowed under the Oklahoma Administrative Procedures Act and other applicable state law.

**GPD** means gallons per day.

**GROUNDWATER** means waters of the state under the surface of the earth regardless of the geologic structure in which it is standing or moving outside the cut bank of any definite stream.

**HAZARDOUS SUBSTANCE** means any of the substances designated under 40 CFR Part 116 pursuant to Section 311 of CWA. (NOTE: These substances are listed in Table 2c-4 of the instructions to Form 2C.)

**HAZARDOUS WASTE** has the meaning set forth in the Environmental Quality Code and rules promulgated by the Board pursuant thereto.

**HAZARDOUS WASTE MANAGEMENT FACILITY (HWM facility)** means all contiguous land, structures, appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous wastes. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

**IMPOUNDMENT** means Surface Impoundment.

**INDIRECT DISCHARGER** means a non-domestic discharger introducing pollutants to a publicly owned treatment works.

**INDUSTRIAL WASTEWATER TREATMENT PERMIT** shall mean permits issued by the Department after July 1, 1993, under Section 2-6-501 of Title 27A of the Oklahoma Statutes, and waste disposal permits issued on or before June 30, 1993, by the Oklahoma Water Resources Board for land application of industrial waste or surface impoundments or disposal systems for industrial waste or wastewater.

**INDUSTRY** means any person, manufacturer, trade or business who discharges or retains wastes.

**INJECTION WELL** means a well into which fluids are being injected.

**LAGOON** means a surface impoundment.

**LAND APPLICATION** means the controlled discharge of waste or wastewater or sludge which is not a hazardous waste onto the land surface, as may be allowed under provisions of Title 27A O.S. 1996 Supp., §2-1-101 et seq. and OAC 252-647.

**LINER** means a barrier which is designed, constructed and installed in a surface impoundment and which has appropriate chemical and physical properties to ensure that such structures do not fail to control the seepage or release of waste and wastewater from the impoundment.

**MGD** means millions of gallons per day.

SECTION D - GLOSSARY (continued)

**MONITORING WELL** means all borings, wells, piezometers, or other means of retrieving a soil, waste, wastewater or vapor sample from the subsurface.

**MUNICIPALITY** means a city, village, town borough, county, parish, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of CWA.

**OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES)** means the EPA approved state program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits and imposing and enforcing pretreatment requirements, under Sections 307, 318, 402 and 405 of CWA. The term includes an approved program.

**NEW DISCHARGER** (in the OPDES program) means any building, structure, facility, or installation: (A) From which there is or may be a new or additional discharge of pollutants at a site at which on October 18, 1972, it had never discharged pollutants; (B) Which has never received a finally effective NPDES or OPDES permit for discharges at that site; and (C) Which is not a "new source." This definition includes an indirect discharger which commences discharging into waters of the United States. It also includes any existing mobile point source, such as an offshore oil drilling rig, seafood processing vessel, or aggregate plant that begins discharging at a location for which it does not have an existing permit.

**NEW SOURCE** (in the OPDES program) means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- A. After promulgation of standards of performance under Section 306 of CWA which are applicable to such source; or
- B. After proposal of standards of performance in accordance with Section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

**NON-CONTACT COOLING WATER** means water used to reduce temperature which does not come into direct contact with any raw material, intermediate product, waste product (other than heat), or finished product.

**NONPOINT SOURCE** means the contamination of the environment with a pollutant for which a specific path of origin may not be well defined.

**NOTICE BY PUBLICATION** means, unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation in the area(s) affected by proposed or actual activities regulated by the Department.

OAC means the Oklahoma Administrative Code.

OFF-SITE means any site which is not "on-site."

**OKLAHOMA'S WATER QUALITY STANDARDS** means the rules promulgated by the Oklahoma Water Resources Board which designate the beneficial uses for which the various waters of the State shall be maintained and protected, classify waters of the State, prescribe the water quality standards required to sustain designated uses, and set forth implementation requirements, as specified in OAC 785:45.

**ON-SITE** means on the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person, but connected by a right-of-way which the person controls and to which the public does not have access, is also considered on-site property.

OPDES Act means the Oklahoma Pollutant Discharge Elimination System Act, 27A Oklahoma Statutes §2-6-201 et seq.

O.S. means Oklahoma Statutes.

**OUTFALL** means the point where monitoring can occur or takes place for the purpose of evaluating compliance with discharge permits issued.

**OWNER or OPERATOR** means the owner or operator of any facility or activity subject to regulation under the NPDES or OPDES or other state water permit program, and shall include but is not limited to the person holding legal or equitable title to property, and the person responsible for the maintenance and operation of a treatment or disposal system or site and for keeping records and providing reports to the Department.

**PERMIT** means an authorization, license, or equivalent control document issued by EPA to implement the requirements of 40 CFR Parts 122, 123 and 124, and the license issued by the Executive Director of the Department of Environmental Quality or the authorization issued by the Executive Director of the Department under a general permit promulgated by the Environmental Quality Board to implement the requirements of these rules, state law, federal regulations and the Clean Water Act. Permit includes an NPDES general permit, state-issued individual permits, and authorizations under general permits, as authorized under the OPDES Act and the Environmental Quality Code. Permit does not include any permit which has not yet been the subject of final agency action, such as a draft permit or a proposed permit. In the State of Oklahoma, the term permit shall be equivalent to the term license as defined under the Oklahoma Administrative Procedures Act.

**PERSON** means any individual, association, partnership, firm, company, public trust, corporation, joint-stock company, trust, estate, municipality, state or federal agency, other governmental entity, any other legal entity or an agent, employee, representative, assignee or successor thereof.

**PILE** means any non-containerized accumulation of solid, non-flowing hazardous waste that is used for treatment or storage.

**POINT SOURCE** means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

**POLLUTANT** includes but is not limited to dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

**POLLUTION** means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or the release of any liquid, gaseous, or solid substance into the environment which is or will likely create a nuisance or render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, biological communities, fish or other aquatic life, or to property. For purpose of this definition, environment shall include but is not limited to waters of the state and release shall include but is not limited to discharge of a pollutant. Pollution shall include such acts or conduct as will or are likely to cause a violation of Oklahoma's Water Quality Standards.

POTW means publicly owned treatment works.

**PREVENTION OF SIGNIFICANT DETERIORATION (PSD)** means the national permitting program under 40 CFR 52.21 to prevent emissions of certain pollutants regulated under the Clean Air Act from significantly deteriorating air quality in attainment areas.

**PRIVATELY OWNED TREATMENT WORKS** means any device or system which is (A) Used to treat wastes from any facility whose operator is not the operator of the treatment works; and (B) Not a POTW.

**PROCESS WASTEWATER** means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

**PROPOSED PERMIT** means an OPDES permit prepared after the close of the public comment period (and, when applicable, any public hearing and

## SECTION D - GLOSSARY (continued)

administrative appeals) before final issuance by the State. A proposed permit is not a draft permit.

**PUBLICLY OWNED TREATMENT WORKS** or POTW means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes any sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended by Pub. L. 95-609, 42 U.S.C. Section 6901 et seq.)

**RECEIVING WATER** means that portion of any waters of the state into which wastes are discharged.

SDWA means the Safe Drinking Water Act (Pub. L. 95-523, as amended by Pub. L. 95-1900, 42 U.S.C. Section 3001f et seq.).

**SEPTIC TANK SYSTEM** means any subsurface disposal system which involves the storage and/or treatment of wastewater.

**SEWAGE SLUDGE** means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a POTW. "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

**SIC CODE** means Standard Industrial Classification code of the Executive Office of the President of the U.S., Office of Management and Budget.

**SILVICULTURAL POINT SOURCE** means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. This term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA Section 404 permit. "Log sorting and log storage facilities" are facilities whose discharges result from the holding of unprocessed wood, e.g., logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines for these facilities.)

**SLUDGE** has the meaning assigned to that term in OAC 252:525.

**SOLID WASTE** has the meaning assigned to that term in OAC 252:500.

**STATE** means the State of Oklahoma or any of the other 49 states as the context requires.

**STORAGE** (in the RCRA program) means the holding of hazardous waste for a temporary period at the end of which the hazardous waste is treated, disposed, or stored elsewhere.

**STORM WATER POINT SOURCE** means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff.

**STORM WATER RUNOFF** means water discharged as a result of rain, snow, or other precipitation.

**SURFACE IMPOUNDMENT** means an excavated soil or lined basin either below or above ground level which is designed, maintained and/or operated to store, recycle, treat and/or dispose of industrial wastewater or storm water, and shall include but is not limited to natural and man-made topographic depressions, excavations, basins, diked areas, lagoons, pits and ponds.

**SYSTEM** means pipelines or conduits, pumping stations and force mains, and all other constructions, devices, appurtenances and facilities used for collecting or conducting wastewater to a point of storage, treatment, or ultimate disposal.

**TOTAL RETENTION SURFACE IMPOUNDMENT** means an impoundment designed and constructed without an outfall structure.

**TOXIC POLLUTANT** means any pollutant listed as toxic under Section 307(a)(1) of CWA.

**TOXIC WASTE** means substances regulated by the Department to protect beneficial uses, human health, or the environment.

**TREATMENT** means any method, technique, or process used to remove pollutants from wastewater or sludge to the extent that the wastewater or sludge may be reused, discharged into waters of the State or otherwise disposed and includes, but is not limited to, the utilization of mechanized works, surface impoundments and lagoons, aeration, evaporation, digesters or other devices or methods.

**TREATMENT WORKS** means any plant, disposal field, lagoon, dam, pumping station, incinerator or any other facility used for the purpose of treating or stabilizing wastes or wastewater.

**UNDERGROUND INJECTION** means well injection.

**UNDERGROUND SOURCE OF DRINKING WATER** or USDW means an aquifer or its portion which is not an exempted aquifer and:

- A. Which supplies drinking water for human consumption; or
- B. In which the ground water contains fewer than 10,000 mg/l total dissolved solids.

**UNDERGROUND STORAGE SYSTEM** means a partially or totally submerged wastewater or waste containment system or treatment system.

**UPSET** means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**WASTE** means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute or contaminate, or tend to pollute or contaminate, any air, land or waters of the State and which is within the jurisdiction of the Department.

**WASTE CONTAINMENT SYSTEMS** means storage tanks, containers and other storage reservoirs, transfer lines, pumps, fittings, overflow prevention devices any associated anticorrosion measures and/or leak prevention/detection systems.

**WASTEWATER** includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals, or contaminating chemicals or other waste or pollutants from domestic, municipal, commercial, agricultural, industrial or manufacturing activities or facilities and which is within the jurisdiction of the Department.

SECTION D - GLOSSARY (continued)

WASTEWATER PERMIT means a permit issued by the Department which limits the types and quantities of pollutants or wastes an industry may store, transport or dispose of and consists of four categories:

1. Construction and operation of total retention systems;
2. Septic tanks other than those used solely for domestic waste;
3. Construction and operation of other wastewater treatment systems;
4. Underground or aboveground wastewater or waste containment, treatment or storage systems, including but not limited to tanks, pipes and fittings.

WASTEWATER TREATMENT SYSTEM means treatment works and all related pipelines or conduits, pumping stations and force mains, and all other appurtenances and devices used for collecting, treating, conducting or discharging wastewater.

WATERS OF THE STATE means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this State or any portion thereof.

WATERS OF THE UNITED STATES means:

- A. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- B. All interstate waters, including interstate wetlands;
- C. All other waters such as intrastate lakes, river, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie

potholes, wet meadows, playa lakes, and natural ponds, the use, degradation, or destruction of which would or could affect interstate or foreign commerce including any such waters:

1. Which are or could be used by interstate or foreign travelers for recreational or other purposes,
  2. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce,
  3. Which are used or could be used for industrial purposes by industries in interstate commerce;
- D. All impoundments of waters otherwise defined as waters of the United States under this definition;
- E. Tributaries of waters identified in paragraphs (A) - (D) above;
- F. The territorial sea; and
- G. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (A) - (F) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet requirement of CWA (other than cooling ponds as defined in 40 CFR Section 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as a disposal area in wetlands) nor resulted from the impoundments of waters of the United States.

WELL INJECTION means the subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

# Permanent Final Adoptions

<b>FORM 1 GENERAL</b>	<b>OKLAHOMA DEQ</b>	<b>OPDES APPLICATION TO DISCHARGE AND/OR DISPOSE OF INDUSTRIAL WASTEWATER OR SLUDGE GENERAL INFORMATION</b>				
<b>A. TYPE OF PERMIT REQUESTED</b>						
NEW	RENEWAL	MODIFICATION	REVOKE & REISSUE			
<b>B. REGULATED ACTIVITIES</b>						
<small>INSTRUCTIONS: ALL applicants MUST fill out FORM 1. Complete items A through D below to determine which additional forms you need to submit. If you answer "yes" to any questions, you must submit the supplemental form listed after the question in parentheses. If you answer "no" to every question, you do not need to submit an application. You may answer "no" if your activity is covered by a general permit or is otherwise excluded from individual permit requirements; see Section C of the instructions. See Section D of the instructions for definitions of <b>bold-faced</b> terms.</small>						
<b>SPECIFIC QUESTIONS</b>		<b>YES</b>	<b>NO</b>	<b>SPECIFIC QUESTIONS</b>		
1. Is this an existing facility which currently results in a discharge of <b>industrial wastewater to waters of the State?</b> (FORM 2C)				3. Is this a proposed facility which will result in a discharge of <b>industrial wastewater to waters of the State?</b> (FORM 2D)		
2. Does this facility use or propose to use <b>surface impoundments</b> (pits, ponds or lagoons) or <b>septic tank systems</b> to treat or dispose of <b>industrial wastewater?</b> (FORM 2S)				4. Does this facility perform or propose to perform <b>land application of industrial sludge or wastewater</b> (including <b>beneficial use</b> for soil conditioning, crop or vegetative fertilization, erosion control or dust suppression)? (FORM 2L)		
<b>C. NAME OF FACILITY</b>						
<b>D. FACILITY CONTACT</b>						
1. NAME & TITLE			2. PHONE (area code & number)			
<b>E. FACILITY MAILING ADDRESS</b>						
1. STREET OR P.O. BOX			2. TELEFAX (area code & number)			
3. CITY OR TOWN			4. STATE	5. ZIP CODE		
<b>F. FACILITY LOCATION</b>						
1. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER			2. COUNTY			
3. CITY OR TOWN			4. STATE	5. ZIP CODE		
6. LEGAL DESCRIPTION (¼, ¼, ¼, Section, Township, Range)						
<b>G. OPERATOR INFORMATION</b>						
1. NAME			2. Is the operator also the owner?			
			YES	No		
3. STATUS OF OPERATOR (enter appropriate letter in box; if "Other," specify)			4. PHONE (area code & number)			
<small>F = FEDERAL</small>	<small>M = PUBLIC (other than federal or state)</small>		<small>(specify)</small>			
<small>S = STATE</small>						
<small>P = PRIVATE</small>	<small>O = OTHER (specify)</small>					
5. STREET OR P.O. BOX			6. TELEFAX (area code & number)			
7. CITY OR TOWN			8. STATE	9. ZIP CODE	H. Is the facility located on Indian land?	
			YES	NO		
<b>FOR OFFICIAL USE ONLY</b>						
OPDES PERMIT NO.	Date Stamp			DATE	INIT.	
STATE PERMIT NO.				PUBLIC NOTICE		
STATE ID NO.				TIER I, II, or III		



**APPENDIX B. APPLICATION FOR PERMIT TO DISCHARGE AND/OR TREAT INDUSTRIAL WASTEWATER OR SLUDGE SURFACE IMPOUNDMENTS AND SEPTIC TANKS [REVOKED]**

**APPENDIX B. APPLICATION FOR PERMIT TO DISCHARGE AND/OR TREAT INDUSTRIAL WASTEWATER OR SLUDGE SURFACE IMPOUNDMENTS AND SEPTIC TANKS [NEW]**

Return to:  
Oklahoma Department of  
Environmental Quality

Water Quality Division  
707 N. Robinson  
P.O. Box 1677  
Oklahoma City, OK 73101-1677

September 1999

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ODES Permitting Section

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Oklahoma DEQ

Application for Permit to Discharge and/or Treat Industrial Wastewater or Sludge

**Form 616-2SI**  
**Surface Impoundments and**  
**Septic Tanks**

This form must be completed by all persons applying for a permit to treat or dispose of wastewater in surface impoundments (pits, ponds or lagoons) and/or septic tanks. This form must be completed in addition to Form 1 and any other applicable forms.

See Form 1, Attachment 1 for instructions for the submittal of applications and the public notice requirements.

**INSTRUCTIONS - FORM 2SI**

**OPDES APPLICATION TO DISCHARGE AND/OR DISPOSE OF INDUSTRIAL WASTEWATER OR SLUDGE  
SURFACE IMPOUNDMENTS & SEPTIC TANK SYSTEMS**

This form must be completed by all applicants who check "yes" to Item B-2 in Form 1.

Your application will not be considered complete unless you answer every question on this form and on any other required forms. If an item does not apply to you, enter "NA" (for not applicable) to show that you considered the question.

**Public Availability of Submitted Information**

You may not claim as confidential any information required by this form or by any other required forms, whether the information is reported on the forms or in an attachment. This information will be made available to the public upon request.

Any information you submit to the Oklahoma Department of Environmental Quality (DEQ) which goes beyond that required by this or any other forms you may claim as confidential, but claims for information which is effluent data will be denied. If you do not assert a claim of confidentiality at the time of submitting the information, DEQ may make the information public without further notice to you. Claims of confidentiality will be handled in accordance with the Oklahoma Public Records Act.

**Definitions**

All significant terms used in these instructions and in Form 2SI are defined in the glossary found in the General Instructions to Form 1.

**Item A**

Enter the facility's official or legal name. Do not use a colloquial name.

**Item B**

Give the name, title, and work telephone number of a person who is thoroughly familiar with the operation of the facility and with the facts reported in this application and who can be contacted by reviewing offices if necessary.

**Item C**

All surface impoundments and/or septic tanks on your map should be identified by number (see Item F below for how to determine impoundment numbers).

Your map should meet the specifications outlined under Item J in the General Instructions to Form 1. Topographic maps may be obtained from the Oklahoma Geological Survey at the address also listed under that item.

You may use the same map to fulfill the requirements for Item J in Form 1, Item C in Form 2SI, provided it clearly shows all information required for each item.

**Item D**

Enter the appropriate letter(s) to identify all sources of water supply and provide the appropriate description of each source (as indicated in parentheses). List each source on a separate line. For each source, list the average daily flows received. If you have more than one source of a given type, indicate this by entering the letter, followed by two digits (e.g., if you obtained your water from three different wells, the sources would be indicated as G01, G02, and G03).

**Item E**

List all chemical compounds and raw materials in containers of 55 gallons or more, used in plant operations. Describe the purpose for which each chemical is used. Uses may be described in general terms (for example, "cooling tower pretreatment," "process feed stock," "wastewater treatment," or "stored pending sale"). Chemicals may be identified by trade name, but in such case a Material Safety Data Sheet (MSDS) for the product should be attached to the application.

Also describe the storage location, indicating whether it is indoors or outdoors.

above or below ground. Storage locations may be keyed to locations on the facility map included for Item J of Form 1, provided all such locations are clearly labeled on the map. List the number and type of containers (for example, cylinders, bottles, sacks, barrels, or bulk tanks) used to store each chemical; if the number varies over time, give a daily average. Also list the average and maximum daily quantity of each chemical stored on site. For bulk storage tanks, maximum capacity may be reported in place of maximum quantity.

**Item F**

Impoundment numbers should consist of the letter F (for flow-through) or T (for total retention) followed by two digits. Number separately for flow-through and total retention impoundments. For example, if you have four (4) flow-through impoundments and two (2) total retention impoundments, they would be numbered F01, F02, F03, F04, and T01, T02.

Septic tank numbers should consist of the letter S (for septic tank system without lateral lines) or Z (for septic tanks with lateral lines) followed by two digits.

Use the same numbers throughout Form 2SI to identify the impoundments and/or septic tanks. If you have an existing permit, use the same numbering scheme in the application as that used in your current permit, where applicable.

List the impoundment numbers of any impoundments that lie within the 100-year floodplain. If you are not sure whether an impoundment lies within the 100-year floodplain, you can determine this by reviewing the Flood Insurance Rate Map (FIRM) for your community or county. FIRMs are prepared by the Federal Emergency Management Agency (FEMA) as part of the National Flood Insurance Program (NFIP). If your community or county is a member of NFIP, copies of FIRMs should be on file in the offices of your community or county government.

Copies of FIRMs (for those communities for which FIRMs have been prepared) are also on file at OWRB. You may obtain a copy of the FIRM panel that covers your facility by writing to: Oklahoma Water Resources Board, Water Management Division, 3800 N. Classen Blvd., Oklahoma City, OK 73118. In the letter, you should specify the legal description of your facility's location. OWRB charges a fee of \$15 for searching floodplain maps.

Alternately, you may obtain copies of FIRMs by writing to the Flood Map Distribution Center (FMDC) at the following address:

Federal Emergency Management Agency  
Flood Map Distribution Center  
6930 (A-F) San Tomas Road  
Baltimore, MD 21227-6227

A nominal cost may be charged. You may also call the FMDC directly at 1-800-333-1363. You may first need to obtain a copy of the FIRM Index (available from FEMA) to identify which FIRM panel you need. A [Guide to Flood Insurance Rate Maps](#), which will help you read and understand FIRMs, is also available from FEMA or from OWRB.

**Item G-1**

The line drawing should show generally the route taken by water in your facility from intake to discharge or final disposal. Show all operations contributing wastewater, including process and production areas, sanitary flows, cooling water, and stormwater runoff. You may group similar operations into a single unit, labeled to correspond to the more detailed listing in Item G-2. The water balance should show average flows. Show all significant losses of water to products, atmosphere, and discharge. Use actual measurements whenever available; otherwise use your best estimate.

You may use the same drawing to fulfill the requirements of Item D-1 in Form 2C or Item D-1 in Form 2D and Item G-1 in Form 2SI, provided the drawing shows both outfalls and surface impoundments.

# Permanent Final Adoptions

## FORM 2SI - INSTRUCTIONS (continued)

### Item G-2

List all sources of wastewater to each impoundment and/or septic tank. Operations may be described in general terms (for example, "dye-making reactor" or "distillation tower"). You may estimate the flow contributed by each source if no data are available. For stormwater runoff you may estimate the average flow, but you must indicate the rainfall event upon which the estimate is based and the method of estimation.

Report the highest and lowest daily values for flow rate in the "Maximum" and "Minimum" columns (columns c-(2) and c-(3)). Report the average of all daily values measured during days when discharge occurred within the last year in the "Average" column (column c-(1)).

### Item G-3

List all wastes and/or pollutants which are or will otherwise be contained in each surface impoundment and/or septic tank (e.g., lubricants, additives, bactericides, detergents, softeners) and their sources. Be as specific as possible in identifying pollutants. Operations may be described in general terms (for example, "dye-making reactor" or "distillation tower"). Include all waste types which have the potential to be contained in the impoundments due to spills, bypasses, or unit failures (e.g., raw materials, oils and greases, solvents or product). Also indicate (with a "Y" or an "N") whether you possess analytical data on the wastes contained in each impoundment.

### Item G-4

List the volume of sludge generated annually in each impoundment and/or septic tank. Use actual measurements if available; otherwise use your best estimate. Indicate whether the sludge will be periodically removed or will accumulate in the impoundment as a site of final disposal. If sludge is to be removed, give the frequency of removal (e.g., every six months, annually, every two years, etc.) Determine this frequency using historical data if available; otherwise use your best estimate. Indicate (with a "Y" or an "N") whether you possess analytical data on the sludge generated in each impoundment.

### Item G-5

List the treatment purpose of each impoundment and/or septic tank (e.g., settling, aeration, evaporation, or final disposal). If an impoundment is made up of several cells (as defined in OAC 252:615-1-2) having different treatment purposes, list each cell on a separate line.

List any chemicals or equipment used for each treatment method. Also list the treatment operation parameters (inlet concentration, goal concentration, and detention time) for each impoundment. Use averages of actual measurements whenever possible; otherwise use design values or your best estimate of average values.

### Item H-1

The plans and specifications should show all inlets to and outlets from each impoundment, as well as each impoundment's physical dimensions. The plans should be clearly labeled with the appropriate impoundment number(s). If the impoundment is made up of several cells, all cells should be clearly shown and labeled according to flow sequence.

### Item H-2

You may use the plans and specifications from Item H-1 to determine each impoundment's holding capacity and dimensions. If an impoundment is made up of several cells, list the overall capacity and dimensions of the impoundment on the first line, followed by the capacity and dimensions of each cell (according to flow sequence) on a separate line.

### Item H-3

List the type of liner material to be installed or currently in use for each impoundment. Use the classifications in OAC 252:615-5-2 (e.g., native soil, compacted clay, flexible membrane, etc.) Within each classification, describe the material of construction as completely as possible (for example, flexible membrane - visquene, or alternative - fiberglass tank in excavated-soil pit). Also list the liner thickness in inches (for native soil liners, enter "N/A" in column c). Hydraulic conductivity (permeability) in column d should be expressed in cm/sec for all liner types as proposed or as built, except that inches/hour may be used for native soil liners, if desired.

List the type(s) of soil (series name(s) and USDA texture(s)) underlying each impoundment. This information can be found in the appropriate Soil Survey for the county in which the facility is located. Soil Surveys are published by the United States Department of Agriculture Soil Conservation Service. They may be available at your local public or university library. Copies are also on file at the Regional Depository of U.S. Government Documents, 200 N.E. 18th, Oklahoma City, OK 73105 (405-521-2502), and can be obtained from them by your local library through interlibrary loan. If you wish to purchase a copy of the Soil Survey for your county, you may order directly from:

Superintendent of Documents  
U.S. Government Printing Office  
Washington, DC 20402.

### Item H-4

In addition to describing the rationale used to select the liner system, indicate whether you possess any engineering reports or analytical data to support your rationale.

### Item I

The plans and specifications should show the location and length of lateral lines as well as the distance from each tank and lateral line to potable water wells, water lines, buildings, property lines, streams, lakes, embankments, and culs. The plans should be clearly labeled with the appropriate impoundment number(s).

For each septic tank, list the tank volume and construction material (e.g., concrete, steel, plastic, fiberglass). If lateral lines are used for disposal, list the length of lateral lines and the percolation rate of the soil. Briefly describe the rationale used to select the proposed or currently used lateral line system. If wastewater is disposed of other than by lateral lines (e.g., impoundment, discharge, recycle), list the other destination.

### Item J

List the method and volume of sanitary wastewater disposal used by the facility.

### Item K

Briefly describe any other methods of waste disposal used by your facility which have not been previously covered. Examples include disposal wells, septic tanks, aboveground and underground storage tanks, and waste hauling. Include information on the nature and volume of wastes disposed of by each method, and the legal description of the final disposal site. If the wastes are removed from the facility, provide the name, address, and phone number of the company hauling the waste, and (if appropriate), the name, address, and phone number of the final disposal site.

FORM 2SI - INSTRUCTIONS (continued)

Item L

For each surface impoundment and/or septic tank, list the depth to groundwater, the hydrologic gradient or direction of groundwater flow, and the legal description of each well used to determine groundwater information. The hydrologic gradient or groundwater flow direction should be determined using a minimum of three wells spaced in a triangular pattern. Hydraulic connections to surface water bodies may also be used to estimate groundwater flow direction. Attach copies of any well logs or hydrologic atlas pages used to determine this information, if available.

You may list multiple impoundments and/or land application sites on the same line, provided the same well was used to determine the groundwater information for all impoundments and/or sites. If you cannot determine the direction of groundwater flow, enter "XX" in column C to show that you considered the question.

Well logs are on file at OWRB. To obtain photocopies, write to: Oklahoma Water Resources Board, Water Management Division, 3800 N. Classen Blvd., Oklahoma City, OK 73118. Requests must be in writing. When ordering, please specify (at a minimum) the Section(s), Township, Range and County for which you wish to obtain logs; you may also want to specify quarter-sections, as well. You should request well logs for all Sections (or quarter-sections) lying in full or in part within a 1/4-mile radius of the surface impoundment(s) and/or outside boundary of the land application site(s). OWRB charges a fee of \$10 per hour for searching records, plus \$0.25 per copy, so be as specific as possible in requesting records. Hydrologic atlases are available from the Oklahoma Geological Survey at the address listed under Item J in the General Instructions to Form 1.

Item M

For each surface impoundment and/or septic tank system, list the total depth and depth of completion of each monitoring well or water well within 1/2 mile of the impoundment and/or septic tank. Also list the elevation of each well as surveyed, the depth to static water level, the date the static water level was measured, and the legal description of each monitoring well. Do not include monitoring wells that are used only to monitor USTs. If there are no water wells within one-half (1/2) mile of any impoundments and/or land application sites, enter "N/A" in column A.

See Item L above for instructions on how to obtain copies of well logs.

Item N

State statutes provide for penalties for submitting false information on this application form.

27A O.S. 1996, §2-6-206(G)(4) provides that, "Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Oklahoma Pollutant Discharge Elimination System Act... shall upon conviction be punished by a fine of not more than Ten Thousand Dollars (\$10,000.00), or by imprisonment for not more than two (2) years, or by both."

All applications must be certified as provided on the forms furnished by the Department, and must be signed by the applicant. Signatures must be original signatures; photostatic copies of signatures will not be accepted. Permit applications must be signed as follows:

- A. If the applicant is a private corporation, the application must be signed by:
  - 1. a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or

- 2. the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

- B. If the applicant is a partnership, sole proprietorship or individual person, the application must be signed, respectively, by a general partner, the proprietor or the individual.

- C. If the applicant is a municipality, political subdivision, the State or Federal government or other public agency or entity, the application must be signed by the principal executive officer of the entity or the ranking elected official.





# Permanent Final Adoptions

3. List all wastes which are or will be contained in the surface impoundment(s) and/or septic tank system(s) (e.g., lubricants, additives, bactericides, detergents, softeners) and their sources. Include all wastes which have the potential to be contained in the impoundment(s) or tank(s) due to spills, bypasses, or unit failures (e.g., raw materials, oils and greases, solvents or product). Also indicate whether you possess any chemical analysis of the wastes. Continue on additional sheets if needed.

a. ID NO.	b. WASTE/POLLUTANT	c. SOURCE	d. DATA?

4. For each impoundment and/or septic tank, list the actual or engineering estimate of the volume of sludge generated annually. Indicate whether the sludge will be periodically removed from the impoundment or tank (give frequency of removal) or will accumulate in the impoundment or tank as a site of final disposal. Also indicate whether you possess analytical data on the sludge generated in each impoundment. Continue on separate sheets if necessary.

a. ID NO.	b. FREQUENCY OF REMOVAL/FINAL DISPOSAL SITE	c. SLUDGE ANALYTICAL DATA	d. VOLUME

5. Describe the treatment purpose of each cell, impoundment, or tank (e.g., settling, aeration, evaporation, or final disposal). List any chemicals and equipment used for each treatment method. Also list the treatment operation parameters (inlet concentration, goal concentration, and detention time) for each impoundment or tank. Continue on additional sheets if necessary.

a. ID NO.	b. TREATMENT				
	(1) DESCRIPTION	(2) CHEMICALS/EQUIPMENT	(3) INLET CONC. (units)	(4) GOAL CONC. (units)	(5) DETENTION TIME (units)

H. IMPOUNDMENT INFORMATION										
1. For each impoundment, attach plans sufficient to define the following design parameters: (1) Length and width at top and bottom; (2) Total depth; (3) Designed minimum and maximum freeboard; (4) Interior and exterior side-slopes (ratio of horizontal to vertical distances); and (5) Inlet and outlet structures.										
2. For each impoundment, list the holding capacity in gallons (assuming a minimum freeboard) and the dimensions in feet. The following abbreviations are used in the table to indicate the various impoundment dimensions.										
BW = BOTTOM WIDTH BL = BOTTOM LENGTH TW = TOP WIDTH TL = TOP LENGTH		D = DEPTH F = MINIMUM FREEBOARD MF = MAXIMUM FREEBOARD			IS = INTERIOR SIDE-SLOPE RATIO (Horiz:Vert) ES = EXTERIOR SIDE-SLOPE RATIO (Horiz:Vert)					
a. ID NO.	b. HOLDING CAPACITY (gallons)	c. DIMENSIONS								
		(1) BW (ft)	(2) BL (ft)	(3) TW (ft)	(4) TL (ft)	(5) D (ft)	(6) F (ft)	(7) MF (ft)	(8) IS (ratio)	(9) ES (ratio)
3. In the table below, list the type of liner material (e.g., native soil, compacted clay, flexible membrane, composite, soil/bentonite, concrete, or alternative) to be installed or currently in use. Definitive information and justification is required for alternative liner systems. List the thickness (in inches, feet, or mills, as appropriate) and permeability rate (in inches/hour) or hydraulic conductivity (in centimeters/second), as appropriate, of each liner as proposed or as built. Also list the type of soil (series name and USDA texture) underlying the impoundment. Continue on additional sheets if necessary.										
a. ID NO.	b. LINER TYPE	c. THICKNESS (inches)	d. HYDRAULIC CONDUCTIVITY (PERMEABILITY) (cm/sec or in/hr, as appropriate)	e. SOIL TYPE						
				(1) SERIES NAME	(2) USDA TEXTURE					
4. Briefly describe the rationale used to select the proposed or currently used liner systems. Include the date of construction, along with a discussion of the physical and chemical properties of liner materials which are indicative of the waste/liner compatibility and the liner's effectiveness as a physical barrier between the waste and groundwater. References can be made to similar facilities, related research, or trade organization guidelines. Continue on additional sheets if necessary.										
SEPTIC TANK INFORMATION										





# Permanent Final Adoptions

## APPENDIX C. APPLICATION FOR PERMIT TO LAND APPLY INDUSTRIAL WASTEWATER AND/OR SLUDGE [REVOKED]

### APPENDIX C. TABLE OF RAINFALL AND EVAPORATION DATA [NEW]

County	Rainfall * (in inches)	Average Pan Evaporaton (in inches)	Average Lake Evaporation (in inches)	County	Rainfall * (in inches)	Average Pan Evaporaton (in inches)	Average Lake Evaporation (in inches)
Adair	60.16	65	47	LeFlore	62.22	65	48
Alfalfa	39.50	90	62	Lincoln	45.12	80	57
Atoka	54.83	75	53	Logan	51.58	85	60
Beaver	28.31	90	62	Love	52.40	80	58
Beckham	36.66	90	64	McClain	49.04	85	60
Blaine	39.07	90	62	McCurtain	67.76	65	49
Bryan	56.75	75	54	McIntosh	55.66	70	52
Caddo	35.74	90	63	Major	29.32	90	63
Canadian	43.46	90	62	Marshall	58.62	75	55
Carter	50.54	80	58	Mayer	47.79	70	49
Cherokee	57.00	70	48	Murray	56.81	80	58
Choctaw	56.33	70	52	Muskogee	56.72	80	50
Cimarron	24.24	90	58	Noble	41.73	85	59
Cleveland	46.07	85	60	Nowata	48.74	70	51
Coal	60.94	75	55	Okfuskee	56.98	75	55
Comanche	42.29	90	64	Oklahoma	41.19	85	60
Cotton	40.86	90	64	Okmulgee	52.33	75	53
Craig	49.49	70	49	Osage	55.04	75	54
Creek	48.68	75	55	Ottawa	50.98	65	47
Custer	43.38	90	64	Pawnee	44.11	80	56
Delaware	55.88	65	47	Payne	45.52	80	52
Dewey	34.38	90	63	Pittsburg	59.27	75	58
Ellis	31.37	90	64	Pontotoc	52.13	75	56
Garfield	39.58	90	61	Pottawatomie	46.49	80	58
Garvin	46.32	80	59	Pushmataha	60.50	70	50
Grady	44.52	90	62	Roger Mills	37.90	90	64
Grant	40.07	90	60	Rogers	55.99	70	51
Greer	39.67	90	64	Seminole	54.34	75	55
Harmon	36.71	90	64	Sequoyah	61.50	65	48
Harper	25.46	90	62	Stephens	45.65	85	62
Haskell	59.46	70	49	Texas	22.07	90	62
Hughes	58.60	75	54	Tillman	40.43	90	64
Jackson	42.18	90	64	Tulsa	46.88	75	53
Jefferson	38.33	85	61	Wagoner	52.10	70	51
Johnston	94.89 49.89	75	55	Washington	44.65	70	53
Kay	40.74	80	58	Washita	36.93	90	64
Kingfisher	39.36	90	62	Woods	35.92	90	62
Kiowa	36.24	90	64	Woodward	27.26	90	62
Latimer	68.60	70	50	* Rainfall data is the 90 <sup>th</sup> percentile			

Source of data: OGS average rainfall data for 1988 – 1998; evaporation data from 1976 OSDH Design Guidelines

**APPENDIX D. CLASS III SURFACE IMPOUNDMENT DESIGN [REVOKED]**

**APPENDIX D. CLASS III SURFACE IMPOUNDMENT DESIGN [NEW]**

Facilities that wish to dispose of Class III wastewater into a single total retention surface impoundment may opt to use the design shown in this Appendix in lieu of hiring a Professional Engineer. This option is not available for designs of multiple or flow-through impoundment systems. To qualify for the use of this design, you must demonstrate that:

A. The bottom of the impoundment shall be a minimum of fifteen feet (15') from groundwater. This information must be submitted with the plan documents outlined below. If there is no water well data available, the facility must determine the depth of the groundwater and submit that data with the plan documents outlined below.

B. The proposed impoundment site must have a one foot (1 ft.) compacted soil liner for the bottom and the sides of the impoundment that has a permeability of  $5.4 \times 10^{-7}$  cm/sec or less. A soil test result that documents the permeability of the impoundment site must be submitted with the plan below.

C. If a facility is able to comply the requirements of A and B above, then it can opt to use the design shown on the diagram on the following page. To use this Impoundment Design:

1. Send an attachment to the permit application stating an intent to use the following design and document the ability to meet the two qualifications shown above. Also submit the proposed wastewater flow in gallons/day.
2. Determine the top dimensions of a square or rectangle impoundment by using the Industrial Wastewater sizing Chart on the following pages. If constructing a rectangle impoundment, the length shall be no more than double of the width. If the proposed flow falls in between two flow values on the table, go the next highest flow value to determine the impoundment dimensions.
3. Copy the diagram shown on the following page. Write or type in the appropriate dimensions on the diagram. Submit this with the attachment. Design parameters include:
  - i. Minimum three feet of freeboard;
  - ii. Inner and outer dike slopes shall be 1 vertical to 3 horizontal (1:3);
  - iii. Total depth of eight feet;
  - iv. The top of the dikes shall be at least one foot above surrounding terrain to divert surface runoff;
  - v. Berms and dikes will be a minimum of four feet wide and provide a flat surface to facilitate inspection and maintenance;
  - vi. A one foot (1') liner thickness for the impoundment; and
  - vii. The liner shall have a coefficient of permeability of  $5.4 \times 10^{-7}$  cm/sec or less.

## **Permanent Final Adoptions**

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4. After receiving approval from the DEQ to construct the impoundment, the impoundment should be built exactly as indicated on this plan. Once construction is completed a signed certification must be sent to the DEQ stating the impoundment was constructed in accordance with this plan. Facilities that need to deviate from this design in any way must contract the services of a professional engineer and notify the DEQ accordingly.

D. If a facility is not able to comply with the requirements of A, B and C above, then the facility must retain the services of a Registered Professional Engineer, licensed by the State of Oklahoma to design the impoundment(s).



INDUSTRIAL WASTEWATER IMPOUNDMENT SIZING CHART

Minimum Top Dimensions in Feet

County	Wastewater flow into the impoundment in gallons/day																			
	50	100	150	200	250	300	350	400	450	500	550	600	650	700	750	800	850	900	950	1000
Adair	161	171	179	187	195	202	208	215	221	227	232	237	243	248	252	257	262	266	271	275
Alfalfa	57	64	70	75	80	84	88	92	96	99	102	105	108	111	114	116	119	122	124	126
Atoka	96	104	112	118	124	130	135	140	145	149	153	157	161	165	169	173	176	179	183	186
Beaver	48	55	61	66	71	75	78	82	85	88	91	94	97	99	102	104	107	109	111	114
Beckham	55	62	68	73	77	82	86	89	93	96	99	102	105	108	110	113	116	118	120	123
Blaine	57	64	70	75	80	84	88	92	95	99	102	105	108	111	113	116	118	121	123	126
Bryan	102	111	118	125	131	136	142	147	151	156	160	164	169	172	176	180	183	187	190	194
Caddo	54	61	67	72	77	81	85	88	92	95	98	101	104	107	109	112	115	117	119	122
Canadian	61	68	74	80	84	89	93	97	100	104	107	110	113	116	119	122	124	127	129	132
Carter	79	87	93	99	105	110	115	119	123	127	131	135	138	142	145	148	151	154	157	160
Cherokee	117	125	133	140	147	153	159	164	169	174	179	184	188	192	197	201	204	208	212	216
Choctaw	114	123	130	137	144	150	156	161	166	171	176	180	185	189	193	197	201	205	208	212
Cimarron	48	53	58	63	68	72	75	79	82	85	88	91	93	96	98	101	103	106	108	110
Cleveland	67	75	81	87	92	96	101	105	109	112	116	119	122	125	128	131	134	137	140	142
Coal	118	127	134	141	147	153	159	164	169	174	179	183	187	192	196	199	203	207	211	214
Comanche	60	67	73	78	83	87	91	95	99	102	106	109	112	115	117	120	123	125	128	130
Cotton	58	66	72	77	82	86	90	94	97	101	104	107	110	113	115	118	121	123	126	128
Craig	90	99	106	113	119	125	130	135	140	144	149	153	157	160	164	168	171	175	178	181
Creek	81	89	96	103	108	113	118	123	127	131	135	139	143	147	150	153	157	160	163	166
Custer	61	68	74	79	84	89	93	97	100	104	107	110	113	116	119	122	124	127	129	132
Delaware	130	139	147	155	162	169	175	181	186	192	197	202	206	211	215	220	224	228	232	236
Dewey	53	60	66	71	75	80	83	87	90	94	97	100	103	105	108	111	113	115	118	120
Ellis	50	58	63	68	73	77	81	84	88	91	94	97	100	102	105	107	110	112	115	117
Garfield	57	64	70	76	80	85	88	92	96	99	102	105	108	111	114	117	119	122	124	126
Garvin	71	79	86	92	97	102	107	111	115	119	122	126	129	133	136	139	142	145	148	150
Grady	62	69	75	81	86	90	94	98	102	105	108	112	115	118	120	123	126	128	131	133
Grant	58	65	71	76	81	85	89	93	96	100	103	106	109	112	114	117	120	122	125	127
Greer	57	64	70	76	80	85	89	92	96	99	102	105	108	111	114	117	119	122	124	127
Harmon	55	62	68	73	77	82	86	89	93	96	99	102	105	108	111	113	116	118	121	123
Harper	46	53	59	64	69	73	76	80	83	86	89	92	94	97	100	102	104	107	109	111
Haskell	129	138	146	153	160	166	172	178	183	188	193	198	202	207	211	215	219	223	227	231
Hughes	109	117	125	131	137	143	149	154	159	163	168	172	176	180	184	188	192	195	199	202
Jackson	60	67	73	78	83	87	91	95	99	102	105	108	111	114	117	120	123	125	128	130
Jefferson	58	66	72	77	82	87	91	94	98	102	105	108	111	114	117	120	122	125	127	130
Johnston	73	81	88	94	99	104	109	113	118	122	125	129	133	136	139	142	146	149	151	154
Kay	64	71	78	84	89	93	98	102	106	109	113	116	120	123	126	129	131	134	137	140
Kingfisher	57	64	70	75	80	84	88	92	96	99	102	105	108	111	114	116	119	121	124	126
Kiowa	54	61	67	72	77	81	85	89	92	96	99	102	105	107	110	113	115	118	120	122
Latimer	213	222	231	239	246	253	260	267	273	279	285	291	296	301	307	312	317	322	326	331
LeFlore	183	192	201	209	217	224	231	238	244	250	256	261	267	272	277	282	287	292	296	301
Lincoln	70	77	84	90	95	100	105	109	113	117	120	124	127	130	133	136	139	142	145	148
Logan	75	83	89	95	100	105	110	114	118	122	125	129	132	136	139	142	145	148	151	153
Love	82	90	97	103	109	114	119	123	127	131	135	139	143	146	150	153	156	159	162	165
McClain	71	79	85	91	96	101	105	109	113	117	121	124	127	131	134	137	140	142	145	148

County	Wastewater flow into the impoundment in gallons/day																			
	50	100	150	200	250	300	350	400	450	500	550	600	650	700	750	800	850	900	950	1000
McCurtain	285	295	304	313	321	329	337	344	351	358	365	371	378	384	390	396	401	407	412	418
McIntosh	111	120	127	135	141	147	153	158	163	168	173	177	181	185	190	193	197	201	205	208
Major	49	56	62	67	71	75	79	83	86	89	92	95	98	100	103	105	108	110	112	115
Marshall	109	117	125	131	138	143	149	154	159	163	168	172	176	180	184	188	192	195	199	202
Mayes	86	95	102	109	115	120	125	130	135	139	143	147	151	155	159	162	166	169	172	175
Murray	93	101	108	114	120	125	130	135	139	143	147	151	155	159	162	166	169	172	175	178
Muskogee	92	100	107	114	119	125	130	134	139	143	147	151	155	158	162	165	169	172	175	178
Noble	62	69	76	81	86	91	95	99	102	106	109	113	116	119	122	124	127	130	132	135
Nowata	88	97	104	111	117	123	128	133	137	142	146	150	154	158	162	165	169	172	175	178
Okfuskee	103	111	119	125	131	137	142	147	152	157	161	165	169	173	177	181	184	188	191	195
Oklahoma	61	69	75	80	85	90	94	98	102	105	109	112	115	118	121	124	126	129	132	134
Okmulgee	89	98	105	111	117	123	128	132	137	141	145	149	153	157	160	164	167	171	174	177
Osage	97	105	112	119	125	131	136	141	145	150	154	158	162	166	170	173	177	180	183	187
Ottawa	106	115	123	131	137	143	149	155	160	165	169	174	178	183	187	191	194	198	202	205
Pawnee	68	76	83	88	94	98	103	107	111	115	118	122	125	128	132	135	137	140	143	146
Payne	70	78	85	91	96	101	105	109	113	117	121	124	128	131	134	137	140	143	146	149
Pittsburg	111	120	127	134	140	146	151	157	162	166	171	175	179	183	187	191	195	198	202	205
Pontotoc	89	97	104	111	117	122	127	132	136	141	145	149	153	156	160	163	167	170	173	176
Pottawatomie	72	80	86	92	97	102	107	111	115	119	123	126	130	133	136	139	142	145	148	151
Pushmataha	135	144	152	159	166	173	179	184	190	195	200	205	209	214	218	223	227	231	235	239
Roger Mills	56	63	69	74	79	83	87	90	94	97	100	103	106	109	112	115	117	120	122	124
Rogers	112	121	129	136	142	148	154	159	165	169	174	179	183	187	191	195	199	203	206	210
Seminole	95	103	110	117	123	128	134	138	143	147	152	156	160	164	167	171	174	178	181	184
Sequoyah	175	184	193	201	209	216	223	229	235	241	247	252	258	263	268	273	277	282	287	291
Stephens	67	74	80	86	91	96	100	104	108	112	115	118	122	125	128	131	133	136	139	141
Texas	44	51	57	62	66	70	74	77	80	83	86	89	92	94	97	99	101	104	106	108
Tillman	58	65	71	76	81	85	89	93	97	100	103	106	109	112	115	118	120	123	125	128
Tulsa	77	86	93	99	104	110	114	119	123	127	131	135	139	142	145	149	152	155	158	161
Wagoner	98	107	114	121	127	133	139	144	149	153	158	162	166	170	174	177	181	185	188	191
Washington	79	87	95	101	107	112	117	122	127	131	135	139	142	146	150	153	156	159	163	166
Washita	55	62	68	73	78	82	86	89	93	96	99	102	105	108	111	113	116	118	121	123
Woods	54	61	67	72	77	81	85	88	92	95	98	101	104	107	110	112	115	117	120	122
Woodward	50	55	60	65	70	74	78	81	84	87	90	93	96	99	101	104	106	108	110	113

[OAR Docket #09-1048; filed 5-22-09]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 623. PRETREATMENT FOR CENTRAL TREATMENT TRUSTS**

[OAR Docket #09-1049]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions  
252:623-1-7. Incorporation by reference [AMENDED]

**AUTHORITY:**  
Environmental Quality Board powers and duties, 27A O.S., § 2-2-101;  
Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

**DATES:**  
**Comment period:**  
December 1, 2008, through January 13, 2009  
**Public hearing:**  
January 13, 2009, and February 27, 2009

**Adoption:**  
February 27, 2009  
**Submitted to Governor:**  
March 9, 2009  
**Submitted to House:**  
March 9, 2009  
**Submitted to Senate:**  
March 9, 2009  
**Gubernatorial approval:**  
March 24, 2009

**Legislative approval:**  
Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

# Permanent Final Adoptions

**Final adoption:**

May 1, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:****Incorporated standards:**

- 40 CFR § 403.5
- 40 CFR § 403.6
- 40 CFR § 403.7
- 40 CFR § 403.8(f)(2)(viii)
- 40 CFR § 403.12(b), (c), (d) and (p)
- 40 CFR § 403.13
- 40 CFR § 403.15
- 40 CFR § 403.16
- 40 CFR § 403.17

**Incorporating rules:**

OAC 252:623-1-7

**Availability:**

The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

**ANALYSIS:**

The Department proposes to amend its rules concerning Central Treatment Trusts [Oklahoma Ordnance Works Authority (OOWA)] to update the incorporation by reference date from July 1, 2007 to July 1, 2008.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.ok.gov) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

**252:623-1-7. Incorporation by reference**

The following sections and subsections of Title 40 Chapter I, Subchapter N, Part 403 of the CFR as published on July 1, ~~2007~~ 2008 are adopted and incorporated by reference:

- (1) § 403.5
- (2) § 403.6
- (3) § 403.7
- (4) § 403.8(f)(2)(viii)
- (5) § 403.12(b), (c), (d) and (p)
- (6) § 403.13
- (7) § 403.15
- (8) § 403.16
- (9) § 403.17

[OAR Docket #09-1049; filed 5-22-09]

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 631. PUBLIC WATER SUPPLY OPERATION

[OAR Docket #09-1050]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Introduction  
252:631-1-3. Adoption of U.S. EPA regulations by reference  
[AMENDED]

**AUTHORITY:**

Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

**DATES:****Comment period:**

December 1, 2008, through January 13, 2009

**Public hearing:**

January 13, 2009, and February 27, 2009

**Adoption:**

February 27, 2009

**Submitted to Governor:**

March 9, 2009

**Submitted to House:**

March 9, 2009

**Submitted to Senate:**

March 9, 2009

**Gubernatorial approval:**

March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

**Final adoption:**

May 1, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:****Incorporated standards:**

- 40 CFR, Part 141 except;
- 40 CFR - 141.400 - 141.405;
- 40 CFR - 141.600 - 141.605;
- 40 CFR - 141.620 - 141.629; and
- 40 CFR - 141.700 - 141.723.
- 40 CFR, Part 143

**Incorporating rules:**

OAC 252:631-1-3

**Availability:**

The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

**ANALYSIS:**

The Department proposes to update its rules concerning the date of the incorporation by reference of certain federal regulations, except for the federal rules previously exempted. The change updates the publication date of the federal rules from July 1, 2007, to July 1, 2008.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.ok.gov) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:

SUBCHAPTER 1. INTRODUCTION

252:631-1-3. Adoption of U.S. EPA regulations by reference

The provisions of Parts 141, "National Primary Drinking Water Regulations," and 143, "National Secondary Drinking Water Regulations," of Title 40 of the Code of Federal Regulations (CFR) as published on July 1, ~~2007~~ 2008, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference, except for the following:

- (1) 40 CFR §§ 141.400 - 141.405;
(2) 40 CFR §§ 141.600 - 141.605;
(3) 40 CFR §§ 141.620 - 141.629; and
(4) 40 CFR §§ 141.700 - 141.723.

[OAR Docket #09-1050; filed 5-22-09]

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

[OAR Docket #09-1051]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Appendix H. Size Charts for On-Site Sewage Treatment Systems [REVOKED]
Appendix H. Size Charts for On-Site Sewage Treatment Systems [NEW]

AUTHORITY:

Environmental Quality Board and Water Quality Management Advisory Council powers and duties; 27A O.S. §§ 2-2-101, 2-2-201 and 2-6-402

DATES:

Comment period:

December 1, 2008, through January 2, 2009

Public hearing:

January 13, 2009, and February 27, 2009

Adoption:

February 27, 2009

Submitted to Governor:

March 9, 2009

Submitted to House:

March 9, 2009

Submitted to Senate:

March 9, 2009

Gubernatorial approval:

March 24, 2009

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

Final adoption:

May 1, 2009

Effective:

July 1, 2009

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Appendix H. Size Charts for On-Site Sewage Treatment Systems [REVOKED]

Appendix H. Size Charts for On-Site Sewage Treatment Systems [NEW]

Gubernatorial approval:

December 15, 2008

Register publication:

26 Ok Reg 505

Docket number:

08-1599

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

Based on feedback from installers in Delaware County, DEQ staff discovered that Delaware County had been mistakenly categorized as being in Net Evaporation Zone 1 instead of 2 in Appendix H, Figure 25. This rulemaking re-categorizes Delaware County as being in Net Evaporation Zone 2.

CONTACT PERSON:

The contact person is Robert Huber. He can be reached at Robert.Huber@deq.ok.gov (e-mail), (405) 702-6100 (phone) or (405) 702-6226 (fax). The DEQ is located at 707 N. Robinson, Oklahoma City, Oklahoma 73102. The mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:

**APPENDIX H. SIZE CHARTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [REVOKED]**

**APPENDIX H. SIZE CHARTS FOR ON-SITE SEWAGE TREATMENT SYSTEMS [NEW]**

**Figure 1. Individual Conventional Subsurface Absorption Fields Designed Using a Percolation Test**

Minimum Trench Length in Feet

PERCOLATION RATE FOR DISPERSAL SITE	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
0-15 minutes per inch	200	270	340	70
16-30 minutes per inch	310	410	510	100
31-45 minutes per inch	420	560	700	140
46-60 minutes per inch	590	790	990	200
61-75 minutes per inch	770	1,030	1,290	260
>75 minutes per inch	Prohibited			

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 2. Individual Conventional Subsurface Absorption Fields Utilizing Chambers When Designed Using a Percolation Test**

Minimum Trench Length in Feet

PERCOLATION RATE FOR DISPERSAL SITE	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
0-15 minutes per inch	160	215	270	55
16-30 minutes per inch	250	330	410	80
31-45 minutes per inch	340	450	560	110
46-60 minutes per inch	470	630	790	160
61-75 minutes per inch	620	830	1040	210
>75 minutes per inch	Prohibited			

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 3. Individual Conventional Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	Prohibited			
2	160	210	260	50
2a	250	330	410	80
3	340	450	550	100
3a	500	665	830	165
4	660	880	1,100	220
5	Prohibited			

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 4. Small Public Conventional Subsurface Absorption Fields Designed Using a Percolation Test**

Minimum Linear Feet Per Gallon per Day

PERCOLATION RATE FOR DISPERSAL SITE	LINEAR FEET PER GALLON PER DAY
0-15 minutes per inch	1.2
16-30 minutes per inch	1.5
31-45 minutes per inch	2
46-60 minutes per inch	2.5
61-75 minutes per inch	3.85
>75 minutes per inch	Prohibited

**Figure 5. Small Public Conventional Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Linear Feet per Gallon per Day

SOIL GROUP	LINEAR FEET PER GALLON PER DAY
1	Prohibited
2	0.8
2a	1.3
3	1.7
3a	2.5
4	3.3
5	Prohibited

**Figure 6. Individual Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	Prohibited			
2	260	340	420	80
2a	400	530	660	130
3	540	720	900	180
3a	800	1,060	1,320	260
4	1,060	1,410	1,760	350
5	Prohibited			

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 7. Small Public Shallow Extended Subsurface Absorption Fields Designed Using a Soil Profile Description**

Minimum Linear Feet per Gallon per Day

SOIL GROUP	LINEAR FEET PER GALLON PER DAY
1	Prohibited
2	1.3
2a	2.1
3	2.7
3a	4.0
4	5.3
5	Prohibited

**Figure 8. Individual Low Pressure Dosing Fields Designed Using a Soil Profile Description**

Total Linear Trench Length in Feet

SOIL GROUP <sup>††</sup>	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Five
1	120	160	200	240
2	160	200	240	280
2a, 3, 3a, 4, & 5	Prohibited			

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

<sup>††</sup> Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.

**Figure 9. Small Public Low Pressure Dosing Fields Designed Using a Soil Profile Description**

SOIL GROUP <sup>†</sup>	AVERAGE DAILY FLOW IN GALLONS			
	200	275	350	400 <sup>††</sup>
1	120	160	200	240
2	160	200	240	280
2a, 3, 3a, 4 & 5	Prohibited			

<sup>†</sup> Low pressure dosing fields may be allowed in soil groups 2a, 3, 3a and 4 when designed and approved as an alternative on-site sewage treatment system.

<sup>††</sup> Low pressure dosing fields may be allowed for average daily flows over 400 gpd, but they will have to be designed and approved as an alternative on-site sewage treatment system.

**Figure 10. Individual ET/A Fields Designed Using a Soil Profile Description - Soil Group 5 Only**

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,059	2,745	3,432	686
2	1,872	2,496	3,120	624
3	1,647	2,196	2,745	549
4	1,471	1,961	2,451	490
5	1,373	1,830	2,288	457
6	1,144	1,525	1,907	381
7	958	1,277	1,596	319
8	792	1,056	1,320	264
9	675	900	1,125	225
10	580	773	967	193

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 11. Small Public ET/A Fields Designed Using a Soil Profile Description - Soil Group 5 Only

Minimum Trench Length in Feet

AVERAGE DAILY FLOW In Gallons	ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
25	261	238	209	187	174	145	122	100	86	70
50	522	475	418	373	348	290	243	200	171	141
75	783	712	626	560	522	435	364	300	257	212
100	1,044	949	835	746	696	580	485	401	342	282
200	2,088	1,898	1,670	1,491	1,392	1,160	971	803	684	564
300	3,131	2,847	2,505	2,237	2,088	1,740	1,456	1,204	1,027	846
400	4,175	3,796	3,340	2,982	2,784	2,320	1,942	1,606	1,369	1,128
500	5,219	4,745	4,175	3,728	3,479	2,899	2,427	2,007	1,711	1,411
600	6,263	5,694	5,010	4,473	4,175	3,479	2,913	2,409	2,053	1,693
700	7,307	6,642	5,845	5,219	4,871	4,059	3,398	2,810	2,396	1,975
800	8,351	7,591	6,680	5,965	5,567	4,639	3,884	3,112	2,738	2,257
900	9,394	8,540	7,515	6,710	6,263	5,219	4,369	3,613	3,080	2,539
1,000	10,438	9,489	8,351	7,456	6,959	5,799	4,855	4,015	3,422	2,821
1,100	11,482	10,438	9,186	8,201	7,655	6,379	5,340	4,416	3,765	3,105
1,200	12,526	11,387	10,021	8,947	8,351	6,959	5,826	4,818	4,107	3,385
1,300	13,570	12,336	10,856	9,693	9,046	7,539	6,311	5,219	4,449	3,667
1,400	14,613	13,285	11,691	10,438	9,742	8,119	6,797	5,621	4,791	3,950
1,500	15,657	14,234	12,526	11,184	10,438	8,698	7,282	6,022	5,134	4,232
1,600	16,701	15,183	13,361	11,929	11,134	9,278	7,768	6,423	5,476	4,514
1,700	17,745	16,132	14,196	12,675	11,830	9,858	8,253	6,825	5,818	4,796
1,800	18,789	17,081	15,031	13,420	12,526	10,438	8,739	7,226	6,160	5,078
1,900	19,832	18,030	15,866	14,166	13,222	11,018	9,224	7,628	6,502	5,360
2,000	20,876	18,978	16,701	14,912	13,918	11,598	9,710	8,029	6,845	5,642
2,500	26,095	23,718	20,876	18,640	17,397	14,498	12,138	10,037	8,556	7,053
3,000	31,314	28,458	25,052	22,367	20,876	17,397	14,565	12,044	10,267	8,463
3,500	36,533	33,212	29,227	26,096	24,356	20,296	16,993	14,052	11,978	9,874
4,000	41,753	37,957	33,402	29,823	27,835	23,196	19,420	16,059	13,689	11,284
4,500	46,972	42,702	37,578	33,551	31,314	26,096	21,848	18,066	15,401	12,695
5,000	52,191	47,446	41,573	37,279	34,794	28,995	24,275	20,073	17,112	14,106

**Figure 12. Individual Drip Irrigation Fields Designed Using a Soil Profile Description**

Minimum Trench Length in Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	125	165	205	40
2	160	210	260	50
2a	250	330	410	80
3	340	450	550	100
3a	500	665	830	165
4	660	880	1,100	220
5	1,000	1,330	1,660	330

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 13. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 1** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	7,282	9,709	12,137	2,427
2	8,010	10,680	13,350	2,670
2a	8,738	11,651	14,564	2,913
3	9,467	12,622	15,777	3,155
3a	10,195	13,593	16,991	3,398
4	10,923	14,564	18,205	3,641
5	14,564	19,418	24,273	4,854

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 14. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 2** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	4,161	5,548	6,935	1,387
2	4,577	6,103	7,629	1,526
2a	4,993	6,658	8,322	1,665
3	5,409	7,212	9,016	1,803
3a	5,825	7,767	9,709	1,942
4	6,242	8,322	10,403	2,080
5	8,322	11,096	13,870	2,774

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 15. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 3** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,913	3,884	4,855	971
2	3,204	4,272	5,340	1,068
2a	3,495	4,660	5,825	1,165
3	3,786	5,049	6,311	1,263
3a	4,078	5,437	6,796	1,359
4	4,369	5,825	7,282	1,456
5	5,825	7,767	9,709	1,942

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

# Permanent Final Adoptions

**Figure 16. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 4** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	2,330	3,107	3,884	777
2	2,563	3,418	4,272	855
2a	2,796	3,728	4,660	932
3	3,029	4,039	5,049	1,010
3a	3,262	4,350	5,437	1,088
4	3,495	4,661	5,825	1,166
5	4,660	6,214	7,767	1,554

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 17. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 5** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,821	2,428	3,034	607
2	2,003	2,670	3,337	667
2a	2,185	2,913	3,641	728
3	2,367	3,156	3,944	789
3a	2,549	3,399	4,248	850
4	2,731	3,641	4,551	910
5	3,641	4,855	6,068	1,214

<sup>†</sup>These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 18. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 6** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,533	2,044	2,555	511
2	1,686	2,248	2,811	562
2a	1,840	2,453	3,066	613
3	1,993	2,657	3,322	664
3a	2,146	2,862	3,577	716
4	2,300	3,066	3,833	766
5	3,066	4,088	5,110	1,022

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 19. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 7** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,324	1,766	2,207	442
2	1,456	1,942	2,427	486
2a	1,589	2,119	2,648	530
3	1,721	2,295	2,868	574
3a	1,854	2,472	3,089	618
4	1,986	2,648	3,310	662
5	2,648	3,531	4,413	883

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 20. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 8** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,165	1,554	1,942	389
2	1,282	1,709	2,136	427
2a	1,398	1,864	2,330	466
3	1,515	2,020	2,525	505
3a	1,631	2,175	2,719	544
4	1,748	2,330	2,913	582
5	2,330	3,107	3,884	777

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 21. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 9** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	1,041	1,387	1,734	346
2	1,145	1,526	1,907	381
2a	1,249	1,664	2,081	415
3	1,353	1,803	2,254	450
3a	1,457	1,942	2,428	485
4	1,561	2,081	2,601	520
5	2,081	2,774	3,468	693

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

**Figure 22. Individual Spray Irrigation Fields Designed Using a Soil Profile Description – Net Evaporation Zone 10** [See Figure 25 in this Appendix (relating to net evaporation zones)]

Minimum Spray Irrigation Area in Square Feet

SOIL GROUP	NUMBER OF BEDROOMS IN RESIDENCE <sup>†</sup>			
	Two or Fewer	Three	Four	Each Additional Bedroom
1	940	1,253	1,566	313
2	1,033	1,378	1,723	345
2a	1,127	1,504	1,879	377
3	1,221	1,629	2,036	408
3a	1,315	1,754	2,192	439
4	1,409	1,880	2,349	471
5	1,879	2,506	3,132	627

<sup>†</sup> These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

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**Figure 23. Individual Lagoons**

Length in Feet of Each Side of the Bottom of a Square Individual Lagoon

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Five
1	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
2				
3	40	50	60	65
4	35	45	55	60
5	30	40	50	55
6	25	35	45	50
7	20	30	35	45
8	20	25	30	35
9	15	20	25	30
10	10	15	20	25

Diameter in Feet of the Bottom of a Round Individual Lagoon

ZONE [See Figure 25 in this Appendix (relating to net evaporation zones)]	NUMBER OF BEDROOMS IN RESIDENCE†			
	Two or Fewer	Three	Four	Five
1	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2			
2				
3	50	60	70	80
4	45	55	65	75
5	40	50	60	70
6	35	45	50	60
7	30	40	45	55
8	25	30	40	45
9	20	30	35	40
10	15	25	30	35

† These figures are based on an average flow of 6,000 gallons per month for a two-bedroom residence with an additional 2,000 gallons per month added for each additional bedroom. The size of the system should be increased if the actual or anticipated water usage exceeds this average.

Figure 24. Small Public Lagoons

Length in Feet of Each Side of the Bottom of a Square Small Public Lagoon

AVERAGE DAILY FLOW In Gallons	ZONE [See Figure 25 of this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
100	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		18	16	14	10	Prohibited			
200			38	35	32	27	22	17	14	11
300			54	49	46	40	34	28	24	20
400			67	61	58	51	44	37	32	27
500			78	72	69	60	52	45	39	34
600			88	82	78	69	60	52	46	40
700			98	91	87	77	68	59	52	46
800			107	99	95	84	74	65	58	51
900			115	107	102	91	81	71	63	56
1,000			123	114	110	97	87	76	68	61
1,100			130	122	116	104	92	81	73	65
1,200			138	128	123	110	98	86	77	69
1,300			144	135	129	115	103	91	82	73
1,400			151	141	135	121	108	95	86	77
1,500			157	147	141	126	113	100	90	81
1,600			163	153	147	131	117	104	94	85
1,700			169	158	152	136	122	108	98	88
1,800			175	164	157	141	126	112	101	92
1,900			181	169	162	146	131	116	105	95
2,000			186	174	167	150	135	120	108	98
2,500	212	198	190	171	154	137	125	114		
3,000	235	220	212	191	172	154	140	127		
3,500	256	240	231	209	188	168	153	140		
4,000	276	259	249	225	203	182	166	151		
4,500	295	276	266	240	218	195	178	163		
5,000	312	293	282	255	231	207	189	173		

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Diameter in Feet of the Bottom of a Round Small Public Lagoon

AVERAGE DAILY FLOW In Gallons	ZONE [See Figure 25 of this Appendix (relating to net evaporation zones)]									
	1	2	3	4	5	6	7	8	9	10
100	Contact your local DEQ office for assistance with sizing lagoons in Zones 1 and 2		25	22	20	15	Prohibited			
200			47	43	40	34	29	23	20	16
300			65	59	56	49	42	35	31	26
400			79	73	70	61	53	45	40	35
500			92	85	81	72	63	54	49	43
600			104	96	92	81	72	62	56	50
700			114	106	102	90	80	69	63	56
800			124	116	111	99	88	76	70	62
900			134	125	119	106	95	82	76	68
1,000			143	133	128	114	102	89	81	73
1,100			151	141	135	121	108	94	87	78
1,200			159	149	143	128	114	100	92	83
1,300			167	156	150	134	120	105	97	88
1,400			174	163	156	140	126	110	102	92
1,500			181	170	163	146	131	115	106	96
1,600			188	176	169	152	136	120	111	100
1,700			195	183	175	158	142	125	115	104
1,800			202	189	181	163	147	129	119	108
1,900			208	195	187	168	151	133	124	112
2,000			214	201	193	173	156	138	128	116
2,500		243	228	219	197	178	157	146	133	
3,000		269	252	243	219	198	175	163	149	
3,500		293	275	265	239	216	192	178	163	
4,000		315	296	285	258	233	207	193	176	
4,500		336	316	304	275	249	221	206	189	
5,000		356	335	322	292	264	235	219	201	

**Figure 25. Net Evaporation Zones**

COUNTY	ZONE	COUNTY	ZONE	COUNTY	ZONE
Adair	1	Grant	9	Nowata	5
Alfalfa	9	Greer	9	Okfuskee	7
Atoka	6	Harmon	9	Oklahoma	8
Beaver	10	Harper	9	Okmulgee	6
Beckham	9	Haskell	3	Osage	7
Blaine	9	Hughes	6	Ottawa	2
Bryan	6	Jackson	9	Pawnee	7
Caddo	9	Jefferson	9	Payne	7
Canadian	9	Johnston	7	Pittsburg	5
Carter	7	Kay	8	Pontotoc	7
Cherokee	3	Kingfisher	9	Pottawatomie	7
Choctaw	2	Kiowa	9	Pushmataha	2
Cimarron	10	Latimer	2	Roger Mills	9
Cleveland	8	LeFlore	1	Rogers	5
Coal	6	Lincoln	7	Seminole	7
Comanche	9	Logan	8	Sequoyah	1
Cotton	9	Love	7	Stephens	8
Craig	4	McClain	8	Texas	10
Creek	7	McCurtain	1	Tillman	9
Custer	9	McIntosh	5	Tulsa	6
Delaware	2	Major	9	Wagoner	5
Dewey	9	Marshall	7	Washington	6
Ellis	9	Mayes	5	Washita	9
Garfield	9	Murray	7	Woods	9
Garvin	8	Muskogee	5	Woodward	9
Grady	9	Noble	8		

[OAR Docket #09-1051; filed 5-22-09]

# Permanent Final Adoptions

## TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION

[OAR Docket #09-1052]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. Introduction

252:690-1-1. Purpose and applicability [AMENDED]

252:690-1-2. Definitions [AMENDED]

252:690-1-4. Incorporation of USEPA regulations by reference [AMENDED]

Subchapter 3. Point Source Discharges

252:690-3-19. TREs, TIEs and WET limits [AMENDED]

252:690-3-27. Intermittent lethality—~~or persistent sublethality~~ [AMENDED]

252:690-3-31. WET test requirements [AMENDED]

252:690-3-34. Test duration for WET tests [AMENDED]

252:690-3-37. ~~Dilution—WET test dilution~~ water for discharges to perennial streams and lakes [AMENDED]

252:690-3-39. Endpoint and test failure criteria for acute tests [AMENDED]

252:690-3-40. Endpoint and test failure criteria for chronic tests [AMENDED]

252:690-3-42. WET testing frequency reductions after WET testing trial period [AMENDED]

252:690-3-75. Wasteload allocations for implementation of human health and raw water criteria for toxic substances to protect the Public and Private Water Supply beneficial use [AMENDED]

252:690-3-93. Monitoring for a nutrient limited watershed [NEW]

Appendix A. Water Quality Standards Implementation Plan Department of Environmental Quality [REVOKED]

Appendix A. Water Quality Standards Implementation Plan Department of Environmental Quality [NEW]

### AUTHORITY:

Water Quality Standards Implementation Plan, 27A O.S., § 1-1-202; Environmental Quality Board powers and duties, 27A O.S., § 2-2-101; Water Quality Management Advisory Council powers and duties, 27A O.S., § 2-2-201; and Water Quality, 27A O.S., §§ 2-6-101 *et seq.*

### DATES:

#### Comment period:

December 1, 2008, through January 13, 2009

#### Public hearing:

January 13, 2009, and February 27, 2009

#### Adoption:

February 27, 2009

#### Submitted to Governor:

March 9, 2009

#### Submitted to House:

March 9, 2009

#### Submitted to Senate:

March 9, 2009

#### Gubernatorial approval:

March 24, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 1, 2009.

#### Final adoption:

May 1, 2009

#### Effective:

July 1, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

N/A

#### INCORPORATIONS BY REFERENCE:

##### Incorporated standards:

The following federal regulations as published on July 1, 2008:

40 CFR Part 260. Hazardous Waste Management System: General, except 260.20 through 260.22.

40 CFR Part 261. Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".

40 CFR 262.42(a)(2)(e).

40 CFR Part 263. Standards Applicable to Transporters of Hazardous Waste.

40 CFR Part 264. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

40 CFR 264.1(f)

40 CFR 264.149

40 CFR 264.150

40 CFR 264.301(l)

40 CFR Part 264 Appendix VI

40 CFR Part 265. Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:

40 CFR 265.1(c)(4)

40 CFR 265.149

40 CFR 265.150

40 CFR Part 266. Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.

40 CFR Part 268. Land Disposal Restrictions, except:

40 CFR 268.5

40 CFR 268.6

40 CFR 268.10

40 CFR 268.11

40 CFR 268.12

40 CFR 268.13

40 CFR 268.42(b)

40 CFR 268.44(a) through (g)

40 CFR 268.44(m) through (p).

40 CFR Part 270. Permit Programs, except 270.14(b)(18).

40 CFR Part 273. Universal Waste Rule.

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

40 CFR Part 116 (Hazardous Substances List)

40 CFR Part 117 (Reportable Quantities for Hazardous Substances)

40 CFR 122.2 - (definitions)

40 CFR 122.24 - (concentrated aquatic animal production facilities)

40 CFR 122.25 - (aquaculture projects)

40 CFR 122.26 - (stormwater discharges)

40 CFR 122.27 - (silviculture)

40 CFR 122.28(a) and (b) - (general permits)

40 CFR 122.29 - (new sources and new dischargers)

40 CFR 122.32 - As an operator of a small MS4, am I regulated under the NPDES storm water program?

40 CFR 122.34 - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?

40 CFR 122.35 - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?

40 CFR 122.41 - (permit conditions)

40 CFR 122.42 - (conditions for specified categories of permits)

40 CFR 122.43 - (establishing permit conditions)

40 CFR 122.44 - (establishing permit limitations, standards and other conditions)

40 CFR 122.45 - (calculating permit conditions)

40 CFR 122.46 - (permit duration)

40 CFR 122.47(a) - (schedules of compliance)

40 CFR 122.48 - (monitoring requirements)

40 CFR 122.50 - (disposal into wells)

40 CFR 122.61 - (permit transfer)

40 CFR 122.62 - (permit modification)

40 CFR 122.63 - (minor modifications of permits)

40 CFR 122.64 - (permit termination)

40 CFR Part 122 Appendices A through J

40 CFR Part 125 (criteria and standards for NPDES):

Subpart A (technology-based treatment),

Subpart B (criteria for aquaculture projects),

Subpart D (fundamentally different factors),

Subpart H (alternative effluent limitations),

Subpart I (new cooling water intakes),

Subpart J (existing cooling water intakes), and

Subpart L (disposal of sewage sludge under CWA 405)

40 CFR Part 129 (Toxic Pollutant Effluent Standards)

- 40 CFR Part 136 (testing and laboratory)
- 40 CFR Sections 401-471 (Effluent Guidelines 7 and Standards)
- 40 CFR Section 110.6 (notice of oil discharge)
- 40 CFR Part 302 (CERCLA exemption from NPDES permits)
- 40 CFR 503.1 (Purpose and applicability)
- 40 CFR 503.2 (Compliance period)
- 40 CFR 503.3 (Permits and direct enforceability)
- 40 CFR 503.4 (Relationship to other regulations)
- 40 CFR 503.5 (Additional or more stringent requirements)
- 40 CFR 503.6(a)-(e),(g)-(j) (Exclusions)
- 40 CFR 503.7 (Requirement for a person who prepares biosolids)
- 40 CFR 503.8 (Sampling and analysis)
- 40 CFR 503.9 (General definitions)
- 40 CFR 503.10(a),(b)(1)&(2),(c),(f),(g) (Applicability)
- 40 CFR 503.11 (Special definitions)
- 40 CFR 503.12 (General requirements)
- 40 CFR 503.13 (Pollutant limits)
- 40 CFR 503.14 (Management practices)
- 40 CFR 503.15 (Operational standards - pathogens and vector attraction reduction)
- 40 CFR 503.16(a) (Frequency of monitoring)
- 40 CFR 503.17(a) (Recordkeeping)
- 40 CFR 503.18 (Reporting)
- 40 CFR 503.30 (Scope)
- 40 CFR 503.31 (Special definitions)
- 40 CFR 503.32(a), (b) (Pathogens)
- 40 CFR 503.33(a), (b)(1)-(11) (Vector attraction reduction)
- 40 CFR 503.40 (Applicability)
- 40 CFR 503.41 (Special definitions)
- 40 CFR 503.42 (General requirements)
- 40 CFR 503.43 (Pollutant (Metal) limits)
- 40 CFR 503.44 (Operational standard - total hydrocarbons)
- 40 CFR 503.45 (Management practices)
- 40 CFR 503.46 (Frequency of monitoring)
- 40 CFR 503.47 (Recordkeeping)
- 40 CFR 503.48 (Reporting)
- 40 CFR Part 503 Appendices:
- Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
- Appendix B (Pathogen treatment processes)
- 40 CFR Part 130 (Water Quality Planning and Management)
- 40 CFR Part 144 (Underground Injection Control Program)
- 40 CFR Part 145 (State UIC Program Requirements)
- 40 CFR Part 146 (Underground Injection Control Program: Criteria and Standards)
- 40 CFR Part 147 (State Underground Injection Control Programs)
- 40 CFR Part 148 (Hazardous Waste Injection Restrictions)

**Incorporating rules:**

OAC 252:690-1-4

**Availability:**

The federal rules incorporated above are readily available to the public for examination at the administrative offices of the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102, Monday - Friday (excluding holidays) from the hours of 8:00 a.m. to 4:30 p.m.

**ANALYSIS:**

The Department proposes to amend this Chapter of rules to require a failure of toxicity testing for sublethal effects to be treated the same as a failure of toxicity testing for lethal effects, as required by EPA and pursuant to approved changes in Oklahoma's Water Quality Standards. Additionally, the amendments propose to specifically state when the Department will consider an organism change for biomonitoring from *Ceriodaphnia dubia* or *Daphnia pulex* to *Daphnia magna* and to add a new rule to require monitoring in a nutrient limited watershed and that there can be no monitoring frequency reductions for WET limits. Finally, the Department proposes to revoke and reissue Appendix A to this chapter of rules to make some clean up language changes and to update its rules concerning the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2007, to July 1, 2008.

**CONTACT PERSON:**

Please send written comments to Donald D. Maisch (e-mail: don.maisch@deq.ok.gov) at the Oklahoma Department of Environmental Quality, 707 N. Robinson, Oklahoma City, OK 73102. Mailing address is P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, phone (405) 702-7189, fax (405) 702-7199.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:**

**SUBCHAPTER 1. INTRODUCTION**

**252:690-1-1. Purpose and applicability**

This Chapter establishes guidance and requirements for DEQ jurisdictional areas for the implementation of Oklahoma's Water Quality Standards, found at OAC 785:45, pursuant to 27A O.S § 1-1-202(B). The DEQ's Water Quality Standards Implementation Plan is included as Appendix A. Included in Subchapter 3 of this Chapter are certain point source discharge implementation criteria formerly contained in OAC 785:46. In addition, the applicable implementation provisions of the following DEQ rules apply:

- (1) OAC 252:205, "Hazardous Waste Management;"
- (2) OAC 252:220, "Brownfields;"
- (3) OAC ~~252:300~~252:301, "Laboratory—~~Certification~~ Accreditation;"
- (4) OAC 252:410, "Radiation Management;"
- ~~(5) OAC 252:510, "Municipal Solid Waste Landfills;"~~
- ~~(5) OAC 252:515, "Management of Solid Waste;"~~
- ~~(6) OAC 252:520, "Solid Waste Management;"~~
- ~~(7) OAC 252:605-252:606, "Discharge Standards;"~~
- ~~(8) OAC 252:611, "General Water Quality;"~~
- ~~(9) OAC 252:616, "Industrial Wastewater Systems;"~~
- ~~(9) OAC 252:619, "Operation and Maintenance of Non-Industrial Total Retention Lagoon Systems and Land Application;"~~
- (10) OAC 252:621, "Non-Industrial Flow-Through and Public Water Supply Impoundments ~~and Including Land Application;"~~
- (11) OAC 252:626, "Public Water Supply Construction Standards;"
- (12) OAC 252:631, "Public Water Supply Operation;"
- (13) OAC 252:641, "Individual and Small Public On-Site Sewage ~~Disposal~~ Treatment Systems;"
- ~~(14) OAC 252:648, "Land Application of Biosolids;"~~
- ~~(14) OAC 252:652, "Underground Injection Control;"~~
- ~~(15) OAC 252:656, "Water Pollution Control Facility Construction;"~~ and
- ~~(16) OAC 252:710, "Waterworks and Wastewater Works Operator Certification."~~

**252:690-1-2. Definitions**

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

"**Acute WET testing**" means WET testing which measures short-term lethality to a specific aquatic animal test species ~~over a 48 hour period as specified in OAC 252:690-3-29.~~

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**"Arithmetic mean"** means the sum of the values of individual data points in a data set divided by the number of data points. This term is synonymous with arithmetic average.

**"Background concentration"** means the concentration of a substance in receiving water immediately upstream of, but not influenced by, a wastewater discharge.

**"CAFO"** means Concentrated Animal Feeding Operation.

**"Chronic WET testing"** means WET testing which measures long term lethal and sublethal effects to a specific aquatic animal test species ~~over a 7-day period~~ as specified in OAC 252:690-3-29.

**"Coefficient of variation (CV)"** means, when used in the context of effluent data, the measure of an effluent distribution's variation relative to its mean. When used in the context of WET test acceptability, CV means the % variation among test replicates in either the control or the critical dilution.

**"Conservative substance"** means a substance which persists in the environment, having characteristics which are resistant to ordinary biological or biochemical degradation.

**"Critical dilution"** means an effluent dilution, expressed as a percentage, representative of the dilution afforded a wastewater discharge according to the appropriate Q\*-dependent chronic mixing zone equation for chronic WET testing. The critical dilution for acute WET testing is 100%.

**"Defensible analytical data"** means data traceable to a laboratory certified for that pollutant by the DEQ under OAC ~~252:300-252:301~~ or data accepted by EPA; data traceable to a municipal laboratory operated by a properly certified laboratory technician by OAC 252:710; or data generated by a state or federal agency laboratory with equivalent certification. Quality assurance procedures, including chain of custody records, must be adequate and documentable. Quality control data required in the analytical method must be available from the laboratory upon request.

**"DEQ"** means the Oklahoma Department of Environmental Quality.

**"Detectable concentration"** means a concentration greater than zero (0) using a ninety-nine percent (99%) probability basis.

**"Dilution series"** means a set of proportional effluent dilutions for acute or chronic WET testing based on a specified critical dilution, which is typically the next-to-highest dilution in the series.

**"Effluent-dominated receiving stream"** means a stream which receives a point source discharge greater than or equal to one-third (1/3) of its 7Q2 flow.

**"Engineer"** means professional engineer registered in the state of Oklahoma.

**"EPA"** means the United States Environmental Protection Agency.

**"Geometric mean"** means the antilog of the arithmetic average of the natural logarithms of the individual points in a data set.

**"Intermittent lethality toxicity"** means two or more lethal effect test failures of a routine acute or chronic WET test within any 18-month period.

**"LC<sub>50</sub> (lethal concentration)"** means the concentration of a toxicant in an external medium that is lethal to fifty percent of the test animals for a specified period of exposure.

**"Load Allocation or LA"** means the portion of a receiving water's TMDL that is attributed either to one of its existing or future nonpoint sources or to natural background sources.

**"Log transformation"** means the mathematical transformation of an observed data set which results in a data set consisting of the natural logarithms of the individual data points in the observed data set.

**"Log-normally distributed"** means a distribution of effluent data which is positively skewed.

**"Major discharger"** means an industrial facility which has a point rating greater than or equal to 80 according to the NPDES permit rating system for industrial discharges; a POTW with a design flow greater than or equal to 1 mgd; or any facility designated as such by EPA in conjunction with the state permitting authority.

**"Mineral constituents"** means chlorides, sulfates and total dissolved solids collectively.

**"Measurable level"** means a detectable concentration for which the analytical signal to noise ratio is significantly high to report a reliable single number. The measurable level corresponds to the lowest point at which the analytical calibration curve is determined based on analyses for the pollutant of concern.

**"Municipal"** means a publicly owned treatment works or facilities which are privately owned that generate only domestic waste including mobile home parks, home owner's associations, etc.

**"Narrative water quality criterion"** means statements or other qualitative expressions of chemical, physical, or biological parameters that are assigned to protect a beneficial use.

**"Numerical water quality criterion"** means concentrations or other quantitative measures of chemical, physical, or biological parameters that are assigned to protect a beneficial use.

**"No Observed Effect Concentration-Lethal" or "NOEC<sub>L</sub>"** means the greatest tested effluent dilution in a WET test at and below which lethality to test organisms does not occur that is statistically different from the control (0% effluent) at the 95% confidence level.

**"No Observed Effect Concentration-Sublethal" or "NOEC<sub>S</sub>"** means the greatest tested effluent dilution in a WET test at and below which a sublethal effect to test organisms does not occur that is statistically different from the control (0% effluent) at the 95% confidence level.

**"Non-conservative substance"** means a substance which undergoes significant short-term degradation or change in the environment other than by dilution.

**"OAC"** means Oklahoma Administrative Code.

**"Once-through cooling water"** means cooling water that is not recirculated.

**"OWQS"** means the Oklahoma Water Quality Standards, contained at OAC 785:45.

"**Permit cycle**" means the life of a permit from the date of issuance to the date of expiration as specifically stated on a permit, unless the expiration of the permit is extended by operation of statute, rule or agreement of the permittee and the DEQ.

"**Period of Record**" means a continuous period for which a facility's effluent data is reviewed for the purposes of characterizing the effluent.

~~"**Persistent lethality**" means the repeated failure of an acute WET test or the repeated lethal effect of a chronic WET test. If the required WET testing frequency is monthly, repeated failure occurs upon the failure of two out of three consecutive monthly tests for the same test species. If the required WET testing frequency is other than monthly, repeated failure occurs upon the failure of the required test plus one of the two monthly retests for the same test species in the ensuing two-month period.~~

~~"**Persistent sublethality**" means two consecutive chronic sublethal effect test failures.~~

"**Persistent toxicity**" means the repeated failure of an acute or chronic WET test. If the required WET testing frequency is monthly, repeated failure occurs upon the failure of two of the three consecutive monthly tests for the same test species. If the required WET testing frequency is other than monthly, repeated failure occurs upon the failure of the required test plus one of the two monthly retests for the same test species in the ensuing two-month period.

"**Percent mortality**" means 100% minus percent survival in a WET test effluent dilution.

"**Positively skewed**" means a data distribution which is asymmetric about its arithmetic mean with a tail in the positive direction.

"**POTW**" means publically owned treatment works.

"**Reasonable potential**" means causes, or has a reasonable potential to cause or contribute to an exceedance of a water quality criterion.

"**Robust Regression on Order Statistics (Robust ROS)**" means a statistical method that computes a regression line to estimate values for non-detect data and combines these estimates with detected observations to compute sample statistics.

"**RPF<sub>95</sub>**" means the reasonable potential factor for an effluent distribution, based on a 95% probability basis, for the purpose of determining whether an effluent limitation is required.

"**RPF<sub>95(M)</sub>**" means the reasonable potential factor for an effluent distribution, based on a 95% confidence interval and 95% probability basis, and accounting for the size of the effluent data set, for the purpose of determining whether further effluent monitoring is required.

"**Receiving water**" means the water of the State to which a wastewater is discharged.

"**Regulatory effluent flow**" means the effluent flow, which is water quality criterion-dependent, used in determining reasonable potential and wasteload allocations for a substance.

"**SMCRA**" means the Surface Mining Control and Reclamation Act of 1977.

"**Standard deviation (s<sub>x</sub>)**" means the standard deviation of an untransformed data set based on a sample of size N.

"**Standard deviation of log-transformed x (s<sub>ln(x)</sub>)**" means the standard deviation of a log-normally transformed data set based on a sample of size N.

"**T<sub>95</sub>**" means the 95<sup>th</sup> percentile of the effluent temperature distribution (in EC) of sustained two-hour daily maximum effluent temperatures where effluent temperature is recorded continuously and the distribution of daily maximum effluent temperatures where temperature is recorded at discrete intervals of two hours or longer, provided that recording intervals for temperature do not exceed six hours.

"**TDS**" means total dissolved solids.

"**TIE**" means toxicity identification evaluation.

"**TRE**" means toxicity reduction evaluation.

"**Trigger Background concentration**" means the background concentration necessary to trigger reasonable potential for a substance to exceed an applicable criterion given a specified mean effluent concentration.

"**Wasteload allocation**" or "**WLA**" means the portion of a receiving water's TMDL that is allocated to one of its existing or future point sources of pollution.

"**WET limit**" means a WET testing limitation in the form of a NOEC<sub>L</sub>, NOEC<sub>S</sub>, or LC<sub>50</sub>, the exceedance of which constitutes a permit violation.

"**WET testing**" means testing for whole effluent toxicity, using an effluent dilution series based on a critical dilution, to specific aquatic animal species according to EPA-approved testing methods.

**252:690-1-4. Incorporation of USEPA regulations by reference**

The following federal regulations at 40 CFR, as published on July 1, ~~2007~~ 2008, are incorporated by reference and applicable to this Chapter:

- (1) **OAC 252:205 (Hazardous Waste Management)**. 124.31, 124.32, & 124.33, substituting DEQ for EPA, and deleting the following sentence from each section: For the purposes of this section only, "Hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.
  - (A) **Part 260**. Hazardous Waste Management System: General, except 260.20 through 260.22.
  - (B) **Part 261**. Identification and Listing of Hazardous Waste. In 261.5(f)(3)(iv), and (v), and in 261.5(g)(3)(iv), and (v) add "other than Oklahoma" after the word "State".
  - (C) 262.42(a)(2)(e).
  - (D) **Part 263**. Standards Applicable to Transporters of Hazardous Waste.
  - (E) **Part 264**. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
    - (i) 264.1(f)
    - (ii) 264.149
    - (iii) 264.150

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- (iv) 264.301(l)
- (v) Part 264 Appendix VI
- (F) **Part 265.** Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities except:
  - (i) 265.1(c)(4)
  - (ii) 265.149
  - (iii) 265.150
- (G) **Part 266.** Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities.
- (H) **Part 268.** Land Disposal Restrictions, except:
  - (i) 268.5
  - (ii) 268.6
  - (iii) 268.10
  - (iv) 268.11
  - (v) 268.12
  - (vi) 268.13
  - (vii) 268.42(b)
  - (viii) 268.44(a) through (g)
  - (ix) 268.44(m) through (p).
- (I) **Part 270.** Permit Programs, except 270.14(b)(18).
- (J) **Part 273.** Universal Waste Rule.
- (K) **Part 279.** Used Oil Management Standards. The only portion of 279.82 which is adopted by reference is "The use of used oil as a dust suppressant is prohibited."
- (2) **OAC 252:606 (Discharge Standards).**
  - (A) Part 116 (Hazardous Substances List)
  - (B) Part 117 (Reportable Quantities for Hazardous Substances)
  - (C) The following from PART 122 (NPDES PERMIT REGULATIONS):
    - (i) 122.2 - (definitions)
    - (ii) 122.24 - (concentrated aquatic animal production facilities)
    - (iii) 122.25 - (aquaculture projects)
    - (iv) 122.26 - (stormwater discharges)
    - (v) 122.27 - (silviculture)
    - (vi) 122.28(a) and (b) - (general permits)
    - (vii) 122.29 - (new sources and new dischargers)
    - (viii) 122.32 ~~B~~ - As an operator of a small MS4, am I regulated under the NPDES storm water program?
    - (ix) 122.34 ~~B~~ - As an operator of a regulated small MS4, what will my NPDES MS4 storm water permit require?
    - (x) 122.35 ~~B~~ - As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?
    - (xi) 122.41 - (permit conditions)
    - (xii) 122.42 - (conditions for specified categories of permits)
    - (xiii) 122.43 - (establishing permit conditions)
    - (xiv) 122.44 - (establishing permit limitations, standards and other conditions)
    - (xv) 122.45 - (calculating permit conditions)
    - (xvi) 122.46 - (permit duration)
    - (xvii) 122.47(a) - (schedules of compliance)
    - (xviii) 122.48 - (monitoring requirements)
    - (xix) 122.50 - (disposal into wells)
    - (xx) 122.61 - (permit transfer)
    - (xxi) 122.62 - (permit modification)
    - (xxii) 122.63 - (minor modifications of permits)
    - (xxiii) 122.64 - (permit termination)
    - (xxiv) Appendices A through J
  - (D) The following from PART 125 (criteria and standards for NPDES):
    - (i) Subpart A (technology-based treatment),
    - (ii) Subpart B (criteria for aquaculture projects),
    - (iii) Subpart D (fundamentally different factors),
    - (iv) Subpart H (alternative effluent limitations),
    - (v) Subpart I (new cooling water intakes),
    - (vi) Subpart J (existing cooling water intakes), and
    - (vii) Subpart L (disposal of sewage sludge under CWA 405)
  - (E) Part 129 (Toxic Pollutant Effluent Standards)
  - (F) Part 136 (testing and laboratory)
  - (G) Sections 401-471 (Effluent Guidelines 7 and Standards)
  - (H) Section 110.6 (notice of oil discharge)
  - (I) Part 302 (CERCLA exemption from NPDES permits)
  - (J) The following Sections from Part 503, Subpart A (General Provisions):
    - (i) 503.1 (Purpose and applicability)
    - (ii) 503.2 (Compliance period)
    - (iii) 503.3 (Permits and direct enforceability)
    - (iv) 503.4 (Relationship to other regulations)
    - (v) 503.5 (Additional or more stringent requirements)
    - (vi) 503.6(a)-(e),(g)-(j) (Exclusions)
    - (vii) 503.7 (Requirement for a person who prepares biosolids)
    - (viii) 503.8 (Sampling and analysis)
    - (ix) 503.9 (General definitions)
  - (K) The following Sections from Part 503, Subpart B (Land Application):
    - (i) 503.10(a),(b)(1)&(2),(e),(f),(g) (Applicability)
    - (ii) 503.11 (Special definitions)
    - (iii) 503.12 (General requirements)
    - (iv) 503.13 (Pollutant limits)
    - (v) 503.14 (Management practices)
    - (vi) 503.15 (Operational standards - pathogens and vector attraction reduction)
    - (vii) 503.16(a) (Frequency of monitoring)
    - (viii) 503.17(a) (Recordkeeping)
    - (ix) 503.18 (Reporting)

(L) The following Sections from Part 503, Subpart D (Pathogens and Vector Attraction Reduction):

- (i) 503.30 (Scope)
- (ii) 503.31 (Special definitions)
- (iii) 503.32(a), (b) (Pathogens)
- (iv) 503.33(a), (b)(1)-(11) (Vector attraction reduction)

(M) The following Sections from Part 503 Subpart E (Incineration)

- (i) 503.40 (Applicability)
- (ii) 503.41 (Special definitions)
- (iii) 503.42 (General requirements)
- (iv) 503.43 (Pollutant (Metal) limits)
- (v) 503.44 (Operational standard - total hydrocarbons)
- (vi) 503.45 (Management practices)
- (vii) 503.46 (Frequency of monitoring)
- (viii) 503.47 (Recordkeeping)
- (ix) 503.48 (Reporting)

(N) The following Appendices from Part 503:

- (i) Appendix A (Procedure to determine the annual whole sludge application rate for a sludge)
- (ii) Appendix B (Pathogen treatment processes)

(O) Provisions of 40 CFR relating to CAFOs are excluded because they are beyond the jurisdiction of this Chapter.

(3) **OAC 252:611 (General Water Quality)** Part 130 (Water Quality Planning and Management)

(4) **OAC 252:652 (Underground Injection Control).** The following apply in their entirety as they apply to the underground injection control program:

- (A) Part 144 (Underground Injection Control Program)
- (B) Part 145 (State UIC Program Requirements)
- (C) Part 146 (Underground Injection Control Program: Criteria and Standards)
- (D) Part 147 (State Underground Injection Control Programs)
- (E) Part 148 (Hazardous Waste Injection Restrictions)

(5) In all cases where these rules conflict with or are less stringent than federal regulations, the federal regulations apply.

### SUBCHAPTER 3. POINT SOURCE DISCHARGES

#### 252:690-3-19. TREs, TIEs and WET limits

(a) **TRE and TIE.** A TRE is required where persistent lethality—toxicity is demonstrated. The DEQ may require a TRE or TIE where persistent sublethality or intermittent lethality is demonstrated.

(b) **WET limits.** The DEQ will incorporate a WET limit into a permit for the species affected by whole effluent toxicity upon the completion of a TRE, unless the DEQ determines that chemical-specific effluent limits or toxicity-specific management practices in accordance with OAC 252:690-3-27 are

sufficient to comply with the narrative toxicity criterion and protect the designated use. The DEQ may also incorporate a WET limit or chemical-specific effluent limits into a permit where reasonable potential is established by the presence in a discharge of a known toxicant in toxic amounts. The effective date of a WET ~~limits—limit~~ or a chemical-specific ~~limits—limit~~ may be deferred up to three years from the date of completion of the TRE or the effective date of a permit, as applicable. The effective date of toxicity-specific management practices may be deferred up to one year from the date of completion of the TRE or the effective date of a permit, as applicable.

#### 252:690-3-27. Intermittent lethality or persistent sublethality toxicity

Where the permittee has demonstrated intermittent ~~lethality—toxicity~~ in either acute or chronic WET testing, the DEQ will require an increase in the frequency of WET testing and may require the permittee to perform a TRE/TIE for the affected species. A WET limit, chemical-specific numerical limit, or toxicity-specific management ~~practices—practice~~ may be required at the completion of a TRE/TIE if the DEQ determines it is warranted. ~~Where the permittee has demonstrated persistent sublethality in chronic WET testing, the DEQ will require an increase in the frequency of WET testing and may require the permittee to perform a TRE/TIE for the affected species. Permit provisions for toxicity specific management practices may be established to control persistent sublethality.~~

#### 252:690-3-31. WET test requirements

WET testing is required for all major dischargers and those minor dischargers identified by DEQ as posing a significant un-addressed toxic risk. Q\* is calculated as described in Appendix D. ~~The following WET testing requirements apply:~~

(1) The following requirements apply to all WET testing:

(A) **Acute testing only.** Acute testing only is required for all discharges to lakes and where  $Q^* < 0.054$  in streams.

(2B) **Chronic testing only.** Chronic testing only is required where  $Q^* > 0.3333$ .

(3C) **Acute and chronic testing, except for *Daphnia Magna*.** Both acute and chronic testing are required where  $0.054 \leq Q^* \leq 0.3333$ .

(42) **Acute and/or chronic testing using *D-Daphnia magna*.** Acute and/or chronic testing using *Daphnia magna* ~~may be considered by the DEQ on a case-by-case basis where the TDS level in an effluent is high and the background TDS level of the receiving stream causes toxicity to *Ceriodaphnia dubia* or *Pimephales promelas* species in a control dilution (0% effluent) may substitute for acute and/or chronic testing for *Daphnia pulex* or *Ceriodaphnia dubia* in the following circumstances:~~

(A) acute testing using *Daphnia magna* for streams where the instream concentration of TDS is less than or equal to 1000 mg/l after mixing using the 7Q2, may be considered by the DEQ on a case-by-case basis

where the TDS level in an effluent has been demonstrated to cause WET test failures to *Daphnia pulex*.

(B) acute testing using *Daphnia magna* for streams where the instream concentration of TDS is greater than 1000 mg/l after mixing using the 7Q2, may be considered on a case-by-case basis where the TDS level in an effluent has been demonstrated to cause WET test failures to *Daphnia pulex* and the background TDS level of the receiving stream causes toxicity to *Daphnia pulex* in a control dilution (0% effluent).

(C) chronic testing using *Daphnia magna* may be considered by the DEQ on a case-by-case basis where the TDS level in the effluent has demonstrated WET test failures to *Ceriodaphnia dubia*, where the background TDS levels of the receiving stream causes toxicity to *Ceriodaphnia dubia*, in a control dilution (0% effluent), and where the permittee can demonstrate that the ionic ratios in the effluent are similar to the ionic ratios in the receiving stream.

(53) **Mussels.** Acute and/or chronic testing of mussels shall be required if the DEQ determines that the discharge may affect an indigenous population(s) of mussels.

## 252:690-3-34. Test duration for WET tests

For acute tests the test duration is 48 hours and for chronic tests the test duration is until 60% of the surviving females in the toxicity test control dilution (0% effluent) produce three broods or at the end of eight days, whichever comes first. The appropriate WET test duration is specified in the specific test method pursuant to OAC 252:690-3-29.

## 252:690-3-37. ~~Dilution~~ WET test dilution water for discharges to perennial streams and lakes

For discharges to perennial streams or lakes, permittees must use receiving water collected as close to the point of discharge as possible but unaffected by the discharge. Receiving water must be collected outside the regulatory mixing zone for discharges to lakes. If the receiving water control fails to fulfill the test acceptability criteria in OAC 252:690-3-38, the permittee must substitute synthetic dilution water for the receiving water in all subsequent tests, provided:

- (1) a synthetic dilution water control which fulfills the test acceptability requirements in OAC 252:690-3-38 was run concurrently with the receiving water control.
- (2) the test indicating receiving water toxicity was carried out to completion.
- (3) the synthetic dilution water had a pH, hardness and alkalinity similar to that of the receiving water, provided the magnitude of these three parameters did not cause toxicity in the synthetic dilution water.
- (4) the receiving water test must be conducted at the start of each permitting cycle.

## 252:690-3-39. Endpoint and test failure criteria for acute tests

The endpoint for routine acute WET testing and retesting is the LC<sub>50</sub>. ~~Test~~ Acute test failure is greater than or equal to 50% mortality to a test species in any of the effluent dilutions after 48 hours, as specified in OAC 252:690-3-29. Statistical analysis must be consistent with the methods described in the documents referenced in OAC 252:690-3-29(a) ~~and (b).~~ Where a WET limit is established, it is expressed as an LC<sub>50</sub> effluent concentration and must be greater than 100% (>100%).

## 252:690-3-40. Endpoint and test failure criteria for chronic tests

The following applies to all chronic tests:

(1) ~~Lethal effect.~~ The endpoint for lethality for routine chronic WET testing and retesting is the NOEC<sub>L</sub>. ~~Chronic lethal effect test failure is a statistically significant difference at the 95% confidence level between survival of the test organisms in an effluent dilution at or below the CCD after 7 days and the control. Statistical analysis must be consistent with the methods described in the documents referenced in OAC 252:690-3-29(e) and (d). Where a WET limit is established, it is expressed as an NOEC<sub>L</sub> and must be greater than or equal to the CCD.~~

(2) ~~Sublethal effect.~~ The endpoint for sublethality for routine chronic WET testing and retesting is the NOEC<sub>S</sub>. ~~Chronic sublethal effect test failure is a statistically significant difference at the 95% confidence level between reproduction in the *C. dubia* test or larval growth in the Fathead minnow test in an effluent dilution at or below the CCD after 7 days and the control. Statistical analysis must be consistent with the methods described in the documents referenced in OAC 252:690-3-29(e) and (d). For chronic test failure, see OAC 785:45.~~

## 252:690-3-42. WET testing frequency reductions after WET testing trial period

Permittees may request reduction of the WET testing frequency for the remaining term of the permit depending on the results of WET testing during the WET testing trial period. Any reduction will be considered on a test species-specific basis. To qualify for a WET testing frequency reduction, the permittee must certify that tests submitted in fulfillment of its WET testing requirements during the WET testing trial period meet all test acceptability criteria set forth in OAC 252:690-3-38 and EPA WET test method documents. In addition the following apply:

- (1) **WET testing established in permit.** Reductions in WET testing frequency are not allowed during the first five years of the applicability of a WET limit testing. The DEQ may consider a reduced testing frequency when the permit is renewed, based on the WET testing results during the term of the then previous permit.
- (2) **No test failure for a species during WET testing trial period.** The DEQ may reduce the testing frequency for a species to not less than once per six months. If the monitoring frequency reduction is denied, the permittee

must continue WET testing at a frequency of once per quarter for the affected species for the remaining life of the permit.

- (A) To be eligible, the permittee must:
  - (i) demonstrate no lethal or sublethal test failures for ~~either the applicable~~ test species during the WET testing trial period; and
  - (ii) certify in writing to the DEQ that it has fulfilled the test acceptability requirements set forth in OAC 252:690-3-38;

(B) The DEQ will either approve or deny the certification in writing within 90 days of receipt. The DEQ may deny the certification based on facility specific criteria if it finds that any of the permittee's WET test reports during the period for which certification is submitted:

- (i) are substantively incomplete;
- (ii) are in error regarding test acceptability criteria or statistical interpretation of results; or
- (iii) were not received by the DEQ by the due date prescribed in the permit.

**(3) Test failure for a species demonstrated during the WET testing trial period.**

(A) If a lethal test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species for the remaining life of the permit upon completion of the WET testing trial period.

(B) If a sublethal test failure is demonstrated at any time during the WET testing trial period, the permittee must continue testing at a frequency of once per quarter for the affected species until no sublethal

effects are demonstrated for four consecutive quarters. After demonstrating no sublethal effects for four quarters, the DEQ may reduce the testing frequency for the affected species to once per six months, provided the requirements of OAC 252:690-3-42 (B)(2) are met.

**(4) WET limits established in permit. Reductions in WET limit testing frequency are not allowed.**

**252:690-3-75. Wasteload allocations for implementation of human health and raw water criteria for toxic substances to protect the Public and Private Water Supply beneficial use**

If either  $C_{d(FFW)}$  or  $C_{d(RAW)}$  exceeds its associated criterion, a water quality-based permit limit is required for that substance. Background levels used in calculating  $WLA_{FFW}$  and  $WLA_{RAW}$  are described in OAC 252:690-3-10 through 3-13 and 3-15. If a pollutant's background level exceeds either  $WLAC_{FFW}$  or  $WLAC_{RAW}$ , the affected WLA is set equal to that criterion. Equations G-2 and G-3 are used to calculate  $WLA_{FFW}$  and  $WLA_{RAW}$ , respectively. For discharges to a stream located less than five stream miles upstream of a public water supply intake and for discharges to a lake located within one mile of a public water supply intake,  $WLA_{FFW}$  is set equal to  $C_{FFW}$  for any pollutant detected in the discharge.

**252:690-3-93. Monitoring for a nutrient limited watershed**

A permittee shall monitor monthly for total nitrogen and/or total phosphorus if the discharge is to a nutrient limited watershed as designated in OAC 785:45.

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## **APPENDIX A. WATER QUALITY STANDARDS IMPLEMENTATION PLAN DEPARTMENT OF ENVIRONMENTAL QUALITY [REVOKED]**

## **APPENDIX A. WATER QUALITY STANDARDS IMPLEMENTATION PLAN DEPARTMENT OF ENVIRONMENTAL QUALITY [NEW]**

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PART I. INTRODUCTION

(a) **STATUTORY AUTHORITY.**

27A O.S. §1-1-202(B) mandates each of the state's environmental agencies to promulgate a Water Quality Standards Implementation Plan (WQSIP) by July 1, 2001, for its jurisdictional areas of environmental responsibility in compliance with the Administrative Procedures Act and pursuant to the provisions of that section. After initial promulgation, each state environmental agency is required to review its WQSIP at least every three years thereafter to determine whether revisions to the plan are necessary.

(b) **DEFINITIONS AND TERMS (not included in OAC 252:690-1-2 or OAC 252:690-1-3).**

**"40 CFR"** means Title 40 of the Code of Federal Regulations.

**"Section 106"** means Section 106 of the CWA, which provides annual grants for water quality management activities and special projects.

**"Section 301"** means Section 301 of the CWA, which requires the achievement of EPA-established effluent limitations for industrial and municipal point source dischargers.

**"Section 303"** means Section 303 of the CWA, which requires states to review and, as necessary, revise their water quality standards at least every three years.

**"Section 303(d)"** means Section 303(d) of the CWA, which requires states to identify waters that do not or are not expected to meet applicable water quality standards with technology-based controls alone (sometimes referred to as the 303(d) List). States establish priority rankings for the listed waters, taking into account pollution severity and existing and designated beneficial uses of the waters. States must develop TMDLs for waters on this list according to priority rankings.

**"Section 303(e)"** means Section 303(e) of the CWA, which requires each state to prepare a CPP document.

**"Section 306"** means Section 306 of the CWA, which directs the promulgation of effluent limitations and standards of performance for certain categories of industries.

**"Section 307"** means Section 307 of the CWA, which provides the process for establishing effluent limitations for those pollutants otherwise known as "priority" pollutants, including pretreatment standards of performance for industrial facility discharges to POTWs.

**"Section 401"** means Section 401 of the CWA, which requires applicants for federal licenses or permits for the construction or operation of facilities which may result in discharges into navigable waters to provide the licensing or permitting agency a certification from the state in which the discharge originates or will originate or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate.

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“**Section 402**” means Section 402 of the CWA, which establishes the National Pollutant Discharge Elimination System (NPDES).

“**AO**” means an Administrative Order.

“**ARAR**” means appropriate, relevant and applicable requirements, when used in the context of Superfund and Brownfields-related investigations and remediations.

“**BMP**” means Best Management Practice(s), a technique determined to be the most effective, practical means of preventing or reducing pollutant discharges to achieve water quality goals. The term is generally applied in the context of nonpoint sources.

“**BUMP**” means Beneficial Use Monitoring Program, a program developed by the OWRB pursuant to 27A O.S. §1-3-101, for monitoring the state’s surface and groundwater quality for the purpose of determining compliance with the OWQS and the effectiveness of water quality management activities.

“**CAA**” means the Clean Air Act and amendments thereto.

“**CEI**” means Compliance Evaluation Inspection.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act, also know as Superfund (see also SARA).

“**CFR**” means Code of Federal Regulations.

“**CO**” means Consent Order.

“**Conventional Pollutants**” means the following five pollutants: 5-day biochemical oxygen demand (BOD<sub>5</sub>) or, alternatively, carbonaceous biochemical oxygen demand, (CBOD<sub>5</sub>), suspended solids, oil and grease, fecal coliform and pH.

“**Corp Comm**” means the Oklahoma Corporation Commission.

“**CPP**” means the Continuing Planning Process document, which describes present and planned water quality management programs and the strategy used by the State in conducting these programs. Procedures for developing OPDES permit limitations utilizing the OWQS and OWQS Implementation Criteria are contained in this document.

“**CWA**” means the Clean Water Act and amendments thereto.

“**DEQ**” means the Oklahoma Department of Environmental Quality.

“**DMR**” means Discharge Monitoring Report, a report submitted to the WQD on a monthly basis via a specialized form by OPDES permittees in accordance with the effluent limitations and monitoring requirements of such permit and standard conditions thereof. Information provided on the DMR is entered into EPA’s Permit Compliance System (see PCS).

“**ECLS**” means the Environmental Complaints and Local Services Division of the DEQ.

“**ELG**” means Effluent Limitations Guideline, one of a series of technology-based effluent limitations standards, either for direct discharge to navigable waters or for discharge to a POTW, established for certain categories of industries pursuant to Sections 306 and 307 of the CWA.

“**EPA**” means the Environmental Protection Agency.

“**EPA Region 6**” means the EPA Region 6 office in Dallas, Texas.

“**Fish and Wildlife Propagation**” means the OWQS beneficial use designation for promoting fish and wildlife propagation for the fishery classifications of HLAC, WWAC, CWAC and Trout Fishery (Put and Take).

“**Fish Consumption**” means the OWQS beneficial use designation for the protection of human health for the consumption of fish flesh.

“**HQW**” means High Quality Water, defined as a water of the state which possesses an existing water quality which exceeds that necessary to support the propagation of fishes, shellfishes, wildlife, and recreation in and on the water, and which is designated as such in OAC 785:45, Appendix A.

“**IU Permit**” means Industrial User Permit, a permit issued in accordance with the National Pretreatment Regulation at 40 CFR Part 403 and, as appropriate, the categorical pretreatment standards at 40 CFR Parts 405 through 499.

“**LPD**” means the Land Protection Division (formerly the Waste Management Division) of the DEQ.

“**LUST**” means leaking underground storage tank.

“**MCL**” means maximum contaminant level.

“**MSGP**” means an industrial Multi Sector General Permit for the discharge of storm water.

“**MS4**” means Municipal Separate Storm Sewer System.

“**NELAC**” means the National Environmental Laboratory Accreditation Council.

“**Nonpoint source**” means a source without a well defined point of origin.

“**Non-pretreatment program POTW**” means a POTW receiving industrial wastewater discharges which does not have an approved pretreatment program, is not in the process of developing a pretreatment program, and has not been directed to develop a pretreatment program.

“**NOV**” means Notice of Violation.

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“**NPDES**” means the National Pollutant Discharge Elimination System, as authorized by Section 402 of the CWA. The DEQ has received delegation of the NPDES program in Oklahoma, except for certain jurisdictional areas related to agriculture and the oil and gas industry retained by ODA and Corp Comm, for which EPA has retained permitting authority. The NPDES program is implemented in Oklahoma via the OPDES program pursuant to the OPDES Act and in accordance with the Memorandum of Agreement between the DEQ and EPA relating to administration and enforcement of the delegated NPDES program.

“**NRC**” means the U.S. Nuclear Regulatory Commission.

“**OAC**” means Oklahoma Administrative Code.

“**OBDA**” means the Oklahoma Brine Development Act.

“**OCC**” means the Oklahoma Conservation Commission.

“**ODA**” means the Oklahoma Department of Agriculture.

“**ODM**” means the Oklahoma Department of Mines.

“**OPDES**” means Oklahoma Pollutant Discharge Elimination System (see also NPDES).

“**OPDES Act**” means the Oklahoma Pollutant Discharge Elimination System Act.

“**OPDES Permit**” means a permit issued pursuant to the OPDES Act.

“**OPDES Permitting Section**” means the Wastewater Discharge Permit Section of the DEQ’s Water Quality Division.

“**ORW**” means Outstanding Resource Water, defined as a water of the state which constitutes an outstanding resource or is of exceptional recreational and/or ecological significance, and which is designated as such in OAC 785:45, Appendix A.

“**O.S.**” means Oklahoma Statutes.

“**OSHA**” means the Occupational Safety and Health Act and amendments thereto.

“**OWQS**” means the Oklahoma Water Quality Standards, established in OAC 785:45, as approved by EPA.

“**OWQScreen**” means a spreadsheet application package developed by the Wastewater Discharge Permit Section, Water Quality Division, for screening point source discharges against OWQS criteria and developing OPDES permit limitations.

“**OWRB**” means the Oklahoma Water Resources Board.

“**Plan**” means Water Quality Standards Implementation Plan.

**“Point Source”** means any discernible, confined and discrete conveyance or outlet, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged into waters of the state. The term “point source” shall not include agricultural storm water runoff and return flows from irrigated agriculture.

**“PPWS”** means Public and Private Water Supply, an OWQS beneficial use designation for the protection of human health for the consumption of water and consumption of fish flesh and water. This term is not synonymous with primary and secondary drinking water standards, as defined in OAC 252:631, Appendix A.

**“SARA”** means the Superfund Amendments and Reauthorization Act (see also CERCLA).

**“Scenic River”** means a river or stream so designated pursuant to the Oklahoma Scenic Rivers Act. A scenic river is automatically considered an ORW.

**“SDWA”** means the Safe Drinking Water Act and amendments thereto.

**“SEL”** means the State Environmental Laboratory of the DEQ’s Customer Services Division.

**“SWP3”** means Storm Water Pollution Prevention Plan.

**“SWS”** means Sensitive Water Supply, defined as a water of the state which constitutes a sensitive public and private water supply, and which is designated as such in OAC 785:45, Appendix A.

**“TBLL”** means, in the context of the pretreatment program, Technically Based Local Limits.

**“Technology-based limitation”** means an effluent limitation based on various levels of technologically-achievable performance.

**“UAA”** means Use Attainability Analysis.

**“UIC”** means Underground Injection Control.

**“USAP”** means Use Support Assessment Protocols, as defined at OAC 785:46.

**“USFWS”** means the United States Fish and Wildlife Service.

**“USGS”** means the United States Geological Survey.

**“Water quality-based limitation”** means an effluent limitation required to attain and maintain water quality standards.

**“WQD”** means the Water Quality Division of the DEQ.

**“WQS Implementation Criteria”** means water quality standards implementation criteria, procedures used to implement the OWQS, including mixing zones, regulatory effluent and

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receiving water flows, determination of effluent wasteload allocations and criteria long term average concentrations, determination of permit limitations and antidegradation policy implementation. Statewide WQS Implementation Criteria of general applicability are found at OAC 785:46. Water quality standards implementation criteria for facilities under DEQ jurisdiction are found in OAC 252:690 and the CPP.

“WQSIP” means Water Quality Standards Implementation Plan.

### (c) REQUIRED WQSIP ELEMENTS.

Pursuant to 27A O.S. §1-1-202(B), each agency’s WQSIP must include eight elements for each of its jurisdictional areas of environmental responsibility. The eight required elements are:

- (1) **Compliance with antidegradation requirements and protection of beneficial uses.** This element describes the processes, procedures and methodologies utilized to ensure that programs within jurisdictional areas of environmental responsibility comply with antidegradation standards and lead to:
  - (A) Maintenance of water quality where beneficial uses are supported.
  - (B) Removal of threats to water quality where beneficial uses are in danger of not being supported.
  - (C) Restoration of water quality where beneficial uses are not being supported.
- (2) **Application of USAP.** This element describes the procedures to be utilized by the agency in the application of USAP to make impairment determinations. USAP implementation criteria are found at OAC 785:46. The procedure by which a DEQ program area utilizes USAP in making waterbody beneficial use impairment determinations, or the manner in which USAP-derived support/impairment information is utilized in program area functions is described. USAP studies are spatial/temporal waterbody investigations utilizing established numerical criteria and/or implementation guidelines to determine whether existing and designated beneficial uses are being supported or not supported.
- (3) **Description of programs affecting water quality.** This element describes the various agency programs and subprograms within each jurisdictional area of environmental responsibility. A program area is described in sufficient detail to convey the manner and process by which surface water quality standards or groundwater protection implementation is achieved.
- (4) **Technical information and procedures for implementation.** This element includes technical information and procedures to be utilized in implementing the WQSIP. Technical information, databases, software programs and operational procedures, be they of federal or agency division/program area origin, that are utilized by a program area to implement the DEQ WQSIP are described.
- (5) **Integration of WQSIP into water quality management activities.** This element describes how agency administrative rules, program area policies and guidance, and standardized methods of conducting business have been or will be developed to facilitate integration of the WQSIP into the water quality management activities within each jurisdictional area of environmental responsibility.
- (6) **Compliance with mandated statewide water quality requirements.** This element describes the manner in which an agency will comply with mandated statewide requirements affecting water quality developed by other state environmental agencies including, but not limited to, TMDL development, point source wastewater discharge

permitting activities, and NPS pollution prevention programs. The manner in which a program area utilizes statewide requirements affecting water quality is described in sufficient detail to demonstrate compliance with those requirements.

(7) **Public and interagency participation.** This element requires a summary of written comments and testimony received pursuant to all federal and state interagency reviews and public meetings held by the state environmental agency, and the state environmental agency's response thereto, for the purpose of providing public participation related to its WQSIP. This element applies to both the initial WQSIP promulgation and revisions thereto.

(8) **Evaluation of the effectiveness of agency activities.** This element describes objective methods and means to evaluate the effectiveness of activities conducted pursuant to an agency's WQSIP in achieving water quality standards. BUMP and USAP assessments are the two primary means by which the effectiveness of water quality management activities may be evaluated on a continuing basis. Fish community biotrend monitoring and regulated activity self-monitoring provide additional means of evaluating program effectiveness.

(A) **BUMP.** The OWRB's Beneficial Use Monitoring Program was created in 1998 at the direction of the State Legislature. The program's monitoring is composed of five key elements, as follows:

(i) Periodic river and stream monitoring, itself composed of two components:

(1) Monitoring at a series of fixed locations, determined by the OWRB in consultation with other state environmental agencies.

(2) Monitoring at a series of stations which rotate on an annual basis, the location and monitoring parameters of which are based largely on the state's list of impaired waterbodies (the so-called 303(d) list, established pursuant to Section 303(d) of the CWA).

(ii) Fixed station load (flow) monitoring.

(iii) Fixed station lakes monitoring.

(iv) Fixed station groundwater monitoring.

(v) Intensive investigative sampling involving identified impaired waters, primarily for the purpose of documenting the source of the impairment and determining appropriate restorative actions.

(B) **USAP.** Waterbody impairment and restoration studies, field surveys, monitoring results, or other available data will be assessed utilizing USAP.

(C) **Fish community biotrends monitoring.** This activity provides an additional biologically-oriented measure of the effectiveness of water quality management activities. Together, BUMP data, USAP studies and Fish Community Biotrends monitoring provide the best overall measures of water quality standards compliance and beneficial use support.

(D) **Regulated activity self-monitoring.** Site-specific monitoring of surface waters and groundwater outside the scope of BUMP and USAP is available to the DEQ on a continuing basis from the regulated community through its various regulatory programs.

(i) **OPDES permits.** Self-monitoring required by OPDES permits issued by the Department. Continued compliance of point source dischargers in a waterbody segment with their OPDES permit limitations, as assessed through self monitoring, should correlate with a waterbody's

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compliance with state water quality standards as assessed through BUMP and USAP investigations. Likewise, self-monitoring of groundwater included in an OPDES permit is useful for assessing groundwater quality management where surface impoundments and/or land application are utilized.

(ii) **Land Protection activities.** Self monitoring of surface waters and groundwater required by solid waste, hazardous waste, underground injection and site remediation regulatory activities yields valuable information for determining compliance with water quality standards and the effectiveness of Land Protection activities.

(iii) **Water supplies.** Self-monitoring of public and private water supplies (both surface waters and groundwater) provides valuable information which may indicate present or impending problems in the maintenance of, or success in the restoration of, the suitability of those surface water supplies and groundwater sources for the public and private water supply beneficial use.

(d) **DEQ JURISDICTIONAL AREAS.**

The jurisdictional areas of the Department of Environmental Quality are listed in 27A O.S. §1-3-101(B), (D) and (E).

**PART II. WQSIP ELEMENTS BY JURISDICTIONAL AREA**

**(a) GENERAL**

The eight required WQSIP elements are presented by jurisdictional area, and in some cases individual program areas within the scope of the jurisdictional area. DEQ's WQSIP will evolve to adapt to future changes in the OWQS and WQS implementation criteria.

**(b) WATER QUALITY PLANNING**

**(1) Compliance with antidegradation requirements and protection of beneficial uses.**

The antidegradation policy in the OWQS prohibits an increase in loading that would impair or further impair an existing use. In addition, the policy prohibits degradation of outstanding resource waters and high-quality waters, even if existing and designated uses would still be attained. Current CPP procedures regarding the 303(d) list, TMDL's, and loading allocations for both point and non-point sources of pollution are consistent with these provisions.

**(2) Application of USAP.** Although evaluation of beneficial use support is not a water quality planning responsibility, its TMDL function is closely related and is utilized on a continuing basis to identify water bodies where USAP might be utilized to reevaluate a waterbody's beneficial uses. USAP, water quality standards, and EPA guidance will be considered to set appropriate target end points in the development of TMDLs.

**(3) Description of programs affecting water quality.** The CPP document, developed pursuant to requirements of Section 303(e) of the CWA, provides the basis and guidance for all water quality planning activities at the DEQ. Water quality planning staff are responsible for several water quality planning program elements:

- (A) Developing procedures for planning and implementing water quality management programs in the CPP.
- (B) Preparing recommendations for the listing and delisting of waterbodies in the 303(d) List.
- (C) Establishing TMDLs for 303(d)-listed waterbodies and coordinating TMDLs with other state environmental agencies.

**(4) Technical information and procedures for implementation.** Technical information and procedures used in water quality planning activities are included in the CPP. Because it is such a significant element in water quality planning, the TMDL development process is described in detail. Proposed adoption of a TMDL is considered a major change to the state's Water Quality Management Plan. Public participation in TMDL development and adoption shall be conducted in accordance with state requirements and the procedures outlined in the CPP. The TMDL loading allocation process culminates in the allocation of pollutant loads among various point sources, nonpoint sources, natural background sources and a margin of safety (MOS), according to the following equation:

$$\text{TMDL} = \text{WLA} + \text{LA} + \text{MOS}$$

TMDL is loading capacity, the maximum amount of pollutant loading a water body can receive without violating water quality standards. WLA is wasteload allocation, the portion of a receiving water's loading capacity that is allocated to existing and future point sources. LA is load allocation, the portion of a receiving water's loading capacity that is allocated to existing and future nonpoint sources and to natural background

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sources. MOS is margin of safety, the prescribed mechanism to account for the uncertainty in determining the amount of pollutant load and its effect on water quality. MOS is typically considered implicitly with conservative assumptions within calculations or models, explicitly during allocation of loads, or both. The major components of TMDL development are assessment of existing conditions, determination of maximum allowable loading, and allocation of loadings.

(A) Assessment of Existing Conditions

(i) Water Quality

The first step in assessing the current conditions is to gather available data and information on the water body. At a minimum, the water quality data (if available) that was used for listing the water body (re: 303(d) List) should be reviewed. The sufficiency and adequacy of existing data is evaluated and described. The DEQ will consider data to be sufficient and adequate when the data accurately characterizes the conditions of the water body, watershed, pollutant, and pollutant sources throughout typical geographic and temporal conditions with reasonable certainty. Some TMDL projects will require additional watershed information relating to particular water quality conditions, as existing data alone may be insufficient to support the analytical needs of TMDL projects. Data on low-flow conditions, storm-flow conditions, and seasonal variations are gathered when appropriate to the situation. Data will be evaluated considering USAP, water quality standards, and EPA guidance.

(ii) Pollutant Load

Before pollutant loads are allocated among sources, the location and types of sources, and the current and projected pollutant load for each source are identified. Current loading and source contributions are established by measuring pollutant loads directly, calculating or estimating loads from water quality and flow data, estimating loads with mathematical models, or using a combination of these methods. Examples of data utilized for pollutant source analysis include:

- watershed and sub watershed boundaries
- hydrologic interaction between surface water and groundwater
- locations of stream segments
- locations of pollutant sources
- types of pollutant sources
- anticipated growth of discharges
- meteorological/rainfall data and runoff coefficients
- land uses and land cover
- soil types.

An inventory is developed of all known factors in the watershed which influence water quality. These factors might include permitted industrial and municipal wastewater discharges, concentrated animal feeding operations (CAFOs), waste application sites, cropland, forestry operations, industrial storm water runoff, urban runoff, construction activities, and other

sources such as natural background. This information will be collected and maintained by sub-watershed where possible to enhance the identification of cause-and-effect relationships. The watershed inventory is compiled from land use data, special investigations, DEQ complaint investigations, DEQ permit databases, surface water monitoring data, input from other agencies, and watershed stakeholder input through an outreach process.

(B) Maximum Allowable Loading

A water body's loading capacity is an estimate of the maximum amount of pollutant loading the water body, considering critical conditions (i.e. flow, temperature, etc.), can receive over time without exceeding water quality standards. Hydrological, biological, chemical, and pollutant fate and transport data are required to calculate a water body's loading capacity. The maximum loading capacities of a waterbody are determined in most cases using a water quality model or models adapted specifically for the waterbody in question. The model used is selected on a case by case basis and is based on available resources, the identified pollutant source(s) and the availability of water quality data.

(C) Allocation of Loadings

Future growth, spatial and temporal variations in flows and loadings, antibacksliding, antidegradation and pollutant sources and source categories must be considered and incorporated when developing a loading, unless it is demonstrated that one or more of these factors is not relevant to the particular load allocation.

(D) Pollution Allocation Strategies

There are three common methods for allocating loads; equal percent removal, equal effluent concentrations, and a hybrid method. Other methods are considered if necessary.

(i) Equal Percent Removal

Equal percent removal exists in two forms. In one, the overall removal efficiencies of the sources are set so that they are all equal. In the other, the incremental removal efficiencies beyond the current discharge are equal.

(ii) Equal Effluent Concentration

This method is self-evident. It is similar to equal percent removal if influent concentrations at all sources are approximately the same.

(iii) Hybrid Method

With this method, the criteria for waste reduction may not be the same from one source to the next. One source may be allowed to operate unchanged while another may be required to provide the entire load reduction. More generally, however, a proportionality rule may be assigned that requires the percent removal to be proportional to the input source loading or flow rate.

(iv) Other Methods

Any other method contained in EPA guidance. The DEQ shall approve the use of the method on a case-by-case basis.

(E) Pollutant Trading

Where appropriate and technically feasible, tradeoffs among wasteload allocations are considered. Technological feasibility, economic issues, and regulatory authority are evaluated when trading allocations. Pollutant trades are acceptable so long as water quality standards (including antidegradation regulations and policies) and minimum applicable technology-based controls are met.

(F) Margin of Safety

The margin of safety (MOS) is the prescribed mechanism to account for the uncertainty associated with TMDL projects. Guidelines for appropriate margins of safety are included in the CPP. The MOS can be included in more than one of the TMDL analytical steps. To represent the MOS, conservative assumptions should be used in completing one or more of the following steps:

- (i) derivation of numeric water quality targets
- (ii) determination of pollutant sources
- (iii) representation of pollutant fate and transport relationships
- (iv) determination of the degree of pollutant reduction achievable through management measures and control actions

**(5) Integration of WQSIP into water quality management activities.** DEQ administrative rules and WQD policies are currently in place which integrate the requirements of the WQSIP into water quality planning. Should WQSIP revisions be necessary in future years, rule changes and policy changes will be made to address and incorporate such requirements.

**(6) Compliance with mandated statewide water quality requirements.** TMDL activities comply with the procedures established in the CPP. Coordination of TMDL activities among state agencies is the primary responsibility of the TMDL Work Group, which is chaired by the DEQ and includes the state environmental agencies with water quality responsibilities.

**(7) Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

**(8) Evaluation of effectiveness of agency activities.** The 303(d) listing/delisting process, which in turn utilizes USAP, will be used to evaluate the effectiveness of all DEQ programs related to surface water quality.

### (C) POINT SOURCE DISCHARGES - OPDES PERMITTING

The primary mechanism for controlling pollution from point source discharges to waters of the state is through the OPDES permitting, compliance monitoring and enforcement processes. OPDES permits include such effluent limitations as are necessary to protect water quality and existing and designated beneficial uses of the receiving water(s). OPDES permit enforcement activities are described in Part II(r) of the Plan.

**(1) Compliance with antidegradation requirements and protection of beneficial uses.**

**(A) General.** The OWQS provides a three-tiered antidegradation policy designating levels of protection. An OPDES permit and the pollutant limitations therein must, at a minimum, serve to protect the existing and designated beneficial uses of the receiving surface water, thereby affording it protection from degradation at the most basic level (Tier 1). In those cases where existing or proposed discharges are to a designated HQW, SWS, or to waters of ecological

and/or recreational significance or endangered/threatened species habitat (OAC 785:46, Appendix B waters), a higher degree of protection from degradation (Tier 2) must be afforded the waterbody. In no case will any discharge be permitted which would, if it occurred, lower existing water quality in an SWS or HQW, regardless of the date of its original existence. A designated Scenic River and/or Outstanding Resource Water (ORW) and their watersheds must be afforded the highest degree of protection (Tier 3), which may even involve denial of a permit to discharge or denial of an increased pollutant loading in the discharge, depending on whether the discharge existed on or prior to June 11, 1989 (non-storm water), or June 25, 1992 (storm water)

(B) **Fact Sheet/Statement of Basis.** An OPDES permit's Fact Sheet/Statement of Basis must address how permit limitations are developed, which in turn assures compliance with the OWQS and WQS implementation criteria for protecting existing and designated beneficial uses. To ensure that compliance with antidegradation requirements is addressed in an individual OPDES permit, the permit's Fact Sheet or Statement of Basis shall specifically describe the antidegradation level applicable to the receiving water and any permitting considerations necessary to afford that level of protection. In cases where permit issuance is denied based on Tier 2 or Tier 3 antidegradation criteria, the statement of basis for the permit denial shall so state. Authorizations issued under a General Permit do not require separate fact sheets. As General Permits expire and are reissued, the associated fact sheets will incorporate a discussion of antidegradation requirements and protection of beneficial uses.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area, but such determinations of beneficial use support or impairment may directly affect the OPDES permitting process in terms of the level of pollutant control technology that may need to be employed for discharges to an impaired waterbody and compliance with the anti-backsliding provisions in Section 402(o) of the CWA. This becomes particularly important when a facility's effluent contains the pollutant(s) causing or contributing to the impairment of a waterbody. For this reason, OPDES permitting procedures will include a review of the 303(d) list and available USAP data applicable to the receiving water.

(3) **Description of programs affecting water quality.**

(A) **Direct discharges.** Municipal POTWs and industrial facilities under DEQ jurisdiction which discharge process wastewaters directly to waters of the state are required to obtain OPDES permits from the Department. Included are discharge authorizations under a General Permit for those facility classes for which general permits have been developed, discharges from water treatment plant wastewaters (OAC 252:631, Subchapter 1), and discharges generated by groundwater remediation activities (OAC 252:611, Subchapter 5). These OPDES permits limit the concentration and loading of specified pollutants in such discharges and require periodic self-monitoring and reporting of levels of the limited pollutants in the facility's discharge(s). Numeric limitations result from the application of the more stringent of technology or water quality-based criteria. OPDES permits may include narrative limitations, effluent or receiving water background monitoring, schedules of compliance and such other special conditions as may be necessary to prevent, control or abate pollution.

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(B) **Indirect discharges.** OPDES permits may also take the form of individual IU permits for industrial facilities which discharge to a non-pretreatment program POTW.

(4) **Technical information and procedures for implementation.**

(A) **Permitting procedures.** OPDES permit limitations are developed using the more stringent of technology-based limitations (secondary treatment standards for municipal POTWs and industrial category-specific ELGs for industries) or water quality-based limitations derived utilizing the OWQS and WQS implementation criteria in OAC 785:46 and OAC 252:690, Subchapter 3. Where technology-based limitations for conventional pollutants are not sufficient to maintain OWQS-prescribed criteria a WLA is developed, approved by EPA Region 6, and publicly noticed. Where technology-based limitations for conventional pollutants are not sufficient to maintain OWQS-prescribed DO criteria for fish and wildlife propagation, a DO-based WLA for oxygen demanding substances (ammonia plus either BOD<sub>5</sub> or CBOD<sub>5</sub>) and DO is generated, approved by EPA Region 6, and publicly noticed. DO-based monthly average ammonia limits, as well as technology-based ammonia limits for certain categories of industries, are compared against the toxicity-based monthly average ammonia limit derived from the 6 mg/l chronic screening value for ammonia at the edge of the chronic mixing zone. Where the toxicity-based ammonia limit is more stringent than either a DO-based limit or a technology-based limit, the toxicity-based limit is established in the permit. Where a DO-based ammonia limit applies for a portion of the year, but not the entire year, a toxicity-based limit applies during the season for which the DO-based WLA is silent. For pollutants with numerical criteria in the OWQS, water quality-based permit limitations are required where a measurable pollutant in an effluent exhibits reasonable potential. WLAs and criterion LTAs are calculated, and permit limits are developed from the criterion LTAs. The most stringent monthly average limit and its associated daily maximum limit are established in the permit. Where reasonable potential is exhibited to exceed an NRWQC human health/fish consumption criterion in the absence of a promulgated state criterion, effluent monitoring, rather than a limitation, is required and OWRB is notified so that they may consider the need for a water quality criterion. Permit limits are developed in accordance with OAC 252:690, Subchapter 3. Where an industrial technology-based limitation applies to a pollutant and reasonable potential is not exhibited for the effluent to exceed an applicable water quality criterion for that pollutant, the technology-based limitation is itself screened to determine whether it would, if the pollutant were present in the effluent at a concentration equal to the technology standard's monthly average limit, exhibit reasonable potential. If so, a water quality-based permit limitation is required for that pollutant.

(B) **OWQS criteria screening.** Because of the complexity of the mathematical and statistical computations necessary to screen for reasonable potential, calculate WLAs and limiting criterion LTAs, and develop permit limits, the WQD has developed two spreadsheets for this purpose, one for discharges to streams and the other for discharges to lakes. Together they are referred to by the DEQ as OWQScreen. The Permitting Section will utilize, maintain and update OWQScreen, as necessary, to remain current with the OWQS and WQS implementation criteria in OAC 785:46 and OAC 252:690, Subchapter 3. Site

specific OWQScreen spreadsheets will be developed on an as-needed basis for receiving waters for which site-specific metals criteria are developed and adopted into the OWQS in accordance with OAC 785:45, Appendix E. Should TBLLs be required in DEQ-issued IU permits or in municipally-issued IU permits, OWQScreen also provides the capability to calculate the entire array of (theoretical) water quality-based permit limits for pollutants with numerical criteria in the OWQS (i.e., limits that would be established in a given OPDES permit were reasonable potential demonstrated to exceed an applicable water criterion).

(C) **Effluent and background monitoring.** Ten data points are required to properly characterize the standard deviation of an effluent or background data distribution. Often there are no background data available and only a single effluent data point. Where the use of such limited effluent and background data does not result in reasonable potential for a pollutant, a permit writer must determine whether additional effluent or background monitoring is warranted as a permit condition. Procedures are established at OAC 252:690, Subchapter 3, to objectively and uniformly evaluate where additional monitoring is warranted where less than 10 data points are available.

(5) **Integration of WQSIP into water quality management activities.** Because of the SB 549-mandated reallocation of a major portion of the WQS implementation criteria to the various state environmental agencies, the DEQ has promulgated WQS implementation criteria for point source discharges and groundwater protection in OAC 252:690, based on the OWQS and the foundational statewide implementation criteria in OAC 785:46.

(6) **Compliance with mandated statewide water quality requirements.** Procedures for the development of individual and general OPDES permits issued to municipal POTWs and industrial facilities utilize and are in compliance with all applicable statewide surface water quality requirements. Compliance with statewide groundwater quality requirements in OPDES permits is described in Part II(q). OPDES permits require that environmental laboratories utilized in fulfilling analytical monitoring requirements be certified by the SEL (see Part II(n)). In the permitting of surface coal mine discharges, the WQD must interface with the ODM, since surface coal mine discharge permit limitations and monitoring requirements are tied to the status of the mine (active, Phase I SMCRA bond release awaiting Phase II release, or post-Phase II release). The WQD must also interface with Corp Comm in the permitting of LUST groundwater remediation-related discharges. The WQD must receive notification from Corp Comm when a LUST remediation project is terminated so that the OPDES permit may be terminated.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** For surface waters, BUMP data and beneficial use support/impairment studies utilizing USAP are capable of providing long term evaluations in selected areas of whether OPDES permitting activities (as well as OWQS water quality criteria, WQS implementation criteria and permitting procedures upon which the water quality-based portion of the program is based) adequately protect assigned beneficial uses and maintain or improve water quality on site-specific, segment and basin-wide levels. Where existing and designated beneficial uses are not being met according to Tier 1 antidegradation requirements or where water quality degradation is

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experienced counter to Tier 2 or Tier 3 antidegradation requirements, the program's point source permitting procedures, as well as the OWQS and WQS implementation criteria, may need reexamination. Background pollutant levels, where used in the OPDES permitting process, may be compared against BUMP and USAP data where permit limitations appear not to protect and maintain beneficial uses as intended. The use of unrepresentative background information may over- or under-estimate the assimilation capacity of a receiving water. Likewise, BUMP and USAP procedures may need to be reexamined.

(9) **Nutrient limited watershed.** A permittee shall monitor monthly for total nitrogen and/or total phosphorus if the discharge is to a nutrient limited watershed as designated in OAC 785:45.

### (d) POINT SOURCE DISCHARGES – PRETREATMENT

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** Incorporation of the general pretreatment regulations at 40 CFR Part 403 into OPDES permits for POTWs with approved pretreatment programs or POTWs developing such pretreatment programs provides an additional means of compliance with antidegradation requirements and protection of beneficial uses.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** IU permits for industrial discharges to POTWs in approved pretreatment program municipalities are issued by the designated municipal control authority. General oversight is provided by the DEQ's State Pretreatment Coordinator, who acts as the pretreatment program approval authority. The Pretreatment Coordinator reviews pretreatment program submittals, revisions to previously approved pretreatment programs, and pretreatment program annual reports for compliance with the National Pretreatment Regulations found at 40 CFR Part 403. The DEQ issues IU permits for industrial discharges to non-pretreatment program POTWs. Inspection and enforcement oversight for both approved pretreatment programs and IU permits for industries discharging to non-pretreatment program POTWs is provided by the WQD Industrial Enforcement Section.

(4) **Technical information and procedures for implementation.** OWQScreen spreadsheets provide the capability to calculate potential effluent limits for TBLLs. The State Pretreatment Coordinator will disseminate this information to municipalities with approved pretreatment programs for their use.

(5) **Integration of WQSIP into water quality management activities.** Integration of the WQSIP into water quality management activities is accomplished through the OPDES permitting process.

(6) **Compliance with mandated statewide water quality requirements.** Pretreatment program procedures utilize and are in compliance with all applicable statewide surface water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of pretreatment program water quality management activities is directly monitored on a statewide basis by Pretreatment Compliance Inspections and Pretreatment Audits of POTW pretreatment

programs, as well as through a POTW's compliance with its permit limitations, as tracked by PCS.

(e) **POINT SOURCE DISCHARGES – WHOLE EFFLUENT TOXICITY (WET)**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** Compliance with antidegradation requirements and protection of beneficial uses is provided through incorporation of WET testing procedures and, if necessary, WET limits into OPDES permits. A narrative toxicity criterion implementation strategy for ammonia was developed cooperatively between the DEQ, OWRB and EPA Region 6 permitting staff in November 2000 and was revised in January 2001.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** Toxics staff reviews OPDES permit WET testing requirements during the permit drafting process. In addition to reviewing draft permits, the Toxics staff reviews WET testing summary reports submitted by the regulated community in accordance with the conditions of their OPDES permits to ensure that the information input to PCS via DMRs accurately reflects actual test results and the completion of valid testing. Where persistent lethality has been demonstrated through repeated WET testing, the permittees are required to conduct a TRE. TREs or TIEs may be required for intermittent lethality or persistent sublethality. Permits may also contain provisions for management practices to control toxicity. The Toxics staff reviews TRE/TIE progress, provides general oversight to the TRE/TIE process, and coordinates DEQ involvement regarding corrective actions and related WET or pollutant-specific limitations to be incorporated into affected OPDES permits.

(4) **Technical information and procedures for implementation.** OWQScreen provides the capability to determine the appropriate type of WET test, critical dilution and dilution series for an OPDES permit. Toxics staff, through critical review of submitted WET test reports, will assist permitting staff in determining whether WET limits are necessary and whether performance-based monitoring frequency reductions are warranted.

(5) **Integration of WQSIP into water quality management activities.** Integration of the WQSIP into water quality management activities is accomplished through the OPDES permitting process.

(6) **Compliance with mandated statewide water quality requirements.** The Toxics staff reviews OPDES permit WET testing requirements during the permit drafting process to ensure that appropriate WET testing is prescribed in the permit and is in accordance with the requirements of OAC 785:45 and OAC 252:690, Subchapter 3.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of biomonitoring permitting procedures, the review of WET testing results and the oversight of TRE/TIE activities is evaluated to a considerable extent through the affected facilities achieving compliance with the OWQS narrative toxicity criterion. BUMP and fish community biotrend information may also provide valuable feedback on the effectiveness of biomonitoring activities.

(f) **POINT SOURCE DISCHARGES – STORM WATER MANAGEMENT**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.**

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(A) **General.** In a manner similar to that for individual OPDES permits, requirements for sector-specific industrial facilities, regulated construction sites, and MS4s must protect the existing and designated beneficial uses of the receiving surface water at the Tier 1 level. Tier 2 and Tier 3 levels of protection apply to storm water discharges as well. Where Tier 3 level protection is necessary (except for storm water discharges from temporary construction activities), only storm water discharges existing as of June 25, 1992, may be permitted. In no case will any discharge be permitted which would, if it occurred, lower existing water quality in an SWS or HQW, regardless of the date of its original existence.

(B) **Storm water construction permit.** The DEQ's Storm Water Construction Permit was issued on September 13, 2007, pursuant to 27A O.S. § 2-14-101 *et seq.*, and in accordance with OAC 252:004. The permitting process utilizes a watershed-specific sensitive area identification system for endangered species rather than the more general county-indexed identification system developed by EPA. Applications for a construction storm water permit for a development site within a sensitive area are scrutinized in greater depth by the USFWS. Stricter erosion control methods and best management practices may be required where Tier 3 level protection is required.

(C) **Industrial stormwater multi-sector general permit.** The DEQ Multi-Sector General Permit for storm water discharges associated with industrial activities was issued on April 7, 2006. Where no additional storm water-related pollutant loading is permitted in a Scenic River watershed, an applicant for an MSGP may either utilize an existing discharge or provide the capability to capture and totally retain all storm water that enters or is incident upon such property.

(D) **Small MS4 general permit.** The DEQ Final Small MS4 General Permit for small municipal separate storm sewer system discharges was issued on February 8, 2005.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** Regulated construction sites must obtain a Storm Water Construction Permit authorization. Sector-specific industrial facilities under DEQ jurisdiction which discharge storm water directly to waters of the state are required to obtain an OPDES Industrial MSGP authorization. The Department used the NPDES (EPA) Multi-Sector Industrial Permit (issued on September 29, 1995 by EPA) until October 2, 2000, when the OPDES (State) MSGP was issued. Storm water permits may also take the form of individual industrial OPDES permits for facilities discharging to waters of the state directly or via discharge to the storm water collection system of an MS4 municipality.

(4) **Technical information and procedures for implementation.** Application, authorization and termination procedures, and coverage limitations are specified in the permits. Information provided by the USFWS is utilized in determining where more restrictive conditions are required in storm water general permits to protect sensitive habitat areas identified by the USFWS. Inspections are conducted when termination of coverage under a storm water permit is requested in order to verify that the site is stabilized and/or storm water discharges have ceased.

(5) **Integration of WQSIP into water quality management activities.** The State MSGP requires an annual Site Compliance Evaluation Report to be completed by facility

owners, managers or operators. The report will describe reportable spills and storm water-related events which may have affected surface water or groundwater quality. Changes or amendments to SWP3s or BMP documents will also be documented through this report. This new reporting method replacing the use of reporting storm water monitoring activities by DMR will require facility owners, managers and/or operators to become directly involved with permit compliance.

(6) **Compliance with mandated statewide water quality requirements.** Storm water permitting activities utilize and are in compliance with all applicable statewide surface water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The State MSGP requires facility owners, managers and/or operators to become directly involved with permit compliance and will ensure a more effective storm water management program. Storm water discharges from certain industrial sectors are subject to numeric effluent limits and monitoring requirements. DMRs submitted by these facilities are evaluated for compliance with effluent limits. Municipalities with an MS4 permit must submit an annual report describing stormwater control activities and improvements.

(g) **NONPOINT SOURCE POLLUTION**

The WQD is the focal point for assessment and consideration of loads from nonpoint sources. The effect of nonpoint source pollution is an integral part of TMDLs and basin-wide planning.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** To the extent possible through site investigations and cooperation with other state agencies, the TMDL process takes into account nonpoint sources of pollution in establishing point source wasteload allocations and nonpoint source load allocations which will comply with antidegradation requirements and protect existing and designated beneficial uses.

(2) **Application of USAP.** Although evaluation of beneficial use support is not a water quality planning staff responsibility, its surface water quality-related programs, particularly the TMDL program, will be utilized on a continuing basis to identify water bodies where USAP might be utilized to reevaluate a waterbody's beneficial uses as affected by nonpoint sources. USAP, water quality standards, and EPA guidance will be considered to set appropriate target end points in the development of TMDLs.

(3) **Description of programs affecting water quality.** Water quality planning staff are responsible for two water quality planning program elements, both of which involve the need to account for nonpoint sources of pollution:

- (A) Procedures for planning and implementing water quality management programs in the CPP.
- (B) Preparing recommendations for the listing and delisting of waterbodies in the 303(d) List, and development of TMDLs.

(4) **Technical information and procedures for implementation.** Technical information and procedures used in water quality planning activities, including accounting for nonpoint sources of pollution, are included in the CPP.

(5) **Integration of WQSIP into water quality management activities.** Federal and state rules and WQD policies are in place that integrate the requirements of the WQSIP into water quality planning. Should WQSIP revisions be necessary in future years, rule

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changes and/or policy changes will be made to address and incorporate such new requirements.

(6) **Compliance with mandated statewide water quality requirements.** TMDL activities require consideration of nonpoint sources of pollution and must comply with the procedures established in the CPP which involve consideration thereof. Coordination of TMDL activities among state agencies is the primary responsibility of the TMDL Work Group, which is chaired by the DEQ and includes the state environmental agencies with water quality responsibilities.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The 303(d) listing/delisting process, which in turn utilizes USAP, will be used to evaluate the effectiveness of DEQ programs related to nonpoint source aspects of surface water quality.

### (h) SECTION 106 POLLUTION CONTROL PROGRAM

This program area is not directly applicable to WQS implementation.

### (i) WATER QUALITY PROTECTION AND CERTIFICATION

Surface water and groundwater quality protection are described under the various program areas in the Plan. Water quality certification under Section 401 of the CWA is a specific responsibility of the WQD.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** Section 401 water quality certifications are the vehicle that a state uses to ensure that Federal permits comply with State antidegradation requirements and existing and designated beneficial uses are not compromised. These water quality certifications are DEQ documents that impose conditions in federal permits or licenses that are specifically intended to ensure attainment of the specific antidegradation requirements and protection of beneficial uses assigned in the OWQS.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of the Section 401 certification process, although beneficial use support/non-support determinations and resulting listing/delisting of waterbodies on the 303(d) List may affect Section 401 certifications.

(3) **Description of programs affecting water quality.** Applicants for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, dredge or fill, or other activities which may result in any discharge into, or pollution or alteration of, waters of the state must obtain a Section 401 water quality certification from the DEQ. Applications for Section 401 certifications are submitted to the DEQ in accordance with OAC 252:611, including mitigation plans when required by the federal permitting entity.

(4) **Technical information and procedures for implementation.** Technical information and procedures used to implement water quality protection are located at OAC 252:611. The DEQ maintains a database of all water quality certifications issued to projects on waters of the state.

(5) **Integration of WQSIP into water quality management activities.** Existing Section 401 certification procedures are consistent with the purpose and content of this Plan.

(6) **Compliance with mandated statewide water quality requirements.** Compliance with statewide water quality requirements is an inherent part of the Section 401 certification process. Water quality certification uses permit review, permit conditions,

and the expertise of other state agencies to accomplish the task of ensuring compliance with statewide water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of Section 401 water quality certification can be observed in the attainment and maintenance of existing and designated beneficial uses by the affected facilities or operations.

(j) **OPERATOR CERTIFICATION**

This program area is not directly applicable to WQS implementation.

(k) **LAND PROTECTION**

Several jurisdictional areas (UIC, hazardous waste, solid waste, Superfund, Brownfields and radiation management) are subsumed under Land Protection.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** All permits and approvals issued by the LPD include technical provisions to protect groundwater and/or surface water. Should releases occur, the owner/operator of a regulated facility will be required to take appropriate measures to protect fresh water sources, and conduct remedial actions as necessary.

(A) **UIC.** UIC permits provide a technically sound basis to ensure that injected fluids do not migrate from the permitted zones of injection and compromise the protection of underground sources of drinking water. Financial assurance is required for closure (plugging and abandonment) and post-closure care (groundwater monitoring) is required as applicable.

(B) **Hazardous waste/solid waste.** For all land-based hazardous waste disposal facilities, existing rules require that the owner/operator monitor for releases to groundwater. Surface water is generally only monitored if a release is suspected. Monitoring wells are the usual method of release detection. Plans for closure and post-closure and any appropriate monitoring or remedial actions are required in the permit. Financial assurance is required for closure and post-closure care (maintenance and monitoring). The Solid Waste program issues permits for technically complete applications that ensure protection of groundwater and prevention of surface water contamination from runoff. Financial assurance for post-closure care and monitoring of groundwater are included in Municipal Solid Waste Management permits.

(C) **Superfund/Brownfields.** LPD is charged with Superfund responsibilities of the state under CERCLA except for SARA Title III planning requirements. The Brownfields Redevelopment/Voluntary Cleanup program is included in this jurisdictional area.

(D) **Radiation management.** Radiation protection permitting and licensing requirements ensure that antidegradation requirements are met and protection of beneficial uses of both surface waters and groundwaters are maintained.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area. However, in voluntary cleanups, use support assessments obtained through the USAP process will be considered in final remedy decision-making during the risk assessment and exposure scenario development.

(3) **Description of programs affecting water quality.**

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(A) **UIC.** UIC permits are issued to private and commercial facilities wishing to inject fluids underground for disposal or mineral extraction purposes under OAC 252:652 and 40 CFR Parts 144 through 146 and 148.

(B) **Hazardous waste/solid waste.** Hazardous and solid waste permits are issued to treatment, storage and disposal facilities (TSDs) and municipal and commercial solid waste facilities. The hazardous waste program issues permits for TSDs pursuant to OAC 252:205 and 40 CFR Parts 260 through 270. Solid waste permits are issued under OAC 252:510 and OAC 252:520. Facilities wishing to close solid or hazardous waste management facilities must comply with all the post-closure care and groundwater monitoring requirements of the above-cited regulations.

(C) **Superfund/Brownfields.** This program identifies, investigates, designs, and conducts remediation of uncontrolled hazardous waste sites and conducts groundwater remediation where feasible. The Superfund program acts in a support role to EPA and other state emergency response entities in emergency response actions. This program has a positive effect on water quality by identifying and remediating waste sources that have significant potential to affect water quality, and by containing, monitoring or remediating affected groundwater and surface water. Brownfields authority is found at 27A O.S. §2-15-101 *et seq.*, and Superfund authority is found at 40 CFR Part 300.

(D) **Radiation management.** Licensing activities for the use and management of byproduct material, special nuclear material, and sources of radiation, except for activities pertaining to diagnostic x-ray systems, are controlled by the LPD's Radiation Management Section since completion of delegation of these authorities from the NRC.

#### (4) Technical information and procedures for implementation.

(A) **UIC.** UIC permits specify the conditions under which a UIC well will be permitted. Considerations include zone(s) of injection, rates, pressures, temperatures and annulus monitoring requirements. Monitoring locations, frequencies, parameters and reporting are specified. A detailed closure plan including financial assurance is also required in the permit.

(B) **Hazardous waste/solid waste.** Hazardous waste and solid waste permits specify conditions for facility construction and operation, groundwater monitoring, and reporting specific parameters that indicate releases to groundwater. The location and frequency of monitoring wells are designed to detect releases should they occur. Action levels are specified in the permit. Risk-based remediation would consider protection of aquifers in the decision-making process. Surface water monitoring occurs when potential releases to surface water exist, or when impacted groundwater interfaces with surface water. Closure, post-closure and corrective action plans, as well as financial assurance, are required by the permits.

(C) **Superfund/Brownfields.** Superfund/Brownfields include determinations of ARARs for remedial decision-making or risk-based closure for protection of surface water and groundwater. Groundwater uses will be considered to determine cleanup and remediation decisions. Emergency response actions will also include protection of public water supplies, surface water and groundwater. The remediation of sites in the Superfund/Brownfields program sometimes requires the treatment and discharge of wastewater and/or stormwater. The

program coordinates with WQD to identify the appropriate discharge and permitting requirements. These requirements would be evaluated as ARARs in any cleanup decisions. Many sites in these programs have historic groundwater and surface water contamination. Cleanup decisions are risk-based and generally include MCLs or other criteria to protect groundwater or surface water. Antidegradation and beneficial uses are considered for cleanup. Cleanup for some sites may include containment of contaminants to prevent further degradation of groundwater or surface water. A systematic monitoring program may verify natural attenuation of contamination in groundwater.

(5) **Integration of WQSIP into water quality management activities.** The Department currently has rules (both federal and state) and agency policies in place that fully implement applicable portions of the OWQS. Departmental rule or policy changes will be made as necessary to implement new or modified aspects of the OWQS.

(6) **Compliance with mandated statewide water quality requirements.** Siting of new facilities and regulated units must be permitted in such a manner that sensitive surface water and groundwater supplies are protected. In addition, operators of permitted facilities are required to perform appropriate monitoring so that releases can be detected and contained in a timely manner and corrective action, if necessary, can be implemented to remediate an impacted water body.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of LPD activities to protect water quality is evaluated by the routine monitoring of permitted facilities for both groundwater and surface water impacts. On-site inspections of permitted facilities and site visits to voluntary cleanup efforts ensure compliance with applicable rules and regulations. In addition, the environmental indicators reporting requirements provide a suitable evaluation methodology for the permitted and voluntary remediation sites within the jurisdiction of the LPD.

**(1) WATER AND WASTEWATER TREATMENT SYSTEMS (NON-INDUSTRIAL)**

This program area includes the construction permitting of municipal and other publicly-owned water and wastewater treatment systems, including the land application of wastewater and non-industrial sludge (biosolids) therefrom, as well as the approval of private individual and small on-site sewage treatment and disposal systems.

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** There is an inherent presumption that adherence to minimum design and construction standards will achieve the objectives of water quality maintenance and support of existing and designated beneficial uses of surface waters and groundwaters. On occasion, water quality-based considerations associated with the attainment and maintenance of higher quality waters, especially relating to dissolved oxygen depletion in receiving waters, may be established through TMDLs requiring a level of sewage treatment more stringent than "secondary." In such cases, construction permitting procedures will ensure that construction permits issued for such systems provide the required level of treatment. Applications for construction permits are reviewed to ensure that new facilities or modifications to existing facilities are not inconsistent with treatment requirements and size restrictions contained in the Water Quality Management Plan.

(2) **Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this program area.

(3) **Description of programs affecting water quality.** Minimum water and wastewater system construction standards and biosolids/water plant residuals reuse and disposal standards are found at OACs 252:606, 252:621, 252:626, 252:631, 252:641 and 252:656. These minimum standards have been demonstrated to achieve water treatment and distribution objectives and sewage collection, treatment and disposal objectives on a widespread geographical basis, including the State of Oklahoma. Construction permit applications and sludge management plan applications are required to contain engineering reports, plans, specifications and sludge management or residuals disposal plans sufficient to demonstrate compliance with these minimum standards for construction or advanced levels of sewage treatment. Local DEQ offices approve the design of private individual and small on-site sewage disposal systems in accordance with OAC 252:641. These systems are inspected and installations are approved by the ECLS Division through its local offices.

(4) **Technical information and procedures for implementation.** Minimum water and wastewater system construction standards and biosolids/water plant residuals reuse and disposal standards are found at OACs 252:606, 252:621, 252:626, 252:631, 252:641 and 252:656.

(5) **Integration of WQSIP into water quality management activities.** The Department will from time to time revise or amend rules concerning construction standards or operational requirements to better protect the quality of waters of the state. Internal policies and guidelines will also be used to integrate the Plan into water and wastewater treatment system permitting activities.

(6) **Compliance with mandated statewide water quality requirements.** Applicable rules for construction permitting and biosolids/residuals beneficial reuse provide for consideration of and compliance with statewide water quality requirements.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The Department will review groundwater and surface water quality information obtained through monitoring activities conducted by DEQ, OWRB, OCC, USGS, and others as well as site specific information to determine whether groundwater and surface water quality is being impacted.

(m) **EMERGENCY RESPONSE**

This program area is not directly applicable to WQS implementation.

(n) **ENVIRONMENTAL LABORATORY SERVICES**

(1) **Compliance with antidegradation requirements and protection of beneficial uses.** The SEL provides analytical support for DEQ and other state agency programs that seek to define compliance with antidegradation requirements and protection of beneficial uses. The Fish Community Biotrends monitoring program and the Toxics and Reservoirs program may be used to evaluate long-term trends, both positive and negative, in fish population and toxic contaminant concentrations in fish flesh.

(2) **Application of USAP.** The SEL may play a supporting role for other state agency functions which are charged with USAP-related activities. One of the SEL's most significant contributions to USAP efforts is its Fish Community Biotrends monitoring program.

(3) **Description of programs affecting water quality.** The SEL provides essential support for Section 106 pollution control activities, and data produced by the SEL is used

extensively in programs funded under Section 106 for areas within DEQ's jurisdiction. It provides support and review of QA Project Plans for all program areas. Laboratories which report results for compliance with NPDES/OPDES permit requirements are required to hold certification from the SEL's laboratory certification unit. The Fish Community Biotrends monitoring program and the Toxics and Reservoirs program may be used to evaluate effects of both point source and nonpoint source discharges on fish populations and the human health aspects of eating fish flesh. The SEL provides support in developing sampling designs, sample analysis, and data analysis for DEQ monitoring activities as well as for private citizens and other state agencies. The SEL provides analytical support, when needed, for special purpose point source compliance monitoring and evaluation, nonpoint source pollution studies, as well as for the TMDL process. The SEL provides analytical support to the WQD for compliance determination, investigations, remediation-related monitoring and other monitoring related to actual or suspected groundwater pollution by water and wastewater treatment facilities, as well as the land application of both municipal and industrial wastewaters and sludges. The SEL provides analytical support to the LPD for compliance determination, investigations, remediation-related monitoring and other monitoring related to identification of hazardous substances, hazardous waste and solid waste disposal sites, Superfund and Brownfield sites and residuals from past practices of radioactive waste disposal. The SEL provides analytical support to both the LPD and Corp Comm in the regulation of UIC wells. The SEL also provides analytical support to the DEQ and other state environmental agencies for emergency response situations.

(4) **Technical information and procedures for implementation.** The SEL assesses the health of aquatic communities via the formal protocol established in its Fish Community Biotrends monitoring program. It conducts its Toxics and Reservoirs program according to an established sampling and analytical protocol. The SEL is also working towards becoming accredited by NELAC.

(5) **Integration of WQSIP into water quality management activities.** The Laboratory Certification Program and the SEL's move towards NELAC certification will ensure that data of known quality and comparability is available for environmental programs.

(6) **Compliance with mandated statewide water quality requirements.** The Toxics and Reservoirs program is administered as a direct implementation of and is in compliance with the toxics in fish tissue criteria found at OAC 785:45. The SEL also provides a Section 106 supporting role for other DEQ functions which have direct responsibilities for implementing the OWQS and WQS implementation criteria.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** The effectiveness of SEL-rendered services to other Section 106-funded activities is measured largely through the effectiveness of those individual programs. The effectiveness of the Toxics and Reservoirs program, in terms of both initiating and terminating fish tissue consumption alerts, is measured largely by its ability to be communicated to affected consumers and the public at large. Evaluation of the effectiveness of interdivisional and interagency cooperation in investigating possible nonpoint sources and evaluating point source dischargers to determine if they cause or contribute to the alert levels of toxics in fish tissue is provided in part by BUMP data and in part by the effectiveness of the individual programs involved. The effectiveness of the Fish Community Biotrends Monitoring

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Program is likewise measured in terms of BUMP data as well as the effectiveness of the individual programs involved in investigating causes of changes in aquatic communities.

### (o) HAZARDOUS SUBSTANCES

Aspects of DEQ's water quality standards implementation related to the regulation of hazardous substances is described in Part II(k), Land Protection.

### (p) WELLHEAD AND SURFACE SOURCE WATER PROTECTION

This jurisdictional area is subsumed under the WQD's source water protection program, which includes both surface waters and groundwaters.

#### (1) **Compliance with antidegradation requirements and protection of beneficial uses.**

The DEQ source water protection program provides for a focus on water quality antidegradation and protection of beneficial uses for both surface waters and groundwaters.

(2) **Application of USAP.** The making of beneficial use support and impairment determinations for surface waters is not a component of this jurisdictional area.

(3) **Description of programs affecting water quality.** The DEQ's source water protection program has a surface source water protection program which parallels the concept of the existing EPA-approved wellhead protection program, as well as a continuation of the existing wellhead protection program. The delineation process will follow the same format in identifying three protection zones for both surface sources and groundwater sources. Similar procedures and guidelines are used to encourage local participation and implementation.

(4) **Technical information and procedures for implementation.** The WQD Source Water Protection Plan provides the technical guidance and procedures for implementation of this program.

(5) **Integration of WQSIP into water quality management activities.** Integration of the Plan will be through rules and internal WQD policies and guidelines, as well as coordination with other state and federal agencies.

(6) **Compliance with mandated statewide water quality requirements.** The groundwater portion of the Source Water Protection Plan provides a basis for delineation of special source groundwaters. Coordination with other affected entities is addressed in the Source Water Protection Plan.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** Special monitoring may be initiated if potential sources of contamination of groundwater or surface water are identified.

### (q) GROUNDWATER PROTECTION

(1) Descriptions of groundwater quality protection procedures in the various DEQ program areas are provided in the subsections dealing with Land Protection, Water and Wastewater Treatment Systems, and Wellhead and Surface Source Water Protection.

(2) For those locations identified in OAC 785:45, Appendix H as a limited use groundwater, and there is a request for the use of said groundwater, certain limitations on the extraction and the use of the groundwater apply.

### (r) UTILIZATION AND ENFORCEMENT OF OWQS AND WQS IMPLEMENTATION

This subsection describes compliance inspection and enforcement activities of permitted point source dischargers and other wastewater treatment facilities conducted by the local ECLS offices and the WQD Municipal and Industrial Enforcement Sections. Utilization of the OWQS and WQS implementation by other DEQ program areas is described under the other jurisdictional areas of this Plan.

**(1) Compliance with antidegradation requirements and protection of beneficial uses.**

The WQD Municipal and Industrial Enforcement Sections ensure that antidegradation requirements and protection of beneficial uses is maintained by performing inspections of and, if necessary, taking enforcement action for significant permit violations against OPDES permit holders. Required inspections, bypass reporting requirements, and procedures for investigating and resolving complaints are directed towards removing threats to water quality, restoration of water quality where beneficial uses are threatened, and maintaining water quality where beneficial uses are supported. Noncompliance with administrative rules and OPDES permits subjects the facility to enforcement action. The WQD Municipal and Industrial Enforcement Sections ensure that wastewater treatment systems comply with antidegradation requirements and protect beneficial uses by monitoring such systems and initiating enforcement action against treatment systems that violate OPDES permit conditions. Total retention (non-discharging) lagoon systems are inspected by ECLS to ensure the systems are being properly maintained. Systems that land apply wastewater or sludge are inspected to ensure the systems follow the technical requirements and criteria in their land application permits and/or sludge management plans. Systems which are not properly maintaining and operating their systems based on these inspections are subject to enforcement action.

**(2) Application of USAP.** The making of beneficial use support/impairment determinations for surface waters is not a component of this jurisdictional area.

**(3) Description of programs affecting water quality.** All OPDES permittees are subject to inspections of facilities to ensure that they are being properly operated and maintained. Additionally, permit holders are required to implement a self-monitoring program and submit analytical results to the DEQ as required by each facility's OPDES permit. These results are received monthly, logged into the PCS database, and reviewed to ensure compliance with the OPDES permit. All unpermitted system bypasses are required to be reported in order to track which facilities may be experiencing collection system or treatment facility overloading problems. The WQD Municipal and Industrial Enforcement Sections are an integral part of the environmental complaint process, bearing the responsibility of investigating and carrying out enforcement action when necessary, often in conjunction with environmental specialists from the ECLS Division's local county offices. ECLS Division environmental specialists in the local DEQ offices conduct inspections of all permitted wastewater facilities at a prescribed frequency. When significant violations are identified, notices to comply are issued by the local DEQ office and follow up inspections are conducted within two weeks. If the violation persists, the facility is referred to the WQD to initiate formal enforcement procedures. Violations of on-site sewage regulations (OAC 252:641) are identified both through the inspection of system installations and through the investigation of complaints of surfacing or discharging sewage. In both cases, the ECLS Division and the WQD have implemented standard enforcement procedures including NOV's, CO's and AO's designed to ensure prompt return to compliance by violators. Methods of monitoring systems include inspections, review of bypass reports and review of discharge monitoring reports. Additionally, the environmental complaint process is effective in determining systems

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which may pose threats to water quality. Systems which do not discharge wastewater are routinely inspected and enforcement action is taken if the system is not properly maintained. All treatment systems are required to comply with their OPDES permit and failure to comply subjects the system to enforcement action.

(4) **Technical information and procedures for implementation.** Facility performance is monitored through inspections, DMRs, bypass reports and the filing of environmental complaints. One or more of these systems may be used to initiate enforcement action against a facility as they may identify a failure of the facility to comply with permit requirements and state or federal regulations. Enforcement actions may include an NOV, CO or AO. Enforcement actions may involve compliance schedules, which are tracked through a database and reviewed monthly to ensure compliance with the tasks required to bring the system into compliance. The ECLS Division has established procedures for facilities found not in compliance with applicable regulations. Typically, when the ECLS environmental specialist identifies a critical violation, he/she issues the facility a written warning to correct the situation within two weeks. If the facility remains non-compliant after two weeks, the facility is referred to the Water Quality Division to initiate formal enforcement action. ECLS has developed a procedure to ensure compliance with on-site sewage regulations. Non-compliance may result from either installation deficiencies found during the construction inspection or from cases of surfacing sewage found during investigations of complaints. In either case, if an NOV and followup inspection do not result in the system coming back into compliance, the owner of the system may be subjected to other enforcement actions.

(5) **Integration of WQSIP into water quality management activities.** To the extent integration of the Plan requires the Department to establish policies of general applicability and future effect, that implement statutory language, or that describe the procedure and practice before the DEQ, the DEQ will promulgate such policies through the rule making provisions of the Administrative Procedures Act. Rules will be added or amended as appropriate to the various chapters of the DEQ's existing rules.

(6) **Compliance with mandated statewide water quality requirements.** The WQD Municipal and Industrial Enforcement Sections' water quality management activities comply with applicable statewide water quality requirements by enforcing adherence to the effluent limitations and other special conditions contained in OPDES permits, which are based on the WQMP, CPP, OWQS and WQS implementation criteria.

(7) **Public and interagency participation.** Part III of this appendix contains a summary of comments received and responses thereto relating to promulgation of DEQ's WQSIP.

(8) **Evaluation of effectiveness of agency activities.** EPA Region 6 oversees the water quality management activities of the WQD Municipal and Industrial Enforcement Sections for major dischargers, including CEIs, enforcement activities and compliance schedules.

### (s) ENVIRONMENTAL REGULATION, POLLUTION CONTROL AND ABATEMENT.

This program area is related to the assumption of jurisdiction by the DEQ of surface water and groundwater pollution issues not subject to the statutory authority of other state environmental agencies. Such issues would be subsumed under other program areas in this Plan. Thus, this program area is not directly applicable to WQS implementation.

### (t) PUBLIC AND PRIVATE WATER SUPPLIES.

This program area is related to drinking water supplies and treatment and thus is not directly applicable to WQS implementation.

(u) **AIR QUALITY.**

This program area is not directly applicable to WQS implementation.

(v) **COMPUTERIZED WATER QUALITY DATA INFORMATION SYSTEM.**

This program area is not directly applicable to WQS implementation.

**PART III. PUBLIC AND INTERAGENCY PARTICIPATION**

**(a) GENERAL.**

**(1) Initial promulgation of Plan.** The initial promulgation of the Plan will receive public and interagency review and comment. This required element will be completed when the public participation period has been completed and a response to all comments received as a result of the public participation process has been appended to the Plan.

**(2) Revisions to Plan.** As with initial promulgation, triennial reviews of and revisions to the Plan, as well as any intermediate revisions thereto, shall undergo public and interagency review, and the response to all comments received shall be appended to the Plan.

**(b) SUMMARY OF COMMENTS RECEIVED AND RESPONSE TO COMMENTS.**

*[OAR Docket #09-1052; filed 5-22-09]*

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 9. HEALTH CARE  
INFORMATION**

*[OAR Docket #09-1008]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Required Information  
310:9-3-1 [AMENDED]  
Subchapter 5. Collection and Release of Information  
310:9-5-2.1 [AMENDED]

**AUTHORITY:**  
Oklahoma State Board of Health; 63 O.S. Supp. 1998, Sections 1-104 et seq. and Section 1-702a

**DATES:**  
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N/A

**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed rules removes specificity of submission items for inpatient and generalizes them to specific national standards, as well as adding submission requirements for outpatient surgery and ambulatory surgery; and expands the information included in public use data files to include the submitting facility, birth weight group, admitting diagnosis, and Present Upon Admission (POA), as well as defining those elements to be included in the outpatient surgery and ambulatory surgery public use files.

**CONTACT PERSON:**

Kelly Baker, Director, Health Care Information, (405) 271-4040

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 3. REQUIRED INFORMATION**

**310:9-3-1. Required information to be collected  
from information providers**

(a) The Department is required by law to collect the following types of information from information providers:

(1) Financial information including, but not limited to, consumption of resources to provide services, reimbursement, costs of operation, revenues, assets, liabilities, fund balances, other income, rates, charges, units of service, wage and salary data;

(2) Service information including, but not limited to,  
(A) occupancy, capacity, and special and ancillary services;

- (B) Physician profiles in the aggregate by clinical specialties and nursing services;
- (C) Discharge data, including but not limited to, completed discharge data sets or comparable information for each patient discharged from the facility after the effective date of this act; and
- (D) Ambulatory care data including, but not limited to, provider-specific and encounter data.

(b) The data elements to be submitted by information providers for hospital inpatient discharges include, but are not limited to the data elements defined in the current version of the National Uniform Bill:

- (1) Patient name;
- (2) Patient street address
- (3) Patient city;
- (4) Patient state;
- (5) Patient address postal code;
- (6) Patient date of birth;
- (7) Patient gender;
- (8) Patient social security number; (last 4 digits only);
- (9) Patient race;
- (10) Patient ethnicity;
- (11) Patient marital status;
- (12) Patient control number;
- (13) Patient medical record number;
- (14) Provider Medicare ID number;
- (15) Admission date;
- (16) Discharge date;
- (17) Source of admission;
- (18) Type of admission;
- (19) Patient discharge status;
- (20) External cause of injury code (E code);
- (21) Attending physician identifier (State of Oklahoma license number);
- (22) Principal diagnosis;
- (23) Other diagnosis codes 1-15;
- (24) Procedure coding method;
- (25) Principal procedure code;
- (26) Other procedure codes 1-15;
- (27) Principal procedure physician identifier;
- (28) Other procedure physician identifiers 1-15;
- (29) Primary payor identification;
- (30) Secondary payor identification;
- (31) Tertiary payor identification;
- (32) Total charges for this hospital stay;
- (33) Total charges for this hospital stay by revenue code;
- (34) Units of service by revenue code; and
- (35) Type of bill.

(c) The data elements to be submitted by information providers for ambulatory surgery patients include, but are not limited to the data elements defined in the current version of the National Uniform Bill and the CMS-1500:

- (1) Patient name;
- (2) Patient street address;
- (3) Patient city;
- (4) Patient state;
- (5) Patient address postal code;
- (6) Patient date of birth;

- (7) Patient gender;
- (8) Patient social security number; (last 4 digits only);
- (9) Patient race;
- (10) Patient marital status;
- (11) Patient control number;
- (12) Patient medical record number;
- (13) Admission date;
- (14) Discharge date;
- (15) Patient discharge status;
- (16) Provider Medicare ID number;
- (17) Attending physician identifier (State of Oklahoma license number);
- (18) Principal diagnosis ICD;
- (19) Other diagnosis ICD codes 1-10;
- (20) External cause of injury codes (E code);
- (21) Principal procedure ICD;
- (22) Principal procedure CPT;
- (23) Principal procedure physician identifier;
- (24) Other procedure ICD 1-10;
- (25) Other procedure CPT 1-10;
- (26) Primary payor identification;
- (27) Secondary payor identification;
- (28) Tertiary payor identification;
- (29) Payor classification;
- (30) Total charges for this facility stay;
- (31) Total charges for this facility stay by revenue code;
- (32) Units of service by revenue code; and
- (33) Type of bill.

- (d) Data file formats that will be accepted include:
  - (1) UB-92 Flat File Format XML format as defined by the Division,
  - (2) ASC X12-837 Health Care Claim Standard fixed length ASCII format as defined by the Division,
  - (3) HCFA-1500,
  - (34) Other formats agreed upon by OSDH and the data provider prior to submission.
- (e) Formats containing the appropriate fields without adhering to the appropriate format shall be considered unreadable and will be returned to the provider.

## **SUBCHAPTER 5. COLLECTION AND RELEASE OF INFORMATION**

### **310:9-5-2.1. Public Use Data File**

- (a) The Department will annually make available for purchase a Public Use Data File(s) (PUDF) containing a calendar year of record level data with anonymous case files (i.e., direct patient identifiers removed).
- (b) The hospital inpatient discharge data PUDF includes the following data elements:
  - (1) Record Identifier (Synthetic)
  - (2) Patient state of residence
  - (3) Patient zip code
  - (4) Patient county of residence
  - (5) Patient gender
  - (6) Patient race
  - (7) Patient marital status

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- (8) Patient age group
- (9) Hospital ID
- (10) Hospital Type
- (11) Admission year
- (12) Admission month
- (13) Admission day of week
- (14) Discharge year
- (15) Discharge month
- (16) Discharge day of week
- (17) Length of stay in days
- (18) Type and source of admission
- (19) Patient discharge status
- (20) Payer classification
- (21) Total charges
- (22) Diagnosis Related Group (DRG)
- (23) Major Disease Category (MDC)
- (24) Birth weight group
- (25) Admitting diagnosis
- (26) External cause of injury codes (E-code)
- (27) Principal diagnosis
- (28) Other diagnosis codes
- (29) Principal procedure code
- (30) Other procedure codes
- (31) Present upon Admission (POA)
- (1) Record ID (Synthetic);
- (2) Patient state of residence;
- (3) Patient zip code;
- (4) Patient county of residence;
- (5) Patient gender;
- (6) Patient race;
- (7) Patient marital status;
- (8) Patient age groups (five year);
- (9) Hospital ID (Synthetic);
- (10) Admission year;
- (11) Admission month;
- (12) Admission day of week;
- (13) Length of stay in days;
- (14) Source of admission;
- (15) Type of admission;
- (16) Patient discharge status;
- (17) External cause of injury code;
- (18) Principal diagnosis;
- (19) Other diagnosis codes (1-15);
- (20) Principal procedure code;
- (21) Other procedure codes (1-15);
- (22) Principal Payor Category;
- (23) Total charges;
- (24) HCFA MDC; and
- (25) HCFA DRG.

(c) The hospital outpatient surgery data PUDF includes the following data elements:

- (1) Record Identifier (Synthetic)
- (2) Patient state of residence
- (3) Patient zip code
- (4) Patient county of residence
- (5) Patient gender
- (6) Patient race
- (7) Patient marital status

- (8) Patient age group
- (9) Hospital ID
- (10) Admission year
- (11) Admission month
- (12) Admission day of week
- (13) Admission hour
- (14) Discharge year
- (15) Discharge month
- (16) Discharge day of week
- (17) Discharge hour
- (18) Length of stay in days
- (19) Type and source of admission
- (20) Patient discharge status
- (21) Total charges
- (22) External cause of injury codes (E-code)
- (23) Principal diagnosis
- (24) Other diagnosis codes
- (25) Principal procedure CPT code
- (26) Other procedure CPT codes
- (27) Payer classification
- (17) Discharge hour
- (18) Length of stay in days
- (19) Total charges
- (20) Principal diagnosis
- (21) Other diagnosis codes
- (22) Principal procedure CPT code
- (23) Other procedure CPT codes
- (24) Payer Classification
- (25) Ambulatory payment classification (APC)

(ee) Entities requesting the PUDF must sign and complete the Data Use Agreement. The completed Data Use Agreement must be included with the request.

*[OAR Docket #09-1008; filed 5-20-09]*

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

*[OAR Docket #09-1009]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. License Requirements  
310:205-3-5 [AMENDED]

### **AUTHORITY:**

Oklahoma State Board of Health; Alarm and Locksmith Industry Act, 59 O.S. Sections 1800.1 et seq.,

### **DATES:**

#### **Comment period:**

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**SUPERSEDED EMERGENCY ACTIONS:**

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**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

310:205-3-5 The proposed rule would adopt an Enhanced Call Verification method which would require facilities that provide monitoring of Burglar Alarms, Electronic Access Control and Closed Circuit Television to take additional steps to assure that first responders (police, fire departments, rescue and emergency personnel) are actually needed when summoned by one of these systems. The proposed rule is necessary due to the excessive number of false alarms generated by these systems. The proposed language requires that monitoring facilities attempt to verify the validity of an activated signal from an alarm system designed to detect and signal an unauthorized intrusion or entry, before requesting a response from law enforcement. This would be accomplished by first calling the alarm user at the alarm system site. If the alarm user cannot be reached, a designated alternate individual that the alarm user has authorized to cancel a response would be contacted for signals indicating an unauthorized intrusion.

**CONTACT PERSON:**

Matt Schue, Director, Occupational Licensing Division, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57905; facsimile: (405) 271-5286 electronic mail: Matts@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, 2009:**

**SUBCHAPTER 3. LICENSE REQUIREMENTS**

**310:205-3-5. Monitoring license requirements**

Licensing requirements for the alarm monitoring industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed alarm monitoring company manager. A monitoring license shall be issued to a monitoring facility, which offers and provides monitoring services to residential or commercial customers.

(B) **Enhanced Call Verification.**

(i) Except as provided in this subsection, a monitoring company shall attempt to verify that an activated signal from an alarm system designed to detect and signal an unauthorized intrusion or entry, before requesting a law enforcement response by:

(I) Calling the alarm user at the site of the alarm system with the activated signal; then

(II) If no contact is made with the alarm user at the site, calling a second telephone number provided by the alarm user of an individual authorized to cancel a response.

(ii) A monitoring company is not required to contact an alarm user who has obtained a written exemption from response verification from the local chief law enforcement officer or his designee.

(iii) A monitoring company is not required to call an alarm user if the system provides visual or audible verification of an unauthorized intrusion or entry by electronic means incorporated into the alarm system.

(iv) A monitoring company is not required to contact an alarm user for signals from medical, emergency, holdup, panic, ambush, nurse call systems, and/or fire alarms.

(2) **Manager.**

(A) Each manager shall be responsible for all activities of the company within the State of Oklahoma. In the event of the death of the monitoring company manager or his/her separation from the company for any other reason, a monitoring company shall notify the Department with fourteen (14) days and name another licensed burglar alarm manager within thirty (30) days from separation.

(B) Each manager shall have a security background verification.

*[OAR Docket #09-1009; filed 5-20-09]*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 315. PUBLIC BATHING PLACE FACILITY STANDARDS**

*[OAR Docket #09-1010]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 310:315-1-2 [AMENDED]
- Subchapter 3. Plan Documents
- 310:315-3-1 [AMENDED]
- Subchapter 7. Construction and Operation
- 310:315-7-9 [AMENDED]
- 310:315-7-10 [AMENDED]
- 310:315-7-11 [AMENDED]
- 310:315-7-12 [AMENDED]
- 310:315-7-14 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S.Supp. 2004, § 1-1013.1 and 63 O.S. 2001, § 1-1014.

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**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

**310:315-1-2** The current rule does not define "Cover/grate", "Unblockable drain", "Scope of work" and "Submerged suction outlet" and the language will be added to define these terms. This proposal establishes definition not stated in previous Rule. The proposed language will specify that swimming pool and spa drain cover devices or systems shall be designed to prevent entrapment or creation of a suction entrapment hazard. This change is necessary because pools licensed by the Department do not meet this requirement to prevent main drain entrapment. The effect of the Rule change could cause a reduction in permits issued to construct by the Department if they cannot comply with the proposed Rule changes that effect the construction of a new swimming pool, wading pool, spa or hot tub. **310:315-3-1, 310:315-7-9, 310:315-7-10, 310:315-7-11, 310:315-7-12** and **310:315-7-14** will provide the language necessary to set forth the parameters of equipment that will be required to be installed as new safety system(s) that will prevent main drain entrapment. The proposed rule change will clarify the required equipment.

**CONTACT PERSON:**

Tressa Madden, Director, Consumer Protection Division, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299,(405)271-5243,tremsam@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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### **310:315-1-2. Definitions**

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

**"Abrasion hazard"** means a sharp or rough surface that would scrape the skin upon chance or by normal use modes.

**"Adjustable inlet"** means a fitting mounted in the pool wall and connected to the return piping from the recirculation system that is directionally adjustable or a fitting mounted in the pool floor and connected to the return piping from the recirculation system that has a means of flow adjustment.

**"Air bump assist backwash"** means the compressing of a volume of air in the filter effluent chamber (by means of an air compressor or by the water pressure from the recirculating pump) which, when released, rapidly decompresses and forces water in the filter chamber through the elements in reverse, dislodging the filter aid and accumulated dirt, carrying it to waste.

**"Air induction system"** means a system whereby a volume of air (only) is induced into hollow ducting built into a spa floor, bench, or other location. The air induction system is activated by a separate air power unit (blower).

**"Attendant"** means any person capable of providing rescue who is responsible to the management.

**"Backwash"** means the process of thoroughly cleansing the filter media and/or elements by reverse flow.

**"Backwash cycle"** means the time required to thoroughly backwash the filter media and/or elements and the contents of the filter vessel.

**"Backwash rate"** means the rate of application of water through a filter during the cleaning cycle normally expressed in U. S. gallons per minute per square foot of effective filter area.

**"Bathing load"** means the maximum number of persons allowed in the pool enclosure at one time.

**"Booster pump system"** means a system whereby one or more hydrojets are activated by the use of a pump which is completely independent of the filtration and heating system of a spa.

**"Cartridge filter"** means a filter that utilizes a porous cartridge as its filter medium.

**"Collector tank"** means a tank receiving the gravity flow from the perimeter overflow gutter and main drain(s) from which the recirculation pump takes suction. It may be referred to as a balance tank.

**"Cover/Grate"** means a fitting, device or assembly that separates the bather from the suction sump or piping that has been design and specified by the manufacturer to control flow through the open area.

**"Department"** means the Oklahoma State Department of Health and authorized representatives.

**"Diatomaceous earth filter"** means a filter that utilizes a thin layer of filter aid as its filter medium that periodically must be replaced.

**"Engineering nomenclature"** means the technical terms used through this chapter are understood to represent the currently accepted professional engineering definitions.

**"Filter"** means a device that separates solid particles from water by recirculating it through a porous substance (a filter medium or element).

**"Filter agitation"** means the mechanical or manual movement to dislodge the filter aid and dirt from the filter element.

**"Filter aid"** means a type of finely divided medium used to coat a septum type filter, usually diatomaceous earth, processed perlite, or similar material.

**"Filter cycle"** means the operating time between cleaning and/or backwash cycles.

**"Filter element"** means a device within a filter tank designed to entrap solids and conduct water to a manifold, collection header, pipe, or similar conduit. Filter elements usually consist of a septum and septum support.

**"Filter freeboard"** means the clear vertical distance between the top of the filter medium and the lowest outlet of the upper distribution system in a permanent media filter.

**"Filter media, permanent"** means a finely graded material (such as sand, anthracite, etc.) which removes filterable particles from the water.

**"Filter septum"** ~~means~~ means that part of the filter element consisting of cloth, wire screen, or other porous material on which the filter medium or aid is deposited.

**"Filtration flow"** means the rate of flow, in volume per time (GPM, GPH), through the filter system installed per manufacturer's instructions with new clean media.

**"Filtration rate"** means the rate of filtration of water through a filter during the filter cycle expressed in U.S. gallons per minute per square foot of effective filter area.

**"Hydrojets"** means a fitting which blends air and water creating a high velocity, turbulent stream of air enriched water.

**"Hydrotherapy, whirlpool, or spa pool"** ~~means~~ means a public pool used exclusively in conjunction with high velocity air and/or high velocity water recirculation systems, utilizing hot, cold, or ambient temperature water. These pools will be referred to as spas.

**"Individual therapy units"** means tanks which are designed for the therapeutic treatment of one individual at one time and are drained and cleaned after each individual use. Individual therapy units are not considered public bathing places.

**"Ladders"** means a series of vertically separated treads or rungs either connected by vertical rail members or independently fastened to an adjacent vertical spa/pool wall.

**"Lower distribution system (underdrain)"** means those devices used in the bottom of a permanent media filter to collect the water uniformly during the filtering and to distribute the backwash uniformly during the backwashing.

**"Open to the general public"** means not restricted to tenants or guests.

**"Overflow system"** means the term overflow system encompasses perimeter type overflows, surface skimmers, and surface water collection systems of various design and manufacture. The water line shall be established by the height of the overflow rim.

**"Perimeter overflow gutter"** means a trough or gutter around the inside perimeter of the pool walls with the overflow lip effecting a skimming action to clean the pool water surface.

**"Permanent media filter"** means a filter that utilizes a medium that can be regenerated and will not have to be replaced.

**"Plunge pool"** means the receiving body of water located at the terminus of a recreation water slide.

**"Pool deck"** means the unobstructed area around the outside of the pool curb, diving boards, diving towers, and/or pool slides.

**"Pool floor"** means the interior bottom pool/spa surface and consists of that surface from a horizontal plane up to a maximum of a 45° slope.

**"Pool turnover"** means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

**"Portable pool"** means a shallow pool, with depth not exceeding 4.5 feet, intended only for swimming instruction, which can be quickly erected, used for an instruction period then dismantled and moved to another location. Conditions

governing authorization and operation are shown in the Public Bathing Place ~~Regulations~~ Operations.

**"Precoat pot"** means a hopper with a valved connection to the suction side of the recirculation pump of pressure ~~diatomaceous~~ diatomaceous earth type filter systems that is used for coating the filter with filter medium prior to filtering water through the system.

**"Private pool"** means a pool maintained by an individual for the use of his family and friends, with no other formal admission requirement.

**"Public swimming pool or public pool"** means a structure of concrete, masonry, or other approved materials, located either indoors or outdoors, used for bathing or swimming, or for instructional purposes in swimming, diving, or other aquatic activities by humans, and filled with a filtered and disinfected water supply, together with buildings, appurtenances, and equipment used in connection therewith. A public swimming pool or public pool shall mean a conventional pool, spa type pool, wading pool, special purpose pool, or water recreation attraction to which admission may be gained with or without payment of a fee and includes but is not limited to pools operated by or serving camps, churches, cities, clubs, counties, health spas, institutions, parks, state agencies, schools, subdivisions, or other cooperative living type projects such as apartments, boarding houses, condominiums, hotels, mobile home parks, motels, recreational vehicle parks, and mobile home parks.

**"Recessed steps"** means a riser/tread or series of risers/treads extending down from the deck with the bottom riser/tread terminating at the spa/pool wall, thus creating a "stairwell."

**"Recessed treads"** means a series of vertically spaced cavities in the spa/pool wall ~~created treat areas for steps~~ to be used as steps for the ladder.

**"Recirculation system"** means the system traversed by the recirculated water from the pool until it is returned to the pool ~~(from the through collector tank, recirculation pump, filter, chemical treatment heater, if provided, and returned to the pool)~~.

**"Scope of work"** means a document outlining proposed changes to a public bathing place, including but not limited to the existing configuration and work to bring the facility into compliance with the provisions of this chapter.

**"Skimmer system"** means the water line shall fall in the midpoint of the operating range of the skimmers.

**"Special purpose pool"** means a public ~~pool~~ bathing place used exclusively for a particular purpose, including but not limited to springboard or platform diving training, scuba diving instruction, and aquatic programs for handicapped individuals and kindergarten children.

**"Spray pool"** means a recreation area intended for use by children, in which water is supplied by a system of sprays but is not allowed to accumulate.

**"Steps"** means a riser/tread or series of risers/treads extending down from the deck into the spa/pool area.

**"Submerged suction outlet"** means a fitting assembly, cover/grate, and related components below the water level that

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provides a localized low pressure area for the transfer of water from a swimming pool, wading pool, spa or hot tub.

"**Toxic**" means the adverse physiological effect on man.

"**Tread contact surface**" means the foot contact surfaces of ladder, step, stair, or ramp.

"**Turnover rate**" means the period of time (usually in hours) required to circulate a volume of water equal to the pool capacity.

"**Upper distribution system**" means those devices designed to distribute the water entering a permanent media filter in a manner such as to prevent movement or migration of the filter medium. This system shall also properly collect water during filter backwashing unless other means are provided.

"**Unblockable drain**" means a suction outlet constructed, designed, or fitted with an approved cover, of a minimum size such that an 18 inches by 23 inches body blocking element will not cause a differential pressure that could cause body entrapment.

"**Vacuum (or suction) filter**" means a filter which operates under a reduced pressure from the suction of a pump.

"**Wading pool**" means a pool intended for ~~recreative~~ recreational use by children and having a maximum depth not exceeding 18 inches.

"**Water line**" means the water line shall be defined in one of the following ways:

"**Water recreation attraction**" means a public bathing or swimming facility with design and operational features that provide patrons recreational activity which is different from that associated with a conventional swimming pool and purposefully involves total or partial immersion in the water. Water recreation attractions include but are not limited to water slides, water amusement lagoons, and wave pools.

## SUBCHAPTER 3. PLAN DOCUMENTS

### 310:315-3-1. Plans and specifications

(a) **Plans and specifications required.** Plans and specifications on new or major remodeling of existing public bathing places shall be prepared by a professional engineer licensed in the State of Oklahoma and submitted to the State Department of Health for approval and an approval permit issued prior to construction.

(1) Permits for construction of public bathing place facilities are not transferable.

(2) No permit to construct a public bathing place facility will be granted unless sufficient information has been presented to the Department to indicate a finding that such facility will be constructed and can be operated in accordance with this chapter and in accordance with good practices of public health and safety.

(3) The purpose of this section is to point out the essential items and in general, the type of information that should be shown on the plans or included in the specifications or the engineer's report. The inclusion of complete information will expedite the review and approval of plans and specifications by the Water Facilities Engineering

Service and will avoid the necessity of returning unapproved plans and specifications to the owner for additional information or clarification.

(4) Plans submitted to the Department for approval for all future public bathing places, or for any major changes in existing public bathing places, must bear the seal of a registered professional engineer licensed to practice under the Oklahoma statutes. Plans shall be of sufficient size and legibility for microfilming.

(5) It is unlawful for any person or persons to begin construction, alteration, or modification of any public pool without first having received written approval from the Department.

(6) The modification of an existing public bathing place to comply with requirements of OAC 310:315-7-14(h) (relating to outlets) shall not require a permit. The changes shall be considered minor modifications as outlined under OAC 310:315-3-1(b) (relating to minor changes) and shall require the submission of a scope of work in writing to the Department outlining the proposed modification to the public bathing place, prior to performing the work. The scope of work shall include, at a minimum, the make and model number of the equipment that will be installed. An inspection by the Department is required upon completion of the work and prior to re-filling the pool with water.

(7) Any changes or additions to the recirculation system, treatment equipment, physical structure, or appurtenances that, in the opinion of the Department, are not equivalent in operating characteristics to those installed in accordance with the plans and related documents approved by the Department will be considered as an alteration or modification of an existing pool.

(8) Upon completion of all new construction, approved alterations or modification of an existing pool, the owner shall provide written notification to the Department that the construction and/or equipment installation is ready for final inspection by the Department.

(9) If construction of a pool (installation of the pool shell) has not commenced within one (1) year from the date of plan approval by the Department, the approval shall expire. However, upon written request by the owner, the project approval may be extended for a period of six (6) months provided significant changes have not been made in the project plans or have not occurred in local conditions affecting the pool or site, and the plans comply with the standards.

(10+) Number of sets of plans. Five (5) or more complete sets of plans and specifications, together with an application for permit on forms provided by the State Department of Health, signed by the owner, shall be submitted to the Department for review. If approved, all plans and specifications will be stamped, indicating the approval of the Department. One (1) set will be retained in the files of the Department; one (1) set forwarded to the local health department; two (2) sets returned to the owner, one (1) for the owner's file and the other to be provided the successful

bidder for the pool construction and one set will be sent to the consulting engineer.

(11) If not approved, one (1) complete set will be retained for record and the remainder will be returned to the applicant with recommendations for necessary changes or modifications that will be in compliance with lawful requirements.

(122) Plans Submitted for Review. Plans should be submitted for review at least thirty (30) days prior to advertising for bids or letting a contract for construction of the pool. From this it is not necessarily to be inferred that approval or recommendations by the Department will always be forthcoming within this time.

(b) **Minor changes.** Proposed changes or additions to existing public bathing places of a minor nature, and not of a sufficient magnitude or scope to involve engineering and the preparation and submission of plans, shall be reviewed informally by the Department in order that the owners may be assured that the proposed changes or additions are in compliance with lawful requirements.

(c) **Structural design not reviewed by State Department of Health.** The review of plans and specifications by the Water Facilities Engineering Service does not include structural design or structural stability of any section or part of a public bathing place. Certification of adequacy is the responsibility of the design engineer.

(d) **Information needed.** The engineer's report, specifications, or plans shall include all of the minimum design requirements outlined in this chapter; the pool capacity in gallons; estimated bathing load (male and female); capacity of all mechanical equipment; information of water supplies, pressure, etc., together with such other information as is requested throughout this chapter. When mechanical equipment, devices, plumbing fixtures, etc., are specified by use or trade name, catalog numbers, etc., then individual leaflets, catalogs, or other descriptive material shall be furnished.

(4) A plot plan is required showing the location of the pool and adjacent buildings, parking areas, sewers, water lines, fences, and contours. The finding location (legal description or street address) shall be shown on the plot plan.

(e) **New equipment and methods.** The policy of the Department with reference to new types of equipment, new design features, etc., will not be such as to discourage or obstruct progress in design. However, any newly developed equipment, materials, etc., proposed for use in connection with a public bathing place shall have been qualified by trial elsewhere to the satisfaction of the State Department of Health before plans and specifications will be approved or a permit issued. This requirement would not necessarily prohibit any occasional experimental or test installation with adequate impartial supervision, wherein a satisfactory written agreement with reference to replacement of equipment, materials, or changes in design is incorporated in the specifications in the event of failure. In the event public funds are involved, then any such agreement shall be backed by a satisfactory guarantee bond, sufficient in amount to provide for the replacement of unsatisfactory materials or equipment plus any and all additional costs occasioned

by changes in design or construction, etc., arising from such replacement.

(f) **Special conditions.** Should special conditions exist or circumstances be such that in the opinion of the engineer certain items listed as minimum design requirements would not be applicable, then such items shall be submitted in writing to the State Department of Health and approved prior to preparation of the final plans and specifications, and shall be explained in detail in the engineer's report.

(g) **Deviations.** Deviations from this chapter may be allowed by the Department upon a finding by the Department that the operation, maintenance, safety, and sanitation of the pool will not be adversely affected by the deviation. No deviation will be allowed unless it is noted on the construction permit. No deviation from approved plans and specifications is permissible unless and until an amended permit has been granted.

## SUBCHAPTER 7. CONSTRUCTION AND OPERATION

### 310:315-7-9. Wading pools

(a) **Wading pools used by children.** Since wading pools will be used by children, who are more susceptible to disease than adults, the standards of sanitation shall be equal, or superior, to those for swimming pools. The maximum depth of all wading pools shall be eighteen (18) inches. A reasonably non-slip surface shall be provided. Bottom slopes shall not exceed one (1) foot in twelve (12) feet. Bathing water shall meet all of the water quality requirements as specified for all artificially constructed bathing places.

(b) **Recirculation.** Wading pools shall have a minimum of one (1) turnover every four (4) hours (two (2) hours is strongly recommended). Unless a separate recirculation system is provided for the wading pool, the main pool recirculation system shall be designed for the additional flow. All recirculation piping to and from the wading pool shall be valved utilizing valves designed for proportioning flows. Rate of flow indicators shall be installed to indicate the flow rate to the wading pool. The piping, fittings, and hydraulic requirements shall be in accordance with ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems); "Recirculation system".

(1) **Inlets, outlets.** Adjustable inlets shall be provided for wading pools based on a minimum of one (1) inlet for each twenty (20) feet, or fraction thereof, of pool perimeter except that wading pools with twenty (20) feet or less of perimeter shall have a minimum of two (2) equally spaced adjustable inlets. ~~At least one (1) main drain meeting~~ Submerged suction outlets shall meet the requirements of ~~310:315-7-14~~ shall be provided OAC 310:315-7-14(h) (relating to outlets).

(2) **Surface skimmers.** One (1) surface skimmer shall be provided for each four hundred (400) square feet of surface area or fraction thereof. Multiple skimmers shall be equally spaced and shall meet all the requirements of ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems).

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(3) **Emergency drainage.** All wading pools shall have drainage to waste (with indirect connection) through a quick opening valve to facilitate emptying the wading pools should accidental bowel or other discharge occur.

(b) **Wading pool integral with a swimming pool.** Where a wading pool is built integral with a swimming pool, provision must be made to prevent children falling into the deeper water. The two pools shall be separated by a wall extending to the surface of the water, topped by a barrier complying with ~~310:315-7-2~~ OAC 310:315-7-2 (relating to pool layout).

(c) **Wading pool rules sign.** At all wading pools, a sign shall be displayed prominently using the following or equivalent

language:

- (1) Wading Pool
- (2) Supervisor Required for Use
- (3) Children over 12 Years of Age Prohibited.

### 310:315-7-10. Spray pools

All spray pools with recirculation systems shall comply with the water quality standards cited in Public Bathing Place Regulations. Water supply and waste disposal shall comply with ~~310:315-5-1~~ OAC 310:315-5-1 (relating to water supply) and ~~310:315-5-2~~ OAC 310:315-5-2 (relating to sewer). Bottom slopes shall not exceed one (1) foot in twelve (12) feet. Spray orifices shall discharge at least six (6) inches above the overflow, and shall be designed and installed so as not to present an impalement or tripping hazard. Water shall be removed continuously through drains with ~~anti-vortex covers, or through grates one hundred forty four (144) square inches or more in area and limiting the a~~ maximum water velocity to of one and one-half (1-1/2) feet/second. Submerged suction outlets shall meet requirements outlined in OAC 310:315-7-14 (relating to outlets).

### 310:315-7-11. Public spas

(a) **Spas.** Spas shall be made of concrete or other impervious materials with a finish adapted to the needs of the facility. Spas shall be of such shape and size as to be operated and maintained in a safe and sanitary manner. In addition to the requirements of this section, compliance is required with all other applicable sections of this chapter.

(b) **Water depths and floor slopes.** Spas shall have a maximum water depth of four (4) feet. The spa floor shall slope to a main drain and the slope shall not exceed one (1) foot in twelve (12) feet (1:12) and the slope shall be uniform.

(c) **Steps.** Steps shall be provided and shall be located to provide adequate entrance to and exit from the spa. The number of sets of steps required shall be on the basis of one (1) for each fifty (50) feet, or major fraction thereof, of spa perimeter. They shall be constructed of an easily cleaned impervious materials having a slip resistant finish. Step sets for spas with more than two hundred (200) square feet of spa water surface area shall comply with ~~310:315-7-5~~ OAC 310:315-7-5(a) (relating to steps, ladders and stairs). Step sets for spas with two hundred (200) square feet or less of spa water surface area shall comply with the following:

(1) Step treads shall have a minimum continuous tread length of twelve (12) inches and a minimum tread width of ten (10) inches.

(2) Step riser heights shall not exceed twelve (12) inches, except that when the bottom step is used for a bench or seat, the bottom riser may be a maximum of fourteen (14) inches.

(3) Intermediate treads and risers between the top and bottom treads and risers shall be uniform in width and height, respectively.

(d) **Handrails.** Handrails shall be provided for all sets of steps and shall be anchored in the bottom and shall extend over the coping and anchor in the deck. Where "figure 4" handrails are used, they shall be anchored in the deck and shall extend laterally to a point vertically above the bottom step.

(e) **Decks.** Spa decks shall comply with the following requirements in addition to the applicable parts of ~~310:315-7-6~~ OAC 310:315-7-6 (relating to walkways or decks).

(1) Decks shall slope a minimum of one-fourth (1/4) inch per foot away from the spa to drainage or to deck drains.

(2) Decks shall have a minimum four (4) foot unobstructed width around the entire spa perimeter except that small indoor spas of less than one hundred twenty (120) square feet of spa water surface area shall have a minimum four (4) foot unobstructed deck around a minimum of fifty (50) percent of the spa perimeter.

(3) Decks shall provide adequate access for cleaning and maintenance of the spa, and for assisting persons in distress.

(4) Decks shall not be more than ten (10) inches below the top of the curb.

(f) **Surface skimmers.** Surface skimmers or overflow gutters shall be provided. The minimum number of surface skimmers required shall be based on one (1) skimmer for each fifty (50) square feet or fraction thereof of spa water surface area. Multiple surface skimmers shall be equally spaced. All surface skimmers shall meet the requirements of ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems) and the system shall be designed for thirty (30) gallons per minute per skimmer. Overflow gutters shall meet the requirements of ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems).

(g) **Air or water jet systems.** Therapy or jet systems shall be independent of the recirculation-filtration and heating systems. In particular, therapy suction outlets shall be separated from filter system outlets sufficiently to ensure no interference with required filter system flow.

(h) **Suction openings.** All suction openings in spas shall have ~~anti-vortex covers or grates one hundred forty four (144) inches (minimum)~~ with sufficient open area to prevent the flow velocity through the grate openings open area from exceeding one and one-half (1-1/2) feet per second. This same velocity restriction shall apply to suction intakes for water jets.

(i) **Chemical feeders.** Feeders for chlorine or bromine shall be specified, shall meet the requirements for the specific spa, and shall be in accordance with ~~310:315-7-16~~ OAC 310:315-7-16 (relating to disinfection and pH control). (Note:

chlorine is not recommended for disinfection in hot water facilities.)

(j) **Filtration system inlets.** Adjustable filtration system inlets shall be provided for spas based on a minimum of one (1) for each twenty (20) feet or fraction thereof of spa perimeter. Additional inlets shall be installed if needed to meet flow requirements. Spas with less than twenty (20) feet of perimeter shall have a minimum of two (2) equally spaced adjustable inlets.

(k) **Filtration recirculation.** Spas shall have a minimum of one (1) turnover every thirty (30) minutes. Note that minimum flow may be determined by the requirements of ~~310:315-7-14~~ OAC 310:315-7-11 (relating to public spas). The piping, fittings, and hydraulic requirements shall be in accordance with ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems) and ~~310:315-7-15~~ OAC 310:315-7-15 (relating to filters). All recirculation lines to and from the spa shall be valved in order to control the recirculation flow. A main drain connected to the recirculation pump meeting the requirements of ~~310:315-7-14~~ OAC 310:315-7-11 (relating to public spas) shall be required. Strainers shall be sized at least twice the area required in ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems). Spa water shall not be allowed to overflow or be piped into another bathing facility unless it is first disinfected and filtered.

(l) **Vacuuming.** Spas shall have provision for vacuuming.

(m) **Temperature.** The maximum water temperature for spas shall be 105°F (40.6°C) and this maximum temperature shall be posted at pool side. A thermostatic control for the water shall be provided.

(n) **Rental spas.** Facilities renting spas designed to provide ~~privacy~~ privacy for users shall have louvered, non-locking doors in each spa enclosure, a help-call system using low voltage call switches to activate central station visual and sound signals, and a fire exit for the facility. An attendant certified in CPR shall be present at all times when any rental spa is in use.

(o) **Capacity.** The maximum capacity for public spas shall be one (1) person per three (3) feet of spa perimeter, or one (1) person per two hundred (200) gallons of water, whichever is less. For spas four hundred fifty (450) gallons or smaller, the capacity shall be one (1) person per one hundred fifty (150) gallons. The design capacity shall be posted prominently in the area adjacent to the spa.

(p) **Spa contiguous with pool.** Where a spa and a swimming pool share a wall in common, a barrier shall be mounted atop the common wall to discourage patrons from walking on the wall and falling into the spa, with its shallow seats. The barrier shall not form a ladder nor a diving platform and shall not include any impalement hazard.

**310:315-7-12. Water recreation attractions**

(a) **General.** Water recreation attraction projects require special consultation with the Department in order that consideration can be given to concepts of design variations and to areas where potential problems may exist. In addition to the requirements of this section, compliance is required with all other applicable sections of this chapter. Plans for supervision, attendants, and lifeguards will be an important feature

to be considered for water recreation attractions, and shall be presented in the engineering report accompanying plans and specifications.

(b) **Water slides.**

(1) **Recreational water slide.** A recreational water slide facility shall consist of one (1) or more flumes, plunge pool, a pump reservoir, filtration, disinfection, and chemical treatment facilities.

(2) **Water slide plunge pool.** Plunge pools are located at the base of slide flumes. They shall be constructed of concrete or other impervious materials with a smooth slip-resistant finish. The plunge pool design shall be as follows:

(A) The minimum plunge pool operating water depth at the slide flume terminus shall be three (3) feet. This depth shall be maintained for a minimum distance of ten (10) feet in front of the slide terminus from which point the plunge pool floor may have constant upward slope to allow a minimum water depth of two (2) feet at the base of the steps. The floor slope shall not exceed one (1) foot in ten (10) feet. The plunge pool water depth shall be commensurate with safety and the ease of exit from the plunge pool.

(B) The plunge pool dimension between any slide flume exit or terminus and the opposite side of the plunge pool shall be a minimum of twenty (20) feet excluding steps.

(C) The slide flume terminus shall be at a minimum depth of six (6) inches below the plunge pool operating water surface level or it may be at the water surface level or up to a maximum of two (2) inches above the water surface level provided the terminal portion of the slide flume is parallel to the water surface for a minimum distance of ten (10) feet. The minimum distance between any plunge pool side wall and the outer edge of any slide flume terminus shall be four (4) feet. A minimum length of ten (10) feet of slide flume shall be perpendicular to the plunge pool wall at the exit end of the flume(s).

(D) The plunge pool shall have a ~~minimum of one (1)~~ minimum of one (1) main drain, complying with OAC 310:315-7-14(h) (relating to outlets), with separate piping and valve to the filtration system. The velocity through the openings of the main drain grate shall not exceed one and one-half (1-1/2) feet per second at the design flow rate of the recirculation pump. The main drain piping shall be sized to handle one hundred (100) percent of the design flow rate of the filtration system in accordance with 310:315-7-14.

(E) The plunge pool floor shall slope to the main drain(s) and the slope shall not exceed one (1) foot in ten (10) feet.

(F) Plunge pool decks shall meet the following requirements as follows:

(i) The minimum width of plunge pool decks along the exit side shall be ten (10) feet.

(ii) All plunge pool decks shall have a minimum six (6) inch high curb.

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- (iii) All plunge pool decks shall slope (drain) away from the plunge pool unless the curb is located at the outside perimeter of the deck. If the curb is located at the outside perimeter of the deck, the plunge pool deck shall slope to the plunge pool and/or pump reservoir or to deck drains which discharge to the same. All slopes shall be a minimum of three (3) inches in ten (10) feet.
- (3) **Bathhouse facilities.** Bathhouse facilities shall be provided in accordance with ~~310:315-7-7~~ OAC 310:315-7-7 (relating to bathhouse). For very large water recreation attractions, the number of bathhouse fixtures may be based on usage experience data.
- (4) **Pump reservoirs.** Pump reservoirs shall be made of concrete or other impervious material with a smooth slip-resistant finish and shall be connected to the plunge pool by a weir. Pump reservoirs shall be for the slide pump intakes. Pump reservoir designs shall be as follows:
- (A) The minimum reservoir volume shall be equal to two (2) minutes of the combined flow rate in gpm of all filter and slide pumps.
- (B) Pump reservoirs shall be isolated by a locking cover or enclosure and shall be accessible only to authorized individuals.
- (C) Access decks shall be provided for the reservoir such that all areas are accessible for vacuuming, skimming, and maintenance. The decks shall have a minimum width of three (3) feet and shall have a minimum slope of three (3) inches in ten (10) feet away from the reservoir. A minimum six (6) inch high curb shall protect the reservoir.
- (D) Pump reservoir slide pump intake(s) shall be located in the pump reservoir and shall be designed to allow cleaning without danger of operator entrapment.
- (E) The pump reservoir shall have a ~~minimum of one (1)~~ minimum of one (1) main drain, complying with 310:315-7-14 OAC 310:315-7-14 (relating to recirculation systems), with separate piping and valve to the filtration system and the velocity through the openings of the main drain grate(s) shall not exceed one and one-half (1-1/2) feet per second at the design flow rate of the filtration system in accordance with ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems).
- (5) **Slide pump check valves.** Slide pumps shall have check valves on all discharge lines.
- (6) **Perimeter overflow gutters or skimmers.** Plunge pools and pump reservoirs shall have perimeter overflow gutter systems and/or skimmers which shall be an integral part of the filtration system.
- (A) Perimeter overflow gutter systems shall meet the requirements of ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems) except the gutters are not required directly under slide flumes or along the weirs which separate plunge pools and pump reservoirs.
- (B) Surface skimmers may be used in lieu of perimeter overflow gutters and shall be appropriately spaced and located according to the structural design. Unless an overflow gutter system is used, a minimum of two (2) surface skimmers each shall be provided in the plunge pool. Skimmers shall meet the requirements of ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems).
- (7) **Water slide recirculation-filtration equipment.**
- (A) The recirculation-filtration system of water slides shall recirculate and filter a water volume equal to the total water volume of the facility in a period of one (1) hour or less.
- (B) Minimum filter area requirements shall be twice the filter areas specified for the recirculation rate stipulated in ~~310:315-7-15~~ OAC 310:315-7-15 (relating to filters).
- (C) Any filtration system pump which takes suction directly from the plunge pool and reservoir shall have a minimum eight (8) inch diameter hair and lint strainer, meeting the requirements of ~~310:315-7-14~~ OAC 310:315-7-14 (relating to recirculation systems) on the suction side of the pump.
- (D) Submerged suction outlets must meet the requirements of OAC 310:315-7-14 (related to recirculation systems).
- (8) **Water slide chemical feed equipment.**
- (A) Gas chlorination is recommended for disinfection for all water recreation facilities. Chlorinators must meet all the requirements of ~~310:315-7-16~~ OAC 310:315-7-16 (relating to disinfection and pH control).
- (B) Feeders for pH adjustment shall be provided, shall meet the requirements of ~~310:315-7-16~~ OAC 310:315-7-16 (relating to disinfection and pH control), and shall be capable of meeting the feed rate necessary for the specific installation.
- (C) When diatomaceous earth type filters are used, an acceptable diatomaceous earth type feeder meeting the minimum feeding requirements of ~~310:315-7-15~~ OAC 310:315-7-15 (relating to filters) shall be provided regardless of the design filtration rate.
- (c) **Water amusement lagoons.**
- (1) **Submission of engineering plans.** The design engineer shall consult with the Department prior to preparation and submission of engineering plans and specifications for water amusement lagoons.
- (2) **Water amusement lagoons.** Water amusement lagoons shall be constructed of concrete or other impervious materials with a smooth slip-resistant finish. These lagoons shall be of such shape and design as to be operated and maintained in a safe and sanitary manner.
- (3) **Recirculation-filtration system.** The recirculation-filtration system of water amusement lagoons shall be capable of a minimum of one (1) turnover every thirty (30) minutes.
- (d) **Wave pools and tube rides.**

- (1) **Submission of engineering plans.** The design engineer shall consult with the Department prior to preparation and submission of engineering plans and specifications for wave pools.
- (2) **Wave pool construction.** Wave pools shall be constructed of concrete or other impervious materials with a smooth slip-resistant finish. These pools shall be of such shape and design as to be operated and maintained in a safe and sanitary manner.
- (3) **Recirculation-filtration system.** The recirculation-filtration system of wave pools and tube rides shall be capable of a minimum of one (1) turnover every four (4) hours.

**310:315-7-14. Recirculation system**

(a) **General considerations.**

(1) A circulation system shall be provided which will include pumps, hair-catcher, and filters, together with all necessary piping connections to the inlets and outlets of the pool. The water heater, chlorinator, and suction cleaner are also usually connected with the recirculation system and shall be considered as integral parts thereof. The entire system and all component parts of swimming pools shall be designed to provide a minimum of three (3) replacements of the bathing water volume every twenty-four (24) hours (four (4) turnovers are recommended), with maximum frictional resistance. The required turnover rate at spas and other facilities appears in the appropriate section; note that at pools and spas with skimmers, the required skimmer flow, rather than turnover, may determine the minimum flow. Design is to be based on provisions for main drain flow at thirty (30) percent of the total recirculation, and thirty (30) gpm through each skimmer. This is represented as  $0.3Q + 30n = Q = \text{total recirculation flow rate}$  and  $n = \text{number of skimmers}$ . (Main drain flow is  $0.3Q$ .) These criteria, plus the maximum allowable filter flux (15 gpm/ft<sup>2</sup> for rapid sand filters) and the maximum total dynamic head loss calculated assuming a "dirty" filter ready for backwash, comprise the basic design requirements for the most commonly designed pools and spas.

(2) Filtration and disinfection are discussed in subsequent subchapters. A collector tank or other means for accommodating surge capacity shall be provided for all pools using overflow gutters connected to the recirculation system.

(b) **Pumps.**

(1) Centrifugal pumps are preferable for swimming pool circulation. Electric drive is also preferable. When pipe lines from suction cleaner lead to pump suction, a pump which will develop good vacuum must be used. The pump and piping at swimming pools shall be of such capacity as to provide for a turnover of pool water in at least eight (8) hours. Refer to the appropriate section for requirements at spas, water slides, and other facilities. When pressure filters are used, pumps must be designed to pass the required volume under the maximum head which may develop in the filters.

(2) The pump shall have adequate capacity to provide the design recirculation flow rate at maximum calculated head loss, and 15 gpm/ft<sup>2</sup> of sand filter area during backwash; the pump should be located below the water level of the pool when feasible, to avoid air-lock. Should it be necessary to locate the pump above the water level of the pool, a check valve shall be provided on the suction side of the pump unless a self-priming pump is furnished.

(3) If the filter is located above the water level of the pool, then valves shall be provided in the inlet and discharge lines which can be closed when the filter is not in use.

(4) A filtration pump equipped with a device that disables the pump operation shall be equipped with both an audible and visual alarm to alert the operator to the condition.

(c) **Strainers.** The recirculation system shall include a strainer to prevent hair, lint, and other solids from reaching the pump and filters. Strainers shall be corrosion-resistant with openings not more than one-eighth (1/8) inch in size and shall be readily accessible for frequent cleaning. Larger openings for strainers will be considered only on a trial basis. At least two (2) baskets, or screens, must be provided. The area of strainer openings shall be at least four (4) times the cross-sectional area of the connecting pipe. A compound pressure gauge shall be installed to measure the pressure between the pump and the hair and lint strainer. Where filter systems are located above the pool water level, a standard vacuum gauge is acceptable.

(d) **Vacuum cleaner.** Vacuum cleaner facilities, either portable or installed integrally in the pool piping system for the operation of a vacuum cleaner, shall be provided. Piping and hose shall be required to produce not more than fifteen (15) feet total head loss at the pump, while moving four (4) gallons per minute per linear inch of cleaner head. All pools shall be designed with pipes for vacuum cleaning facilities integrally with the pool piping or portable facilities will be provided. Vacuum cleaner heads with brushes are recommended. The mixture of water and sediment from a suction cleaner may, in the case of outdoor pools subjected to heavy dust loads, be discharged to an approved waste treatment system. The discharge from suction cleaners used in cleaning indoor pools, which are not subjected to heavy dust loads or in which sedimentation is slight, may be returned to the pool through the filter system. Any point source discharge must comply with the requirements of ~~310:315-5-2~~ OAC 310:315-5-2 (relating to sewer).

(e) **Water heater.** Indoor pools operated during the colder months shall be provided with some method of heating the pool water. Introduction of steam directly into the pool or the use of heating coils placed directly in the pool ~~are~~ is prohibited. A heater designed to heat all or a part of the circulation water is preferable. Such a heater may be designed for use with steam or hot water and ample surface for heat interchange must be provided. Automatic thermal control is desirable. Provision should be made for easy removal of the heater parts for cleaning. A check valve shall be installed between the filter and the inlet side of the heater. On all heated pools, a fixed thermometer shall be placed on the recirculation line immediately

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downstream from the heater after blending and another on the return line from the pool. Thermometers shall be accessible and have a Fahrenheit scale.

(f) **Piping system.** The determination of sizes of pipe, fittings, and valves on the complete main pump suction line from the swimming pool shall be based upon a rate of friction losses for piping of not more than six (6) feet per one hundred (100) feet of pipe based upon the Hazen-Williams formula for fifteen (15) year old piping. All piping on the discharge side of the pump for filtration and to the point for discharge of backwash water from the filter plant shall have pipe sizes determined on a basis of friction losses which shall be not more than twelve (12) feet per one hundred (100) feet and the velocity in any pipe shall not exceed ten (10) feet per second. Pipe selection shall be made based upon the Hazen-Williams formula for fifteen (15) year old pipe. In the determination of pipe sizes required, the criterion which would call for the largest pipe size shall govern. All pool piping shall be supported by piers or other substantial means to preclude possible settlement which will either provide dirt traps or air pockets and a condition which might result in rupture of the lines. The use of plastic pipe on suction lines and lines beneath the pool and bathhouse structure is not recommended. All plastic pipe used shall bear the approval seal of the National Sanitation Foundation. All piping shall be labeled or color coded and all valves shall be labeled.

(g) **Rate-of-flow indicator.** Every public swimming pool distribution system including those for wading pools shall be provided with an accurate and durable rate-of-flow indicator, installed in accordance with the manufacturer's recommendations and with the required uniform distance upstream and downstream for accurate response. In pressure sand filter installations, a rate indicator shall be provided and located on the filter inlet line so as to record both filtration and backwashing rates. It shall be calibrated for and provided with an easily readable scale reading in gallons per minute, and shall have a range at least ten (10) percent below the required filtration rate and ten (10) percent above the required backwash rate. It shall be accurate within ten (10) percent of true flow. In a diatomite type filter installation, a rate-of-flow indicator can be located wherever convenient to visibly indicate the flow rate, preferably in the filter effluent line.

(h) **Outlets.** All pools must be provided with an outlet at the deepest point to permit the pool to be completely and easily drained. Each public bathing place subject to licensure by the Department permitted after September 1, 2009 that does not utilize indirect suction shall be provided with an unblockable suction outlet as defined in American National Standards Institute (ANSI) A112.19.8-2007, or have multiple outlets, placed a minimum of 3 feet apart measured from center point of the drain cover/grate. Outlet openings of the grating in the floor of the pool shall be at least four (4) times the area of the discharge pipe. ~~Outlets must be covered by proper plate or grating which is not readily removed by bathers. The outlet shall be covered with a grate having a minimum area of one hundred forty four (144) square inches equal to a twelve (12) inch x twelve (12) inch square or be covered with an anti vortex plate to prevent the development of a suction~~

~~in the outlet, dangerous to the safety of the bathers. Each submerged suction outlet shall be fitted with a cover/grate that conforms to the entrapment protection standards of the ANSI A112.19.8-2007 performance standard. Submerged suction outlet cover/grate shall be installed according to the manufacturer's installation instructions. Field fabricated sumps shall be constructed according to ANSI A112.19.8-2007. Openings in the drain cover(s) shall be designed for a maximum velocity of one and one-half (1-1/2) feet per second. ~~The maximum width of grate openings shall be one half (1/2) inch.~~ The outlet shall be marked by a dark colored stripe outlining the main drain, disk, or circle unless the plate or grating is of a contrasting color. Multiple outlets to meet this requirement shall be provided where the width of the pool is more than thirty (30) feet. In such cases, outlets shall be spaced not more than twenty (20) feet apart and not more than fifteen (15) feet from the side walls. A line shall run from the main drain(s) to a manifold connected to the inlet of the hair and lint strainer. A separate line shall run from each skimmer to the manifold. A valve that will permit adjustment of flow shall be installed in each line carrying water from the pool. Where provided, the vacuum line shall connect to the manifold through a suitable valve. Vacuum lines shall have a cover in place when not in use. After September 1, 2009 any existing pool licensed by the Department that plans modifications relative to the replacement or modification of submerged suction outlet cover/grates, or the addition of systems or devices intended to minimize the risk of physical or suction entrapment, shall submit a scope of work as specified under OAC 310:315-3-1 (relating to plans and specifications). At a minimum the proposal shall include the make and model of all equipment to be installed. Documentation shall be provided that all cover/grates conform to the entrapment protection standards of the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A112.19.8-2007. Additionally the modification shall incorporate at least one of the following devices or systems relative to prevention of suction entrapment:~~

- (1) A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A112.19.17 or American Society for Testing Materials (ASTM) standard F2387;
- (2) A suction-limiting vent system with a tamper-resistant atmospheric opening;
- (3) A gravity drainage system that utilizes a collector tank;
- (4) An automatic pump shut-off system;
- (5) A device or system that disables the drain; or
- (6) An unblockable suction outlet as defined in American National Standards Institute (ANSI) A112.19.8-2007, multiple outlets placed a minimum of 3 feet apart measured from center point of the drain cover/grate, or any other system determined by the department to be equally effective as, or better than, the systems described in (1)

through (5), at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(i) **Inlets.** Multiple inlets shall be provided and shall be so spaced that each inlet will serve a linear distance of not more than fifteen (15) feet, provided that the distance from side wall or corner to adjacent inlet in an end wall shall not exceed five (5) feet. At least four (4) inlets are required at pools of any size, and more may be required at recessed features (stairs, seats, etc.) or in pools with irregular shapes, to achieve satisfactory disinfectant distribution. On pools less than sixteen hundred (1600) square feet in area, only directional (eye-ball type) inlets are permitted. In pools with surface area greater than sixteen hundred (1600) square feet or length in excess of sixty (60) feet, inlets shall be placed at fifteen (15) feet intervals around the entire perimeter. In any case, an adequate number of inlets shall be provided, properly spaced, and located to accomplish complete and uniform recirculation and maintenance of uniform disinfectant residual at all times. Inlets shall be a minimum of eighteen (18) inches below the water surface. Each inlet shall be designed as an orifice subject to adjustment or at least must be provided with an individual gate valve to permit adjustment of water volume and/or velocity to obtain a balanced circulation. In the event recessed stairs are used, an inlet at the stairs must be provided to assure adequate circulation.

(j) **Overflow gutters.** Overflow gutters shall be required on all pools having a surface area or more than twenty-four hundred (2400) square feet. Pools having a surface area of twenty-four hundred (2400) square feet or less shall be provided either with overflow gutters or skimmers. Overflow gutters shall extend completely around the pool except at steps or recessed ladders, and shall be designed to assure that water does not wash back into the pool from the gutter. Guttered pools shall be designed for at least some water to be overflowing into the gutters or into surge weirs at all times, not just when the pool is at full bather capacity, for continuous removal of surface oils and debris. The gutter, drains, and piping shall be designed to rapidly remove overflow water caused by recirculation displacement, wave action, or other causes produced from the maximum pool bathing load. The opening into the gutter beneath the coping shall be not less than four (4) inches, and the interior of the gutter shall be not less than four (4) inches wide with a depth of at least three (3) inches. Where large gutters are used, they shall be designed to prevent entrance or entrapment of bathers' arms or legs. The overflow edge shall be rounded and shall not be thicker than two and one-half (2-1/2) inches for the top two (2) inches. Prefabricated gutter and return systems will be evaluated on a case-by-case basis.

(k) **Gutter outlets.** Drainage outlets shall be provided at least every fifteen (15) feet and the gutter bottom may be level, or preferably pitched slightly, to these outlets. Outlet pipes shall have a minimum inside diameter of two (2) inches. Outlets shall be covered by gratings. Angle gutter drains, which are not as subject to stoppage, are recommended. Drainage from overflow gutters may be discharged to sewers (without direct connection), or connected to the recirculation system through a properly designed surge tank or other acceptably designed

provision for handling surge capacity, such as deep gutter channels. The gutter, drains, and return piping to the surge tank shall be designed to rapidly remove overflowing water caused by recirculation displacement, wave action, or other causes produced from the maximum pool bathing load. The outlet fittings shall have a clear opening in the grating at least equal to one and one-half (1-1/2) times the cross-sectional area of the outlet pipe. Open, roll-over, semi-recessed, or overflow gutters recessed in the side wall of the pool may be used, provided the design is such as to minimize accidents and to enable the gutter to be easily cleaned.

(l) **Skimmers.** Skimming devices are permitted in lieu of gutters on swimming pools with not more than twenty-four hundred (2400) square feet of surface area, providing approved handholds are installed and sufficient motion to the pool water is induced by the pressure return inlets. At least one (1) skimming device shall be provided for each six hundred (600) square feet or fraction thereof. The required surface skimmers shall be located at least thirty (30) feet apart, measured horizontally. One (1) skimmer shall be located on the leeward side. Where used, skimming devices shall be built into the pool wall, shall develop sufficient velocity on the pool water surface to induce floating oils and wastes into the skimmers from the entire pool area, and shall meet the following general specifications:

(1) The piping and other pertinent components of the skimmers shall be designed for a total capacity of at least fifty (50) percent of the required filter flow of the recirculation system, and no skimmer shall be designed for a flow-through rate of less than thirty (30) gallons per minute.

(2) The skimmer weir shall be automatically adjustable and shall operate freely with continuous reaction action to variations in water level over a range of at least four (4) inches. The weir shall operate at all flow variations as described in the above paragraphs. The weir shall be of such buoyancy and design as to develop an effective velocity.

(3) An easily removable and cleanable basket or screen through which all overflow water must pass shall be provided to trap large solids.

(4) The skimmer shall be provided with a device to prevent air-lock in the suction line. If an equalizer pipe is used, it shall provide an adequate amount of water for pump suction should be water of the pool drop below the weir level. If any other device or arrangement is used, a sufficient amount of water for pump suction shall be assured. When the equalizer pipe is used, it shall be sized to meet the capacity requirements of the filter and pump and shall in no case be less than two (2) inches in diameter. This pipe shall be located at least one (1) foot below the lowest overflow level of the skimmer. It shall be provided with a valve or equivalent device that will remain tightly shut under normal operating conditions but will automatically open when the skimmer becomes starved. Equalizer openings shall comply with the drain cover provisions of OAC 310:315-7-14(h) (related to outlets).

(5) The skimmer shall be of sturdy corrosion-resistant materials.

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(6) Where multiple skimmers are installed, valves shall be provided to isolate each skimmer and/or regulate the flow through each skimmer. See 310:315-7-14 OAC 310:315-7-14 (relating to recirculation systems) for additional details.

(7) In addition to the above requirements, the skimmers must be approved and listed as currently approved by the National Sanitation Foundation (NSF) Standard 50 - Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs.

[OAR Docket #09-1010; filed 5-20-09]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 345. REGISTRATION OF SANITARIANS AND ENVIRONMENTAL SPECIALISTS

[OAR Docket #09-1011]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 3. Applications  
310:345-3-1 [AMENDED]  
Subchapter 7. Revocation and Reinstatement  
310:345-7-2 [AMENDED]

**AUTHORITY:**  
Oklahoma State Board of Health; Sanitarians and Environmental Specialist  
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**ANALYSIS:**  
310:345-3-1(b) The proposed language will amend the rule that limits a certificate of registration for Sanitarians-In-Training or Environmental Specialist-In-Training to a maximum time period of 30 months. Additional language would allow for the reinstatement of a Sanitarian-In-Training or Environmental Specialist-In-Training for just cause shown as determined by the Council. **310:345-7-2** The proposed rule language will clearly outline that a Sanitarian-In-Training or Environmental Specialist-In-Training shall not be eligible for reinstatement except as provided in section 310:345-3-1(b).

### 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, 2009:**

### 310:345-3-1. Classification of applicants

(a) **Registered Professional Sanitarian or Registered Professional Environmental Specialist.** Applicants for registration as Registered Professional Sanitarians ("R.P.S.") or Registered Professional Environmental Specialists ("R.P.E.S.") shall:

(1) have not less than two years of postgraduate, full-time experience working in the fields of public health or environment;

(2) have a baccalaureate degree with a major in public health, environmental health, environmental science, physical science, natural science, biological science, agricultural science, or equivalent from an accredited college or university with at least thirty (30) semester hours of work in physical, natural and biological sciences, public health and/or environmental health;

(3) pass an examination prescribed by the Council, demonstrating knowledge and understanding of the principles of sanitation and of the physical, biological and environmental sciences; and

(4) pay applicable examination and registration fees.

(b) **Sanitarian in Training or Environmental Specialist in Training.** Applicants who meet all qualifications for registration as a sanitarian or environmental specialist, except the postgraduate experience requirement, ~~and who are employed as sanitarians or environmental specialists,~~ may be granted an active, certificate of Sanitarian-In-Training ("SIT") or Environmental Specialist-In-Training ("ESIT") on approval of the Commissioner. Such certificate shall remain in effect for a period not to exceed 30 months after date of issue, unless revoked by the Commissioner, or the sanitarian-in-training or environmental specialist-in-training requests inactive registration status pursuant to Section 310:345-3-1(c). A sanitarian in training or environmental specialist in training certificate of registration shall not be renewed, except that for just cause shown, as determined by the Council, a certificate of registration in training may be reinstated as provided in 310:345-7-2.

(c) **Inactive Sanitarian-in-Training or Environmental Specialist-in-Training.** Sanitarians-in-Training or Environmental Specialists-in-Training who are unable to maintain their employment to complete their two (2) years of postgraduate, work experience may request the Department to change their registration status to inactive in order to preserve the thirty (30) month limitation for an individual to register as a sanitarian-in-training or environmental specialist-in-training. Such inactive status shall not be granted if the individual's

employment was terminated for acts or omissions which constitute a violation of this Chapter or the Oklahoma Sanitarian and Environmental Specialist Registration Act. An individual may only be granted inactive status as a sanitarian-in-training or environmental specialist-in-training one time for no more than one (1) year.

(d) **Life Registration Sanitarian or Life Registration Environmental Specialist.** Life Registration Sanitarian or Life Registration Environmental Specialist is available to those individuals who are 62 years of age or older before January 1, in the application year, hold a valid current registration and have been registered for not less than 25 years at the time of application.

**SUBCHAPTER 7. REVOCATION AND REINSTATEMENT**

**310:345-7-2. Reinstatement**

(a) Former registrants who have successfully completed the sanitarian or environmental specialist examination may make application for reinstatement on the basis prescribed in subsection (b) of this Section.

(b) The certificate of an applicant will be reinstated on simple application therefore on a form prescribed by the Department and accompanied by remittance equal to the total amount of money which would have been paid to the Department in late renewal fees up to the time of application, had the original certificate not been permitted to expire, plus an additional fee of Ten Dollars (\$10.00) to reimburse the Department for expense of special handling required by this procedure.

(c) However, if the amount of the remittance computed as described in subsection (b) of this Section shall exceed Thirty-Five Dollars (\$35.00), the applicant may file for registration as though he had not previously been registered.

(d) A former registrant whose certificate was originally issued without examination shall not be eligible for reinstatement, but may be issued a new registration after successful completion of the sanitarian or environmental specialist registration examination.

(e) Except as provided herein and in section 310:345-3-1(b) a certification of registration in training shall not be eligible for reinstatement.

*[OAR Docket #09-1011; filed 5-20-09]*

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

*[OAR Docket #09-1012]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 1. General Provisions  
310:400-1-3 [AMENDED]

Subchapter 5. Rules of Professional Conduct  
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  
310:400-9-4 [AMENDED]  
310:400-9-7 [REVOKED]  
Subchapter 11. Supervised Experience Requirements  
310:400-11-3 [AMENDED]  
310:400-11-4 [AMENDED]  
310:400-11-5 [AMENDED]  
Subchapter 13. Fees  
310:400-13-2 [AMENDED]  
Subchapter 15. Issuance and Maintenance of License  
310:400-15-3 [AMENDED]  
310:400-15-4 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1925.5(A); 63 O.S. 2001, Section 1-106.1.

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**SUPERSEDED EMERGENCY ACTIONS:**

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**ANALYSIS:**

**310:400-1-3** The current Rule provides definitions. The proposal provides additional definitions and clarification. The effect of the Rule will provide clarification regarding the definitions for home-study or technology-assisted distance learning, technology-assisted supervision and on-site supervisor. **310:400-5-3** The current Rule describes professional competence and integrity. The proposed Rule establishes a prohibition for non-licensed individuals to practice privately or independently or open a facility with the intent of providing private or independent therapy practice. The effect of the Rule will ensure that non-licensed individuals are not opening their own therapy practices or practicing independently. **310:400-7-2** The current Rule describes the Evaluation of Supervised Experience document. The proposed Rule changes the documentation of percentages of time spent in counseling activities to the number of supervised hours spent with different population. The effect of the Rule will allow for documentation of hours spent with clients. **310:400-7-2.1** The current rule describes reapplication procedures. The proposed Rule establishes procedures for re-application following permanent expiration of licensure and voided application. The effect of the Rule will clarify the requirements for re-application. The proposed Rule also establishes re-application requirements for approved supervisors whose status has been revoked by administrative action. The effect of the Rule will ensure that approved supervisors have been rehabilitated before supervising licensure candidates. **310:400-9-4** The current Rule requires notification be sent to applicant of test eligibility 60 days before the exam. The proposed Rule requires notification be sent to applicant 60 days after the Department receives the completed application. The effect of the Rule will allow the Department to schedule the exams in a timely fashion. The proposed Rule also establishes a timeline for the Department to schedule the oral examination as well as a

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timeline for the applicant to pass the oral exam. The effect of the Rule will ensure that LMFT applicants are familiar with the Oklahoma LMFT Act and psychopathology as they begin accruing supervised experience. The proposed Rule also establishes a time limit to pass the national examination before the application is voided and establishes requirements to re-apply for licensure. The effect of the Rule will ensure that licensure applicants complete the examination requirements within the allotted time period. **310:400-9-7** The current language establishes penalties for licensure applicants who fail to apply for the exams. The proposed Rule deletes the current language since it has been added to another section. The effect of the Rule will provide consistency in the rule language. **310:400-11-3** The current Rule describes supervisor qualifications. The proposed Rule establishes requirements for approved supervisors to meet the therapy supervision continuing education requirement. The proposed Rule also establishes requirements for approved supervisors to place their supervisor status on inactive or retired status and to re-activate their approved status. The proposed Rule also establishes a time limit for re-application of a revoked approved supervisor status. The effect of the Rule provides clarification regarding the continuing education requirements for approved supervisors and provides approved supervisors a mechanism to retire, inactivate, and re-activate their status. **310:400-11-4** The current Rule establishes requirements regarding the duration of supervised experience. The proposed Rule requires the accrual of 250 relational hours as a part of the supervised experience and establishes a four-week time period to complete a designated number of hours. The proposal also establishes requirements for accruing technology-assisted supervision. The effect of the Rule will ensure that marital and family licensure candidates are gaining supervised experience with members of a relational system and will allow LMFT candidates the opportunity to meet with an Approved LMFT Supervisor with the assistance of technology. **310:400-11-5** The current Rule establishes requirements for documentation of supervised experience. The proposed Rule requires the evaluation form to be complete before being accepted by the Department. The effect of the Rule will ensure that all requirements are complete before documentation is submitted for review. **310:400-13-2** The current Rule requires an examination processing fee paid by the applicant if the national examination was taken prior to application in Oklahoma. The proposed Rule eliminates the processing fee. The effect of the Rule will allow the licensure applicant to bypass paying fee since there is no charge to the Department to collect the test scores. **310:400-15-3** The current Rule requires the license verification card to be displayed on the original license. The proposed Rule establishes a requirement for the LMFT to also carry a current verification card on their person anytime therapy services are being provided. The effect of the Rule ensures the current status of licensees when therapy services are being provided. **310:400-15-4** The current Rule establishes acceptable continuing education. The proposed Rule clarifies presenter qualifications and context of programs, including home-study and technology-assisted distance learning. The effect of the Rule will provide clarity regarding presenters and context of continuing education programs and allow acceptance of home-study and technology-assisted distance learning programs.

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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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 310:400-1-3. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

**"Approved LMFT supervisor"** means an individual who meets the qualifications to become an approved supervisor and is approved by the Department as set forth in Section 310:400-11-3 of this Chapter.

**"Extra therapeutic relationship"** means a familial, social, financial, business, professional, close personal, sexual or other non-counseling relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LMFT's professional obligation to a client.

**"Home-study or technology-assisted distance learning"** refers to the delivery of graduate coursework or continuing education through mailed correspondence or other distance learning technologies, which focuses on synchronous or asynchronous instructional delivery methods. Home-study or technology-assisted distance learning is designed to deliver education to learners who are not in the direct physical presence of the educator.

**"On-site supervisor"** means a person who is may not be an approved LMFT supervisor but is licensed in the State of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LMFT Candidate whose assigned job duties include acting as the immediate supervisor to the LMFT Candidate.

**"Technology-assisted supervision"** refers to supervision that occurs through video teleconferencing, over secure internet connections, wherein an Approved LMFT Supervisor and a Licensed Marital and Family Therapist Candidate are in separate physical locations. Technology-assisted supervision must be approved by the Department prior to the accrual of hours. Factors to be considered by the Department include: distance between approved supervisor and candidate; financial hardship on approved supervisor or candidate; physical hardship on approved supervisor or candidate; specialty credentials; and other pertinent factors.

## SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT

### 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, upon request, 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 therapy services for a client 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 concurrently or subsequently 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

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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.

(p) No person may engage in the private or independent practice of marital and family therapy work or open a facility with the intent of providing private or independent therapy practice unless that person:

(1) is licensed under this Act as a Licensed Marital and Family Therapist; and,

(2) has met all requirements of Section 310:400-11-4 of the LMFT Regulations; and

(3) has continued to meet all continuing education requirements set forth in Subchapter 15 of this Chapter.

## 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, 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 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~~ number of hours of direct client contact with different populations; 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. Reapplication 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.
- (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.

#### (a**b**) **Re-application for revoked license.**

(1) No re-application for a revoked license will be considered for a period of 5 years following the revocation. 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,
  - (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.
- (4) Application materials shall be reviewed by the advisory board.
- (5) At the time of application, applicant must provide additional documentation to demonstrate rehabilitation relating to the cause of the revocation of licensure.
- (6) The Department may impose reasonable practice limitations that are in addition to the requirements for completion of approved supervised experience.
- (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.
  - (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.
- (b,d) **Re-application for denied application.**
- (1) Re-application after application has been denied as prescribed in Section 1925.15 of the Act shall 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,
  - (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.
- (8) At the time of application, applicant must provide additional documentation to demonstrate rehabilitation relating to the cause of denial of licensure application.
- (9) The Department may impose reasonable practice limitations that are in addition to the requirements for completion of approved supervised experience.

**SUBCHAPTER 9. LICENSURE EXAMINATIONS**

**310:400-9-4. Application**

- (a) ~~The Department shall mail notification of approval to take the examination(s) to the applicant's last known address 60 days prior to the date of the next scheduled examination.~~ eligibility to sit for examination(s) to the last known address of applicant no later than sixty (60) days after receiving the required and completed application materials.
- (b) The Department will schedule the oral exam and notify the applicant of test date. An applicant who wishes to take a scheduled national examination must complete an examination registration form, return it to the Department's designee and submit the required fee prior to the date of the examination.
- (c) The applicant must pass the oral exam within one year from the first date applicant is eligible to test or the supervision agreement will be revoked and the applicant shall be mailed notification at last known address. After passing the oral exam, the applicant may submit a new supervision agreement and on-site supervisor verification form for Department approval.
- (d) An applicant's eligibility to sit for the national examination shall be valid for three years, at which time if the applicant has not successfully passed the national exam, the licensure application shall be voided and the applicant shall be mailed notification at last known address. An applicant may re-apply with an additional requirement of a plan of remediation acceptable to the advisory board.

**310:400-9-7. Failure to apply [REVOKED]**

- (a) ~~The application may be voided if a person fails to apply for and take one of the first three examinations scheduled after~~

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~~the applicant has been mailed notification at last known address in writing of his/her approval for examination.~~

~~(b) The application may be voided if a person fails to apply for and take one of the first three examinations scheduled after the applicant has failed the exam and has been mailed notification at last known address in writing of his/her approval for examination.~~

## SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENTS

### 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. Approved Supervisor designation will not be renewed until the continuing education requirement for each missed renewal period is met.

(c) If continuing education requirement is not met within six (6) years of expiration, approved supervisor status will be permanently expired and the LMFT must re-apply and meet all requirements, including passing the LMFT Oral Exam, in this Subchapter to become an approved supervisor.

(d) An active approved supervisor may request inactive status by submitting a request in writing to the Department. An inactive approved supervisor shall not provide any activities described in Subchapter 11 of this Chapter.

(e) An inactive approved supervisor may reactivate by submitting the required therapy supervision continuing education due by the end of the current renewal period. If approved supervisor status has been inactive for three (3) or more years, the supervisor must retake and pass the LMFT Oral Exam before approved status is reinstated.

(f) An active approved supervisor status may be retired by informing the Department in writing. Retired approved supervisor status shall not be reinstated but does not prevent a person from applying for approved supervisor status at a future date.

(g) No re-application for a revoked approved supervisor status, as a result of administrative proceeding, shall be considered for a period of five (5) years following the revocation.

### 310:400-11-4. Duration of supervised experience

(a) Work experience under supervision must extend over a minimum of 24 months. This marital and family therapy related experience must include a minimum of 1000 hours of direct client contact. The candidate must have a minimum of 250 relational hours with two or more members of the relational system present in the session.

(b) Supervision sessions:

(1) should be scheduled weekly and shall be 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~~ four week 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. Supervision in group sessions shall equal no more than 75 hours of the total requirement. Technology-assisted supervision shall not account for more than 75 hours of the total requirement.

(d) Approved LMFT Supervisors shall meet with LMFT candidate(s) in person at least once every six month evaluation period when performing technology-assisted supervision.

(e) Supervisors shall perform at least two (2) observations, (live or tape) per each six (6) month evaluation period for each supervisee.

(e)f) 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, 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. Incomplete evaluations will not be accepted by the Department until all requirements for the semi-annual evaluation period have been completed.

(c) Upon completing the supervision requirement, the supervisee must complete and submit the Final Evaluation of Supervision Experience by Supervisee form for each supervisor. The Final Evaluation of Supervision Experience by Supervisee Form shall include the name of the supervisee and

supervisor; period covered by supervision; ratings of supervision; recommendation of supervisor to other supervisees. (d) Supervisors shall maintain supervision records for at least seven (7) years beyond termination of supervision.

SUBCHAPTER 13. FEES

310:400-13-2. Schedule of fees

- The following fees apply to the administration of the Act: (1) Application fee - \$200.00 - Shall be submitted with the application form. (2) License examination - \$295.00 - Shall be submitted when the applicant is notified of eligibility to sit for the examination. (3) Examination processing fee - \$50.00 - If the examination has previously been taken, this fee shall be submitted when the applicant is notified following the review of his/her application form. (4) License fee - \$100.00 - Shall be submitted upon notification that all application materials and fees have been received and are in order. This fee validates the license for the initial two-year period. (5) License renewal fee - \$100.00. - After the initial two-year period of licensure, this is a yearly fee to be submitted on or before December 31 of each year. (6) Late renewal fee - \$25.00 - This fee is assessed in addition to the renewal fee for failure to renew license on or before December 31. (7) Replacement fee - \$25.00 - This fee is for the issuance of a license certificate to replace a license certificate which has been lost, damaged, or is in need of revision to be submitted with documentation of the necessary replacement. (8) Inactive license fee - \$25.00 - Payment of this fee renders the license inactive and suspends all rights and privileges granted by the license until the license is reinstated.

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. (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). (f) Display of renewal certificate. (1) License renewal verification cards shall be displayed on the original (or replaced) license certificate. (2) A current license verification card shall be readily available on the LMFTs person at any time marital and therapy services are being provided.

310:400-15-4. Continuing education.

- (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 from programs pre-approved by the Department or its designee. Continuing education in mental health ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program: (A) Addresses ethics issues specifically pertaining to the practice of therapy, as defined in Section 1925.2(7) of this Act; (B) Addresses regulations as promulgated in Subchapter 5 of this Chapter; and

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- (C) Meets all requirements of subsections (b) through (e) of Section 310:400-15-4 of this Chapter.
- (D) Beginning renewal year 2009, the three clock hours of mental health ethics continuing education must be accrued in a face-to-face setting.
- (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. Continuing education in Therapy Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:
- (A) Addresses issues specifically related to the practice of therapy supervision pursuant to regulations promulgated in Subchapter 11 of this Chapter; and
- (B) Contains content in one or more of the following knowledge areas:
- Overview of a supervision model;
  - Supervisors' areas of focus and roles in supervision;
  - Supervisors' process and practical application;
  - Ethical dilemmas involved in therapy supervision;
  - Methods of effectively addressing and preventing ethical dilemmas in therapy supervision;
  - Overview of AAMFT standards of supervision; or
  - Overview of Oklahoma LMFT Rules and Regulations regarding therapy supervision; and
- (C) Meets all requirements of subsections (b) through (e) of Section 310:400-15-4 of this Chapter.
- (c) **Acceptable continuing education.** Continuing education is acceptable to the Department when it:
- approximates the content of any of the academic areas listed under Subchapter 7 of this Chapter and;
  - is presented by a person who meets one of the following qualifications:
- is licensed or certified by therapy related professions;
  - is 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; ~~or~~
  - has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in Section 310:400-7-4 of this Chapter; ~~or~~
  - the person is presenting or has presented at a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; ~~or~~
  - is presenting ~~or has presented~~ in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and
- (3) takes place in the context of one of the following:
- a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved ~~distance~~ technology-assisted distance learning or home-study course;
  - ~~takes place in the context of~~ a national mental health conference provided by the American Association for Marriage and Family Therapy (AAMFT), American Psychological Association (APA), American Counseling Association (ACA), or any of its divisions, National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; ~~or~~
  - a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services.
- (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) **Continuing education accrual from ~~distance~~ technology-assisted distance learning or home-study courses.** Continuing education may be accrued when the LMFT completes ~~distance~~ technology-assisted distance learning or home-study programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through ~~distance~~ technology-assisted distance learning or home-study courses.
- (f) **Professional audience.** Continuing education, whether received or presented by the LMFT must be targeted toward a professional audience.
- (g) **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:
- an official continuing education validation form furnished by the presenter, or,
  - 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,
  - an official college transcript showing courses or audit credit.
  - (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.

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PRACTITIONERS**

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(h) **Submission of continuing education roster.** LMFT's shall submit a Continuing Education Roster, on official Department forms, (not individual verification of attendance documents) with the license renewal fee. Rosters may be obtained from the LMFT office. The Continuing Education Roster shall include the name of the licensee, signature and signature date of the licensee, total clock hours of workshop(s), name of workshop(s), sponsoring agency of workshop, date of workshop, and the number of hours of each workshop. Only C.E. accrued in the preceding license renewal period is acceptable.

(i) **Audit of continuing education submissions.** In 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 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.

(j) **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.

(k) **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.

(l) **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.

(m) **Continuing Education Rosters for LMFT Approved Supervisors.** Every three (3) years, LMFT Approved Supervisors are required to submit three (3) hours of continuing education in therapy supervision on the LMFT Approved Supervisor Continuing Education Roster. The LMFT Approved Supervisor Continuing Education Roster shall include name of licensee, signature and signature date of licensee, total clock hours of workshop(s), name of therapy supervision workshop, sponsoring agency of workshop(s), date of workshop(s), and number of hours of each workshop.

[OAR Docket #09-1012; filed 5-20-09]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions  
310:403-1-2 [AMENDED]
- Subchapter 7. Rules of Professional Conduct  
310:403-7-2 [AMENDED]  
310:403-7-3 [AMENDED]
- Subchapter 15. Supervised Experience Requirements  
310:403-15-7 [AMENDED]
- Subchapter 21. Continuing Education Requirements  
310:403-21-1.1 [NEW]  
310:403-21-3 [AMENDED]
- Subchapter 25. License and Specialty Renewal  
310:403-25-8 [AMENDED]
- Subchapter 27. Licensure by Endorsement  
310:403-27-1 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1934(A)

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Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2009

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May 15, 2009

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**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

**310:403-1-2** The current Rule provides definitions. The proposal provides additional definitions. The effect of the Rule will provide clarification regarding the definitions for face-to-face and home-study or technology-assisted distance learning. **310:403-7-2** The current Rule describes competence. The proposed Rule establishes requirements for LBP's to report knowledge of sexual exploitation of other mental health professionals. The effect of the Rule will ensure that impaired mental health professionals will be reported to the appropriate licensure authority. **310:403-7-3** The current Rule describes client welfare. The proposed Rule establishes a prohibition for non-licensed individuals to practice privately or independently or open a facility with the intent of providing private or independent behavioral health services practice. The effect of the Rule will ensure that non-licensed individuals are not opening their own behavioral health services practice or practicing independently. **310:403-15-7** The current Rule establishes requirements for documentation of supervised experience. The proposed Rule requires the evaluation form to be complete before being accepted by the Department. The effect of the Rule will ensure that all requirements are complete before documentation is submitted for review. **310:403-21-1.1** The new proposed Rule describes the documentation of attendance for continuing education. The effect of the Rule will ensure that LBP's retain

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proper verification of attendance of continuing education documents in order to renew the license. **310:403-21-3** The current Rule establishes acceptable continuing education. The proposed Rule clarifies presenter qualifications and context of programs, including home study and technology-assisted distance learning. The effect of the Rule will provide clarity regarding presenters and context of continuing education programs and allow acceptance of home study and technology-assisted distance learning programs. **310:403-25-8** The current Rule requires the license verification card to be displayed on the original license. The proposed Rule establishes a requirement for the LBP to also carry a current verification card on their person anytime behavioral health services are being provided. The effect of the Rule ensures the current status of licensees when behavioral health services are being provided. **310:403-27-1** The current Rule establishes requirements for licensure by endorsement. The proposed Rule establishes additional requirements for full endorsement and clarifies the requirements for licensure by endorsement and establishes a time limit to meet the current licensure requirements in order to gain full endorsement. The effect of the Rule will ensure LBP's licensed by endorsement will be afforded the opportunity to practice behavioral health services in Oklahoma while completing the current licensure 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 310:403-1-2. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

**"Act"** means Title 59, Sections 1930 et seq. of the Oklahoma Statutes.

**"Dual relationship"** means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LBP's professional obligation to a client.

**"Face-to-face behavioral health services"** means the behavioral practitioner and the client shall be in the physical presence of the other in a behavioral health setting.

**"Face-to-face supervision"** means the supervisor and the supervisee shall be in the physical presence of the other.

**"Full time practice"** means working at least 20 hours per week.

**"Group supervision"** means two (2) to six (6) LBP Candidates.

**"Technology-assisted distance learning"** refers to the delivery of graduate coursework or continuing education, which focuses on synchronous or asynchronous instructional delivery methods. Technology-assisted distance learning is designed to deliver education to students who are not in the direct physical presence of the educator.

## 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 such services may be impaired by a personal physical, mental or emotional condition(s). LBPs shall seek assistance for any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional activities. If an LBP possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits his or her ability to recommend a course of treatment or decision-making that is indicated, and under such circumstances where all other treatment and decision options are contra-indicated, then in that event the LBP shall not undertake to provide counseling and shall terminate the counseling relationship in accordance with this Chapter.

(f) **Knowledge of improper sexual contact.** If an LBP becomes aware that another LBP or LBP Candidate is violating Section 310:403-7-4, the LBP or LBP Candidate must, within a reasonable time, report the improper sexual contact to the Department in accordance with Section 310:403-31-2.

(fg) **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, 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) 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 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) 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 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) LBP 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) LBP candidates and licensees who provide counseling services for a client may only provide fact witness testimony in forensic matters involving that client, unless otherwise required by law or court order. 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. Fact witness testimony means evidentiary statements that are limited to direct observations made by the LBP 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.

**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. LBPs employed at an institution or facility that has a published records retention policy that is equal to the retention required by this subsection will be deemed to be in compliance with this subsection.

(2) **Confidentiality.** LBPs shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the

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client or otherwise authorized or required by law or court order.

(3) **Confidentiality of records.** LBPs shall be responsible for complying with the applicable state and federal regulations in regard to the security, 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.

(4) **Client access.** LBPs shall provide the client a copy of the client's record in accordance with state 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) **Invasion of privacy.** LBPs shall not make inquiry into persons or situations not directly associated with the client's situation.

(d) **Private or Independent Practice.** No person may engage in the private or independent practice of behavioral practitioner work or open a facility with the intent of providing private or independent counseling practice unless that person:

(1) is licensed under this Act as a Licensed Behavioral Practitioner; and,

(2) has met all requirements of Section 310:403-15-2 of LBP Regulations; and

(3) has continued to meet all continuing education requirements set forth in Subchapter 21 of this Chapter.

(d e) **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 current 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 may impede, undermine or otherwise interfere with the LBPs duty of responsibility to the current 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.

### SUBCHAPTER 15. SUPERVISED EXPERIENCE REQUIREMENT

#### 310:403-15-7. Documentation of supervised experience

(a) 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. Incomplete evaluations will not be accepted by the Department until all requirements for the semi-annual evaluation period have been completed.

### SUBCHAPTER 21. CONTINUING EDUCATION REQUIREMENTS

#### 310:403-21-1.1. Documentation of attendance

LBPs 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 teaching activities on the sponsor's letterhead giving the name of the program, location, dates, subject taught, and total number of hours taught.

#### 310:403-21-3. Acceptable continuing education

(a) Continuing education shall take place in the context of a college course, in-service training, institute, seminar, workshop, conference or a ~~Department approved home study course~~ technology-assisted distance learning program approved by the Department.

(b) Continuing education shall be accrued during the twelve (12) months preceding the renewal deadline or, in the case of the first licensing period, twenty-four (24) months preceding renewal.

(c) Of the ten (10) hours of C.E. required annually, two (2) hours must be in counseling or mental health ethics.

### SUBCHAPTER 25. LICENSE AND SPECIALTY RENEWAL

#### 310:403-25-8. Display of verification card

(a) LBPs shall display a current license verification card on the original or replaced license.

(b) A current license verification card shall be readily available on the LBPs person at any time behavioral health services are being provided.

### SUBCHAPTER 27. LICENSURE BY ENDORSEMENT

**310:403-27-1. Requirements for licensure by endorsement**

An applicant for licensure by endorsement must meet the following requirements:

(a) The Department shall issue a license by full endorsement to an applicant who is licensed as a behavioral practitioner in another jurisdiction and who meets the following:

- (1) Possess a behavioral practitioner's license which is active and in good standing, with no history of suspension or revocation against license;
- (2) Fulfill the requirements of Section 1935 (A), and (B), and (C) of the Act;
- (3) Possess at least a masters degree from a program in psychology from a regionally accredited college or university;
- (4) Pass the LBP State Standards Test; and
- (5) Pass the Practice Examination of Psychological Knowledge unless:

~~(A) The applicant has passed a written examination that, in the judgment of the Department, is substantially equivalent to the examination established by the Board; or~~  
~~(B) The applicant has practiced as a licensed behavioral practitioner for seven (7) of the last ten (10) years immediately preceding application for license in Oklahoma.~~

(b) The Department shall issue a two (2) year, non-renewable, license by endorsement to applicants seeking full endorsement who do not fulfill the requirements set forth in subsection 310:403-27-1(a) of this Chapter, under the following conditions:

- (1) The applicant must show proof of continuous practice in counseling for five (5) years prior to application in Oklahoma;
- (2) The applicant must show proof of behavioral practitioner license in the other jurisdiction is current and in good standing, with no history of suspension or revocation against the license;
- (3) The applicant takes and passes the examinations as provided in subsection 310:403-19-1 of this Chapter; and,
- (4) The applicant completes all deficient course work to meet the academic requirements as provided in subchapter 9 of this Chapter.

(c) The license by endorsement will expire after two years from the date of issue. Failure to fulfill the requirements as provided in this subsection, within the two (2) year licensure period, will require the applicant to fulfill licensure requirements set forth in Section 1935 (C)(2)(3) of the Act.

*[OAR Docket #09-1013; filed 5-20-09]*

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

*[OAR Docket #09-1014]*

**RULEMAKING ACTION:**  
 PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 310:405-1-2.1 [AMENDED]
- Subchapter 3. Rules of Professional Conduct
- 310:405-3-2 [AMENDED]
- 310:405-3-3 [AMENDED]
- 310:405-3-6 [AMENDED]
- Subchapter 7. Application Procedures
- 310:405-7-8.1 [NEW]
- Subchapter 11. Supervised Experience Requirement
- 310:405-11-2 [AMENDED]
- 310:405-11-4 [AMENDED]
- Subchapter 13. Fees
- 310:405-13-2 [AMENDED]
- Subchapter 15. Licensure Examinations
- 310:405-15-2 [AMENDED]
- Subchapter 17. Continuing Education Requirements
- 310:405-17-2 [AMENDED]
- 310:405-17-3 [AMENDED]
- 310:405-17-4.1 [AMENDED]
- Subchapter 21. License and Specialty Renewal
- 310:405-21-6 [AMENDED]
- Subchapter 27. Licensure by Endorsement
- 310:405-27-3 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; 59 O.S. 2001, Section 1905(A)

**DATES:**

**Comment period:**

February 2, 2009 through March 12, 2009

**Public hearing:**

March 12, 2009

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March 12, 2009

**Submitted to Governor:**

March 23, 2009

**Submitted to House:**

March 23, 2009

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March 23, 2009

**Gubernatorial approval:**

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Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2009

**Final adoption:**

May 15, 2009

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**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

**310:405-1-2.1** The current Rule provides definitions. The proposal provides additional definitions. The effect of the Rule will provide clarification regarding the definitions for face-to-face, approved supervisor, on-site supervisor, home-study or technology-assisted distance learning, and technology-assisted counseling. **310:405-3-2** The current Rule describes competence. The proposed Rule establishes requirements for LPC's who provide technology-assisted counseling services. The effect of the Rule will increase the ability for citizens in Oklahoma to receive counseling services via technology, especially in rural parts of the state. The proposed Rule establishes requirements for LPC's to report knowledge of impairment or knowledge of sexual exploitation of other mental health professionals. The effect of the Rule will ensure that impaired mental health professionals will be reported to the appropriate licensure authority. **310:405-3-3** The current Rule describes requirements for maintaining records. The proposal expands the requirements to include maintaining accurate and truthful records. The effect of the Rule will ensure that LPC's and licensure candidates keep correct and honest records. **310:405-3-6** The current Rule describes an LPC who is non-compliant with the Rules of Professional Conduct will be found guilty of unprofessional conduct prior to disciplinary action. The proposal establishes a requirement indicating that an LPC who is non-compliant with the Rules of Professional Conduct will be subject to disciplinary action. The effect of the Rule will allow LPC's

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due process in the event of alleged unprofessional conduct. **310:405-7-8.1** The new proposed Rule establishes re-application requirements for approved supervisors whose status has been revoked by administrative action. The effect of the Rule will ensure that approved supervisors have been rehabilitated before they begin to supervise licensure candidates. **310:405-11-2** The current Rule has a misspelled word that prevents enforcement of the Rule regarding responsibility of supervisors and supervisees. The proposal replaces the word with "shall." The effect of the Rule allows for enforcement. **310:405-11-4** The current Rule allows an LPC licensed by endorsement to become an approved supervisor after one year of licensure in Oklahoma. The proposed Rule requires an LPC licensed by endorsement to be licensed in Oklahoma for two years before being eligible to become an approved supervisor. The effect of the Rule will ensure that LPC's licensed by endorsement will have adequate time to learn the Oklahoma LPC Act and Regulations prior to eligibility to become an approved supervisor. The proposed Rule also establishes requirements for approved supervisors to meet the counseling supervision continuing education requirement. The proposed Rule also establishes requirements for approved supervisors to place their supervisor status on inactive or retired status and to re-activate their approved status. The proposed Rule also establishes a time limit for re-application of a revoked approved supervisor status. The effect of the Rule provides approved supervisors a mechanism to retire, inactivate, or reactivate their status. **310:405-13-2** The current Rule requires an examination processing fee if the national examination was taken prior to application in Oklahoma. The proposed Rule eliminates the processing fee. The effect of the Rule will allow the licensure applicant to bypass paying the fee since there is no charge to the Department to collect the test scores. **310:405-15-2** The current Rule lists the name of the licensure examination incorrectly. The proposed Rule correctly identifies the licensure examination. The effect of the Rule will provide consistency regarding the name of the exam. **310:405-17-2** The current Rule describes the ethics requirement for continuing education. The proposed Rule clarifies that counseling ethics must be the sole focus of the program in order for it to meet the continuing education requirements. The effect of the Rule will ensure that LPC's are completing the ethics continuing education requirement through programs that are teaching counseling ethics as they pertain to the counseling profession. **310:405-17-3** The current Rule establishes acceptable continuing education. The proposed Rule clarifies presenter qualifications and context of programs, including home study and technology-assisted distance learning. The effect of the Rule will provide clarity regarding presenters and context of continuing education programs and allow acceptance of home study and technology-assisted distance learning programs. **310:405-17-4.1** The current Rule allows for acceptable continuing education from distance learning courses. The proposed Rule clarifies distance learning courses to include home study and technology-assisted courses. The effect of the Rule will allow LPC's to accrue continuing education hours by the most current medium. **310:405-21-6** The current Rule requires the license verification card to be displayed on the original license. The proposed Rule establishes a requirement for the LPC to also carry a current verification card on their person anytime counseling services are being provided. The effect of the Rule ensures the current status of licensees when counseling services are being provided. **310:405-27-3** The current Rule establishes requirements for licensure by endorsement. The proposed Rule establishes additional requirements for full endorsement and clarifies the requirements for licensure by endorsement and establishes a time limit to meet the current licensure requirements in order to gain full endorsement. The effect of the Rule will ensure LPC's licensed by endorsement will be afforded the opportunity to practice counseling in Oklahoma while completing the current licensure 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 310:405-1-2.1. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

**"Act"** means Title 59, Sections 1901 et seq. of the Oklahoma Statutes.

**"Advisory board"** means the Oklahoma Licensed Professional Counselor Advisory Board appointed by the State Board of Health.

**"Approved LPC Supervisor"** means an individual who is approved by the Department pursuant to Section 310:405-11-4 of this Chapter.

**"Counselor"** means a person licensed as a Licensed Professional Counselor pursuant to this Act.

**"Dual relationship"** means a familial, social, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a client, or engaging in any activity with another person that interferes or conflicts with the LPC's professional obligation to a client.

**"Face-to-face counseling"** means the counselor and the client shall be in the physical presence of the other during counseling.

**"Face-to-face supervision"** means the supervisor and the supervisee shall be in the physical presence of the other during individual or group supervision.

**"Full time"** means at least twenty (20) hours of on-the-job experience per week.

**"Group supervision"** means an assemblage of counseling supervisee consisting of from two (2) to six (6) members.

**"Home-study or technology-assisted learning"** means the delivery of graduate coursework or continuing education by any means using synchronous or asynchronous instructional delivery methods to students who are not in the physical presence of the educator.

**"On-site supervisor"** means a person who may not be an approved LPC supervisor but is licensed by the state of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker, Psychiatrist, or Licensed Alcohol and Drug Counselor employed by the agency employing the LPC Candidate whose assigned job duties include acting as the immediate supervisor to the LPC Candidate and who is available to the candidate at all times when counseling services are being rendered by the LPC Candidate.

## 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, 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 may be impaired by a personal physical, mental or emotional condition(s). LPCs shall seek assistance for any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional activities. If an LPC possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits his or her ability to recommend a course of treatment or decision-making that is indicated, and under such circumstances where all other treatment and decision options are contra-indicated, then in that event the LPC shall not undertake to provide counseling and will terminate the counseling relationship in accordance with these rules.

(f) **Knowledge of impairment.** If a LPC becomes aware that a LPC or LPC candidate is violating an obligation described in Section 310:405-3-2(e), the LPC must, within a reasonable time, report the situation to the Department in accordance with Section 310:405-31-2.

(g) **Knowledge of improper sexual contact.** If a LPC or LPC candidate becomes aware that another LPC or LPC Candidate is violating Section 310:405-3-3.1, the LPC or LPC Candidate must, within a reasonable time, report the improper sexual contact to the Department in accordance with Section 310:405-31-2.

(h) **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 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) 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 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) 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 may only provide fact witness testimony 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. Fact witness testimony means evidentiary statements that are limited to direct observations made by the LPC 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.

### **310:405-3-3. Client welfare**

(a) **Discrimination.** LPCs shall not, in the rendering of their professional services, participate in, condone, or promote discrimination based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital status/partnership, language preference, socioeconomic status, or any basis proscribed by law. LPCs do

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not discriminate against clients, students, employees, supervisees, or research participants in a manner that has a negative impact on these persons.

(b) **Records.**

(1) **Requirement of records.** LPCs shall maintain verifiable, accurate and truthful records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services. LPCs employed at an institution or facility that has a published records retention policy that is equal to the retention required by this subsection will be deemed to be in compliance with this subsection.

(2) **Confidentiality.** LPCs shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the client or otherwise authorized or required by law or court order.

(3) **Confidentiality of records.** LPCs shall be responsible for complying with the applicable state and federal regulations in regard to the security, 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.

(4) **Client access.** LPCs shall provide the client with a copy of the client's record in accordance with state 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 shall not knowingly enter into a dual relationship(s) and shall take any necessary precautions to prevent a dual relationship from occurring. When the LPC reasonably suspects that he or she has inadvertently entered into a dual relationship the LPC shall record that fact in the records of the affected client(s) and take reasonable steps to eliminate the source or agent creating or causing the dual relationship. If the dual relationship cannot be prevented or eliminated and the LPC cannot readily refer the client to another counselor or other professional, the LPC shall complete one or more of the following measures as necessary to prevent the exploitation of the client and/or the impairment of the LPC's professional judgment:

(1) Fully disclose the circumstances of the dual relationship to the client and secure the client's written consent to continue providing counseling;

(2) Consult with the other professional(s) to understand the potential impairment to the LPC's professional judgment and the risk of harm to the client of continuing the dual relationship.

(d) **Providing counseling to persons of prior association.** LPCs shall not undertake to provide counseling to any person with whom the LPC has had any prior sexual contact or close personal relationship within the previous five (5) years.

(e) **Interaction with former clients.** LPCs shall not knowingly enter into a close personal relationship, or engage in any business or financial dealings with a former client for two (2) years after the termination of the counseling relationship. LPCs shall not engage in any activity that is or may be sexual

in nature with a former client for at least five (5) years after the termination of the counseling relationship. LPCs shall not exploit or obtain an advantage over a former client by the use of information or trust gained during the counseling relationship.

(f) **Invasion of privacy.** LPCs shall not make inquiry into persons or matters that are not reasonably calculated to assist or benefit the counseling process.

(g) **Private or Independent Practice.** No person may engage in the private or independent practice of professional counseling work or open a facility with the intent of providing private or independent counseling practice unless that person:

(1) is licensed under this Act as a Licensed Professional Counselor; and,

(2) has met all requirements of Section 310:405-11-5 of the LPC Regulations; and

(3) has continued to meet all continuing education requirements set forth in Subchapter 17 of this Chapter.

(h) **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 current 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 current 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.

**310:405-3-6. Failure to comply**

An LPC who does not comply with subchapter 3 - Rules of Professional Conduct shall be ~~guilty of unprofessional conduct~~ and subject to disciplinary action under subchapter 31.

## SUBCHAPTER 7. APPLICATION PROCEDURES

**310:405-7-8.1. Re-application for revoked approved supervisor status**

No re-application for a revoked approved supervisor status, as a result of administrative action, shall be considered for a period of five (5) years following the revocation and said re-application shall meet the requirements described in subsection 310:405-11-4 of this Chapter.

## SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENT

**310:405-11-2. Responsibility of supervisors and supervisees**

- (a) The supervisor and supervisee ~~hall~~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, 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 and supervisee's employers are adhered to during the course of supervision.
- (b) The supervisor shall maintain supervision records for each supervisee for at least five (5) years beyond the termination or completion of the supervised experience.

**310:405-11-4. Supervisor qualifications**

Supervisor qualifications include:

- (1) A Licensed Professional Counselor who has practiced in positions relevant to those the LPC proposes to supervise for two (2) years beyond the date of issue of the Oklahoma license, and
- ~~(2) An LPC who was licensed by endorsement from another state who has practiced in positions relevant to those they propose to supervise for one (1) year beyond the date of issue of the Oklahoma license.~~
- (32) As of January 1, 2000:
  - (A) an LPC who has successfully completed a graduate course in counselor supervision of at least forty-five (45) contact hours or equivalent course of study acceptable to the Department. This equivalent course of study shall consist of workshops in counseling supervision in combination with directed study of counseling supervision literature. Fifteen (15) of the forty-five (45) contact hours shall be in a class or workshop format which includes four (4) supervisors-in-training; the other thirty (30) contact hours shall be reserved for directed study, and
  - (B) an LPC who has passed the Oklahoma Legal and Ethical Responsibilities Examination.
- (43) An agreement to be "on call" to the supervisee on a twenty-four (24) hour basis and to arrange for an alternate supervisor if not available.
- (54) After receipt of the LPC supervision agreement, LPC supervisor may be approved by the Department.
- (65) Approved LPC Supervisors are required to complete a minimum of three (3) clock hours of continuing education in counseling supervision each renewal period.
- (76) Approved Supervisor designation will not be renewed until the continuing education requirement is met for each missed renewal period.
- (7) If continuing education requirement is not met within five (5) years of expiration, approved supervisor status will be permanently expired and the LPC must re-apply and meet all requirements in this Subchapter, including the re-taking of 310:405-11-4(2)(A) or (B) to become an approved supervisor.

- (8) An active approved supervisor may request inactive status by submitting a request in writing to the Department. An inactive approved supervisor shall not provide any activities described in Subchapter 11 of this Chapter.
- (9) An inactive approved supervisor may reactivate by submitting the required counseling supervision continuing education due by the end of the current renewal period.
- (10) An active approved supervisor status may be retired by informing the Department in writing. A retired approved supervisor status shall not be reinstated but does not prevent a person from applying for approved supervisor status at a future date.
- (11) No re-application for a revoked approved supervisor status, as a result of administrative proceeding, shall be considered for a period of five (5) years following the revocation.

**SUBCHAPTER 13. FEES**

**310:405-13-2. Schedule of fees**

- (a) **Application fee.** One hundred forty-five dollars (\$145.00) shall be submitted with the application form.
- (b) **License examination fee.** One hundred dollars (\$100.00) shall be submitted when the applicant registers for the examination.
- ~~(c) Examination processing fee. Fifty dollars (\$50.00) shall be submitted if the National Counselor Examination has been previously taken and when the scores are received by the Department.~~
- ~~(d) Initial license fee.~~ **Initial license fee.** Ninety dollars (\$90.00) shall be submitted upon notification by the Department. This fee validates the license for a two (2) year period.
- ~~(e) Annual renewal fee.~~ **Annual renewal fee.** Eighty dollars (\$80.00) shall be submitted upon notification by the Department on or before June 30 and validates the license for twelve (12) months.
- ~~(f) Specialty application fee.~~ **Specialty application fee.** One hundred dollars (\$100.00) shall be submitted with the specialty application.
- ~~(g) Specialty designation fee.~~ **Specialty designation fee.** Fifty dollars (\$50.00) shall be submitted upon notification by the Department.
- ~~(h) Specialty designation renewal fee.~~ **Specialty designation renewal fee.** Twenty dollars (\$20.00) shall be submitted on or before June 30 and validates the license for twelve (12) months.
- ~~(i) Late renewal fee.~~ **Late renewal fee.** Twenty-five dollars (\$25.00) shall be submitted if the license is not renewed by June 30. The licensee must submit this fee as well as the license renewal fee on or before the following June 30 to avoid revocation.
- ~~(j) Replacement fee.~~ **Replacement fee.** Twenty-five dollars (\$25.00) shall be submitted for the issuance of a license to replace a license which has been lost, damaged, or is in need of revision.
- ~~(k) Inactive license fee.~~ **Inactive license fee.** Twenty-five dollars (\$25.00). Payment of this fee renders the license inactive and suspends all rights and privileges granted by the license until the license is reactivated.
- ~~(l) Reactivation fee.~~ **Reactivation fee.** A pro-rated fee in accordance with LPC regulation 310:405-21-3.1 shall be submitted at the time of reactivation.

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## SUBCHAPTER 15. LICENSURE EXAMINATIONS

### 310:405-15-2. Examinations required

Each applicant shall take two examinations:

- (1) The National Counselor Examination ~~or~~for Certification and Licensure or another equivalent examination as determined by the Department; and
- (2) The Oklahoma Legal and Ethical Responsibilities Examination.

## SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

### 310:405-17-2. Number of hours required

(a) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of continuing education per year. One (1) graduate academic semester credit hour is equal to fifteen (15) clock hours. One (1) graduate academic quarter credit hour is equal to ten (10) clock hours.

(b) A minimum of three (3) clock hours of continuing education hours must be in counseling ethics from programs pre-approved by the Department or its designee. Continuing education in counseling ethics is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

- (1) Addresses ethics issues, as the sole focus and specifically pertaining to the practice of counseling, as defined in Section 1902(6) of this Act, counseling treatment interventions, consulting, referral activities, or research activities as defined in Section 1902 of this Act.
- (2) Addresses regulations as promulgated in Subchapter 3 of this Chapter.
- (3) Meets all requirements of sections 2-5 of Section 310:405-17-3 of this Chapter.
- (4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling ethics continuing education must be accrued in a face-to-face setting.

(c) Approved LPC Supervisors must complete a minimum of three (3) clock hours of continuing education in counseling supervision from programs pre-approved by the Department of its designee. Continuing education in Counseling Supervision is acceptable as meeting the pre-approval requirements by the Department when the continuing education program:

- (1) Addresses issues specifically related to the practice of clinical supervision, as the sole focus, pursuant to regulations promulgated in Subchapter 11 of this Chapter.
- (2) Contains content in one or more of the following knowledge areas:
  - (A) Ethical and legal considerations in the practice of clinical supervision;
  - (B) Theoretical models of clinical supervision;
  - (C) Clinical supervision intervention methods and modalities;
  - (D) Research in clinical supervision; and

(3) Meets all requirements of sections 2-5 of Subchapter 310:405-17-3 of this Chapter.

(4) As of the July 1, 2008 to June 30, 2009 renewal period, the three clock hours of counseling supervision continuing education must be accrued in a face-to-face setting.

### 310:405-17-3. Acceptable continuing education

Continuing education (C.E.) is acceptable to the Department when it:

(1) Approximates the content of any of the academic areas listed under subchapter 310:405-9-2 of this chapter and;

(2) Is presented by a person who:

(A) is licensed or certified by counseling related professions;

(B) is a licensed or certified member of a non-counseling field, i.e. medicine, law if the content of the presentation is counselor related and falls within the presenter's area of training; or

(C) has experience teaching, at the graduate level, in a regionally accredited college or university from any of the knowledge areas listed in Section 310:405-9-2 of this Chapter; or

(D) the person is presenting or has presented at a national mental health conference provided by the American Counseling Association (ACA), or any of its divisions, American Psychological Association (APA), Association for Marriage and Family Therapy (AAMFT), National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(E) is presenting ~~or has presented~~ in a program sponsored or provided by a state or federal government agency with responsibility for mental health and substance abuse services; and

(3) Takes place in the context of:

(A) a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved ~~distance~~home-study or technology-assisted learning course;

(B) takes place in the context of a national mental health conference provided by the American Counseling Association (ACA), or any of its divisions, American Psychological Association (APA), American Association for Marriage and Family Therapy (AAMFT), National Association for Social Workers (NASW), the Association for Addiction Professionals (NAADAC), or other nationally recognized professional organization in the mental health field; or

(C) a program approved or offered by a state or federal government agency with responsibility for mental health and substance abuse services; and

(4) Is accrued during the twelve (12) months preceding the renewal deadline or, in the case of the first licensing period, twenty-four (24) months preceding.

**310:405-17-4.1. Continuing education accrual from ~~distance~~home-study or technology-assisted learning courses**

Continuing education may be accrued when the LPC completes ~~distance~~home-study or technology-assisted learning programs that are approved by the Department. No more than ten (10) hours of continuing education may be accrued per renewal period through ~~distance~~home-study or technology-assisted learning courses. Presenter or program author must meet all requirements of 310:405-17-3 of this Chapter.

**SUBCHAPTER 21. LICENSE AND SPECIALTY RENEWAL**

**310:405-21-6. Display of verification card**

- (a) A current license verification card shall be displayed on the original or replaced license.
- (b) A current license verification card shall be readily available on the LPC's person at any time counseling services are being provided.

**SUBCHAPTER 27. LICENSURE BY ENDORSEMENT**

**310:405-27-3. License by endorsement**

- (a) The Department shall issue a license by full endorsement to an applicant who is licensed or certified as a professional counselor in another jurisdiction and who meets the following:
  - (1) The applicant's professional ~~counselor's~~counselor license in the other jurisdiction is active and in good standing; with no history of suspension or revocation action against the license.
  - (2) The applicant fulfills the requirements of Section 1906(A), ~~and (B), and (C)~~ of the LPC Act;
  - (3) The applicant must have at least a masters degree in a counseling field from a regionally accredited college or university;
  - (4) The applicant takes and passes the examination as provided in Section 1907(A)(1) of the LPC Act, unless:
    - (A) ~~The~~the applicant has passed a written, counseling examination that, in the judgment of the Department, is substantially equivalent to the examination established by the Department; ~~or~~
    - (B) ~~Has practiced professional counseling for seven (7) of the last (10) years immediately preceding application for licensure in Oklahoma; and,~~
  - (5) The applicant takes and passes the Oklahoma Legal and Ethical Responsibilities Examination.
- (b) The Department shall issue a two (2) year, non-renewable license by endorsement to applicants seeking full endorsement who do not fulfill the requirements set forth in subsection 310:405-27-3(a) of this Chapter, but only under the following conditions:

- (1) The applicant must show proof of continuous practice in counseling for five (5) years prior to application in Oklahoma;
- (2) The applicant must show proof of professional counselor licensure in the other jurisdiction is current and in good standing, with no history of suspension or revocation against the license;
- (3) The applicant takes and passes the examinations as provided in subsection 310:405-15-2 of this Chapter; and,
- (4) The applicant completes all deficient course work to meet the academic requirements as provided in subchapter 9 of this Chapter.
- (c) The license by endorsement will expire after two years from the date of issue. Failure to fulfill the requirements as provided in this subsection, within the two (2) year licensure period, will require the applicant to fulfill licensure requirements set forth in Section 1906 (C)(1)(2) of the Act.

[OAR Docket #09-1014; filed 5-20-09]

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 515. COMMUNICABLE DISEASE AND INJURY REPORTING**

[OAR Docket #09-1015]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Disease and Injury Reporting Requirements
- 310:515-1-1.1 [AMENDED]
- 310:515-1-3 [AMENDED]
- 310:515-1-4 [AMENDED]
- 310:515-1-7 [AMENDED]
- 310:515-1-8 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S., Section 1-503.

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"n/a"

# Permanent Final Adoptions

## ANALYSIS:

This rule requires certain diseases be reported to the Oklahoma State Department of Health. Reporting of disease is required by Oklahoma statute, 63 O.S. 1991, Section 1-503. The purpose of disease reporting is to protect the public health.

## CONTACT PERSON:

Lauri Smithee, M.E.S., M.S., Chief, Acute Disease Service, Oklahoma State Department of Health, 1000 NE 10th, Oklahoma City, OK 73117-1299, ph (405) 271-4060, fax (405) 271-6680, or e-mail LauriS@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, 2009:**

## SUBCHAPTER 1. DISEASE AND INJURY REPORTING REQUIREMENTS

### 310:515-1-1.1. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"**AIDS**" means Acquired Immunodeficiency Syndrome.

"**Anti-HAV-IgM+**" means a positive test result for the hepatitis A virus immunoglobulin M antibody.

"**Anti-HBc-IgM+**" means a positive test result for the hepatitis B core immunoglobulin M antibody.

"**CD4**" means cluster of differentiation 4 glycoprotein that serves as a receptor for HIV on T helper cells.

"**Department**" or "**OSDH**" means the Oklahoma State Department of Health.

"**E. coli**" means *Escherichia coli*.

~~"**EHEC**" means enterohemorrhagic *Escherichia coli*.~~

"**EIA**" means enzyme immunoassay.

"**HBeAg+**" means a positive test result for the hepatitis B "e" antigen.

"**HBsAg+**" means a positive test result for the hepatitis B surface antigen.

"**HBV DNA+**" means a positive test result for deoxyribonucleic acid of the hepatitis B virus.

"**HIV**" means Human Immunodeficiency Virus.

"**PHIDDO**" or "**PHIDDO system**" means Public Health Investigation and Disease Detection of Oklahoma system.

"**NAT for HCV RNA+**" means a nucleic acid amplification test with a positive test result for hepatitis C virus ribonucleic acid.

"**Outbreak of an apparent infectious disease**" means a cluster of cases from different households of potentially infectious disease of known or unknown etiology. The cases would have a similar clinical syndrome if laboratory testing is pending or inconclusive. Examples of such outbreaks include but are not limited to a cluster of cases of gastrointestinal illness, respiratory illness, or rash illness of unknown etiology.

"**RIBA**" means recombinant immunoblot assay.

"**S/co**" means the signal-to-cut-off-ratio.

"**Spp.**" is an abbreviation referring to the term "species," and is used to broaden the antecedent term in order to include

all organisms that may be found or described within a given genus.

"**Unusual disease or syndrome**" means a case of a rare, possibly infectious disease of known or unknown etiology, even if laboratory testing may be pending or inconclusive. Examples of such unusual diseases or syndromes include but are not limited to, unexplained adult respiratory distress syndrome, hemorrhagic fever, vesicular rash illness, or an illness associated with an unusual pattern of illness or death among animals.

"**VISA**" means vancomycin intermediate *Staphylococcus aureus*.

"**VRSA**" means vancomycin resistant *Staphylococcus aureus*.

### 310:515-1-3. Diseases to be reported immediately

The following diseases must be reported by any health practitioner or laboratory personnel to the OSDH electronically via the secure web-based Public Health Investigation and Disease Detection of Oklahoma system or by telephone (405-271-4060 or 800-234-5963) ~~or electronically via the secure web-based Public Health Investigation and Disease Detection of Oklahoma system~~ immediately upon suspicion, diagnosis, or testing as specified in the OSDH Disease Reporting Manual.

- (1) Anthrax (*Bacillus anthracis*).
- (2) Bioterrorism - suspected disease.
- (3) Botulism (*Clostridium botulinum*).
- (4) Diphtheria (*Corynebacterium diphtheriae*).
- (5) *Haemophilus influenzae* invasive disease.
- (6) Hepatitis A (Anti-HAV-IgM+).
- (7) Hepatitis B during pregnancy (HBsAg+).
- (8) Measles (Rubeola).
- (9) Meningococcal invasive disease (*Neisseria meningitidis*).
- (10) Outbreaks of apparent infectious disease.
- (11) Plague (*Yersinia pestis*).
- (12) Poliomyelitis.
- (13) Rabies.
- (14) Smallpox.
- (15) Tularemia (*Francisella tularensis*).
- (16) Typhoid fever (*Salmonella* ~~¶~~*Typhi*).
- (17) Viral hemorrhagic fever.

### 310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

- (1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via the PHIDDO system, telephoned, faxed, submitted electronically via the PHIDDO system, or submitted via secure electronic data transmission to the OSDH within one (1) business day of diagnosis or positive test as specified in the OSDH Disease Reporting Manual.

- (A) Acid Fast Bacillus (AFB) positive smear.
- (B) AIDS (Acquired Immunodeficiency Syndrome).
- (C) Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus).
- (D) Brucellosis (*Brucella* spp.).
- (E) Campylobacteriosis (*Campylobacter* spp.).
- (F) Congenital rubella syndrome.
- (G) Cryptosporidiosis (*Cryptosporidium parvum* spp.).
- (H) Cyclosporiasis (*Cyclospora cayetanensis*).
- (I) Dengue Fever.
- (J) *E. coli* O157, O157:H7, or a ~~s~~Shiga-like toxin producing *E. coli* (~~EH~~STEC infections).
- (K) Ehrlichiosis (*Ehrlichia* or *Anaplasma* spp.).
- ~~(ML)~~ Giardiasis (*Giardia lamblia*).
- ~~(NM)~~ Hantavirus pulmonary syndrome.
- ~~(ON)~~ Hemolytic uremic syndrome, postdiarrheal.
- ~~(PO)~~ Hepatitis B. If HBsAg+, anti-HBc-IgM+, HBeAg+, or HBV DNA+ then report results of the entire hepatitis panel.
- ~~(QP)~~ Hepatitis C. If hepatitis C EIA is confirmed by RIBA or NAT for HCV RNA, or signal-to-cut-off (s/co) ratio or index is predictive of a true positive then report results of the entire hepatitis panel.
- ~~(R)~~ Hepatitis, acute unspecified.
- ~~(SQ)~~ Human Immunodeficiency Virus (HIV) infection.
- ~~(SR)~~ Influenza associated pediatric mortality.
- ~~(TS)~~ Legionellosis (*Legionella pneumophila* spp.).
- ~~(U)~~ Leprosy (Hansen's Disease).
- ~~(VT)~~ Leptospirosis (*Leptospira interrogans*).
- ~~(WU)~~ Listeriosis (*Listeria monocytogenes*).
- ~~(XV)~~ Lyme disease (*Borrelia burgdorferi*).—Erythema migrans or EIA+ confirmed by Western Blot).
- ~~(YW)~~ Malaria (*Plasmodium* spp.).
- ~~(ZX)~~ Mumps.
- ~~(AAY)~~ Pertussis (*Bordetella pertussis*).
- ~~(BBZ)~~ Psittacosis (~~Chlamydia~~*Chlamydia* *psittaci*).
- ~~(CCAA)~~ Q Fever (*Coxiella burnetti*).
- ~~(CCBB)~~ Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).
- ~~(DDCC)~~ Rubella.
- ~~(EEDD)~~ Salmonellosis (*Salmonella* spp.).
- ~~(FEE)~~ Shigellosis (*Shigella* spp.).
- ~~(GGFF)~~ *Staphylococcus aureus* with reduced susceptibility to vancomycin (VISA or VRSA).
- ~~(HHGG)~~ *Streptococcus*, group A invasive disease.
- ~~(HHH)~~ *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.
- ~~(HII)~~ Syphilis (*Treponema pallidum*).
- ~~(KKJJ)~~ Tetanus (*Clostridium tetani*).
- ~~(LLKK)~~ Trichinosis Trichinellosis (*Trichinella spiralis*).

- ~~(MMLL)~~ Tuberculosis (*Mycobacterium tuberculosis*).
- ~~(NNMM)~~ Unusual disease or syndrome.
- ~~(OONN)~~ *Vibrio* spp. infections including cholera.
- ~~(PPOO)~~ Yellow Fever.

(2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH within one (1) month of diagnosis or positive test as specified in the OSDH Disease Reporting Manual.

- (A) CD4 cell count < 500 with corresponding CD4 cell count percentage of total (by laboratories only).
- (B) Chlamydia infections (*Chlamydia trachomatis*).
- (C) Creutzfeldt-Jakob disease.
- (D) Gonorrhea (*Neisseria gonorrhoeae*).
- (E) HIV viral load.
- (F) Pelvic inflammatory disease (PID).

(3) **Occupational or Environmental diseases.** Laboratories must report blood lead level results greater than 10 ug/dL within one (1) week and results less than 10 ug/dL within one (1) month. Health care providers must report blood lead level results 20 ug/dL or greater within twenty-four (24) hours and results 10-19 ug/dL within one (1) week.

(4) **Injuries (hospitalized and fatal cases only).**

- (A) Burns.
- (B) Drownings and Near Drownings.
- (C) Traumatic Brain Injuries.
- (D) Traumatic Spinal Cord Injuries.

**310:515-1-7. Control of Communicable Diseases Manual**

The OSDH adopts the most recently published edition of the publication, "Control of Communicable Diseases Manual," published by the American Public Health Association, as a guideline for the prevention and control of communicable diseases. In order to determine the most recently published edition of the "Control of Communicable Diseases Manual," access the American Public Health Association web site at <https://secure.apha.org/source/orders/index.cfm>. ~~to identify the latest published edition of the "Control of Communicable Diseases Manual."~~

**310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory**

(a) Isolates or appropriate specimens of the following organisms shall be sent to the OSDH Public Health Laboratory for typing.

- (1) *Bacillus anthracis*.
- (2) *Brucella* spp.
- ~~(3) *Campylobacter* spp.~~
- ~~(43) *E. coli* O157, O157:H7, or a ~~s~~Shiga-like toxin producing *E. coli* (~~EH~~STEC).~~
- ~~(54) *Francisella tularensis*.~~
- ~~(65) *Haemophilus influenzae* (sterile site).~~
- ~~(7) HIV.~~
- ~~(86) *Listeria monocytogenes* (sterile site).~~

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- (97) *Mycobacterium tuberculosis*.
- (408) *Neisseria meningitidis* (sterile site).
- (449) *Plasmodium* spp.
- (4210) *Salmonella* spp.
- (13) *Shigella* spp.
- (1411) *Staphylococcus aureus* that are VISA or VRSA
- (4512) *Vibrio* spp.
- (4613) *Yersinia* spp.

(b) Following consultation with an OSDH epidemiologist, clinical specimens from suspected cases of Botulism must be sent to the OSDH Public Health Laboratory for testing.

[OAR Docket #09-1015; filed 5-20-09]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 525. DIRECT SERVICES TO INDIVIDUALS

[OAR Docket #09-1016]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 5. Disease and Prevention Services [NEW]  
310:525-5-1. Purpose [NEW]  
310:525-5-2. Fees [NEW]

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Oklahoma State Board of Health; 63 O.S. 1991, §§ 1-104 et seq. 63 O.S. §§ 1-106.1, 1-206.1(A), 1-208.1 and 1-219, 63 O.S. §§ 1-231 et seq.

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"n/a"

**ANALYSIS:**  
The rules are being amended to enable fees to be charged for disease and prevention services, such as tuberculosis. Fees may be charged for services that are not directly related to disease control and are performed through the state health department or the county health departments.

**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, 2009:

## SUBCHAPTER 5. DISEASE AND PREVENTION SERVICES

### 310:525-5-1. Purpose

The rules in this subchapter implement the fee provisions of the Public Health Code which authorize fees for services of the Oklahoma State Department of Health.

### 310:525-5-2. Fees

Fees may be charged for disease and prevention services as follows. The fees listed reflect actual costs incurred by the Department for product and person-time. The fees are the maximum to be charged by the Department as follows.

- (1) Tuberculin skin test: \$45;
- (2) Blood assay for *Mycobacterium tuberculosis*: \$46;
- and
- (3) X-ray consultation: \$84.

[OAR Docket #09-1016; filed 5-20-09]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 531. VISION SCREENING

[OAR Docket #09-1000]

**RULEMAKING ACTION:**  
Permanent final adoption

**RULES:**  
Subchapter 1. General Provisions  
310:531-1-1 [AMENDED]  
310:531-1-3 [AMENDED]  
Subchapter 3. Advisory Committee  
310:531-3-1 [AMENDED]  
Subchapter 5. Vision Screening Standards for Children  
310:531-5-1 [AMENDED]  
310:531-5-2 [AMENDED]  
310:531-5-3 [AMENDED]  
310:531-5-4 [NEW]  
Subchapter 7. Registry Enforcement for Vision Screening Providers  
[NEW]  
310:531-7-1 [NEW]  
310:531-7-2 [NEW]  
310:531-7-3 [NEW]  
310:531-7-4 [NEW]  
310:531-7-5 [NEW]  
310:531-7-6 [NEW]

**AUTHORITY:**  
Oklahoma State Board of Health; 70 O.S. § 1210.284; 63 O.S. §§ 1-105 and 1-106 et seq.

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N/A

INCORPORATION BY REFERENCE:

N/A

ANALYSIS:

This proposal amends the existing rule. The proposed amendments to the rule will clarify definitions, disciplinary process, appeals and registry enforcement for vision screening providers.

CONTACT PERSON:

Suzanna Dooley, MS, ARNP, Chief of Maternal and Child Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299.

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

SUBCHAPTER 1. GENERAL PROVISIONS

310:531-1-1. Purpose

This chapter/subchapter identifies the authority and provides definitions for vision screening services provided to elementary school age children by qualified vision screeners.

310:531-1-3. Definitions

When used in this Chapter, the following words or terms shall have the following meaning unless the context of the sentence requires another meaning:

"Advisory Committee" means the Oklahoma Vision Screening Advisory Committee for Children.

"Board" means the State Board of Health.

"Commissioner" means the Commissioner of Health of the Oklahoma State Department of Health.

"Department" means the Oklahoma State Department of Health.

"HOTV Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) letters, H, O, T and V.

"Lea Symbol Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart with the four (4) symbols, circle, square, house, and apple.

"Ophthalmologist" means a person licensed by the state of Oklahoma to practice medicine who has a specialty in ophthalmology.

"Optometrist" means a person licensed by the state of Oklahoma to practice optometry.

"Random Dot E Stereo Test" means a vision screening test that determines relative stereo acuity or depth perception.

"Professional Examination" means a diagnostic evaluation performed by an appropriately licensed professional whose expertise addresses the diagnostic needs of the individual.

"Referral" means parent/guardian notification that the student's screening results indicate a need for a professional examination by an ophthalmologist or optometrist.

"Snellen Letter Chart" means a vision screening test that determines relative visual acuity for distance vision using a chart consisting of eight (8) or more rows of progressively smaller block type letters.

"Vision screening provider" means an individual who is engaged in providing vision screening as defined in this section.

"Vision Screening" means the process or system used to identify children in grades K, 1 and 3 who may be at risk of having or developing visual problems that may adversely affect their ability to acquire knowledge, skill or learning, for the purpose of recommending further evaluation by an eye care professional.

SUBCHAPTER 3. ADVISORY COMMITTEE

310:531-3-1. Purpose

This chapter/subchapter creates the Oklahoma Vision Screening Advisory Committee for Children.

SUBCHAPTER 5. VISION SCREENING STANDARDS FOR CHILDREN

310:531-5-1. Purpose

This chapter/subchapter identifies those children to be screened and standards for screening tools and vision screening providers.

310:531-5-2. Oklahoma Vision Screening Standards

(a) Parents or guardians of any child subject to the Oklahoma School Code shall provide certification of vision screening for any child who is:

(1) in Kindergarten, and the vision screening shall be completed within the previous twelve (12) months or during the school year;

(2) in the First grade, and the vision screening shall be completed within the previous (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year; and

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- (3) in the Third grade, and the vision screening shall be completed within the previous twelve (12) months, with certification provided to school personnel within thirty (30) days of the beginning of the school year.
- (b) Vision screening must, at a minimum, utilize the following vision screening tests using standard screening procedures:
- (1) For relative distance acuity, the Snellen Letter Chart, HOTV Chart, or Lea Symbol Chart, at a distance of ten (10) feet; and,
  - (2) For ~~stereoacuity~~stereo acuity, the Random Dot E Stereo Test, at a distance according to the calibration of the manufacturer; and,
  - (3) Any additional vision screening test recommended by the Advisory Committee and approved by the Commissioner of Health.
- (c) The following visual criteria shall be used as a basis for referring a child for further evaluation by an eye care professional:
- (1) For relative distance acuity, worse than 20/40 in either or both eyes for children below the First Grade, or worse than 20/30 in either or both eyes for children in the First grade or above, and for all children, a two or more line difference between either eye; and,
  - (2) For relative ~~stereoacuity~~stereo acuity, a child identifies the E correctly in less than four (4) consecutive responses out of ten (10) attempts.

### 310:531-5-3. Vision Screening Provider Standards and Procedures

- (a) To become a qualified vision screener, ~~an organization or an individual~~ may ~~must~~ make application to the Advisory Committee and include documentation of successful completion of training approved by the Advisory Committee that includes the following:
- (1) common eye problems;
  - (2) the screening process;
  - (3) required screening tools;
  - (4) screening special populations; and,
  - (5) basic anatomy and physiology of the eye.
- (b) The Advisory Committee will review and submit, a minimum of one time annually, a list of qualified vision screening providers to the Department.
- (c) All approved vision screening providers will be added to the statewide registry on the Internet website maintained by the Department.
- (d) Unless otherwise provided by law, no person shall engage in vision screening as provided in 70 O.S. § 1210.284 without first being listed on the vision screening registry maintained by the Department.

### 310:531-5-4. Disclaimer

Any disclosure or other notice provided by a vision screener or other person subject to this chapter describing a vision screening provided in accordance with this chapter must include a disclaimer that advises the parent or guardian that a vision screening is not equivalent to a comprehensive eye examination.

## SUBCHAPTER 7. REGISTRY ENFORCEMENT FOR VISION SCREENING PROVIDERS

### 310:531-7-1. Purpose

The purpose of this subchapter is to establish procedures for the investigation of complaints against persons engaged in vision screening, and where evidence from an investigation is sufficient, provide for hearings pursuant to the Oklahoma Administrative Procedures Act. Disciplinary sanctions may be imposed upon a person engaged in vision screening, including monetary penalties, removal from the vision screening registry for five (5) years or less, or summary removal from the registry pending a hearing for removal.

### 310:531-7-2. Grounds for discipline

An approval of a vision screener may be modified, suspended, or terminated for one or more of the following reasons:

- (1) Repeated failure to conduct vision screenings according to the procedures and referral criteria approved by the Advisory Committee, including but not limited to, deletion of one or more portions of the process outlined in the screening guidelines, or addition of one or more procedures not contained in the screening guidelines.
- (2) Making repeated referrals for professional examinations that indicate a conflict of interest, financial or otherwise.
- (3) Repeated violations of the Family Educational Rights and Privacy Act of 1974, 20 United States Code §1232, et seq.
- (4) Any other act prohibited by law.

### 310:531-7-3. Complaint investigation

- (a) Reporting complaints. Any person may report to the Department any complaint or allegations of non-compliance with 70 O.S. § 1210.284 or this Chapter by a vision screening provider by submitting the following:
- (1) the name, address, and telephone number, if known, of the vision screening provider(s) who is the subject of the complaint;
  - (2) the location(s) where the alleged non-compliance occurred;
  - (3) the date(s) of non-compliance;
  - (4) the reporting party's name, address and telephone number; and,
  - (5) the specific allegations against the vision screening provider, including but not limited to references to, or a copy of supporting documentation regarding, or any witnesses to, the alleged non-compliance.
- (b) Process. Upon receipt of a complaint against a vision screening provider alleging non-compliance with 70 O.S. § 1210.284 or this Chapter, the Department shall conduct an investigation. Upon completion of the investigation, a written report will be prepared and presented to the Advisory Committee for recommendation. If sufficient evidence exists to initiate an individual proceeding, the Advisory Committee shall recommend that the Department initiate disciplinary proceedings.

**310:531-7-4. Summary removal from registry**

(a) If in the course of an investigation the Department determines that a vision screening provider has engaged in conduct of a nature that is, or is likely to be detrimental to the health, safety, or welfare of the public, and which conduct necessitates immediate action to prevent such harm, the Commissioner may order summary removal of the name of the vision screening provider from the registry for vision screening maintained by the Department pending the Department filing a petition to remove the name of the vision screening provider from the registry following an individual proceeding pursuant to the Oklahoma Administrative Procedures Act, 75 O.S. §§ 309 et seq. A presumption of imminent harm to the public shall exist if the Department determines that probable cause exists that a vision screening provider has harmed, or threatened harm to, a child while providing vision screening services. The order of summary removal from the registry must include the specific grounds for the summary removal, a citation of the statute or law allegedly violated, and inform the vision-screening provider of the process to request a hearing to contest the summary action.

(b) Any vision screening provider whose name has been summarily removed from the registry for vision screening may request a hearing to contest such summary action. The Department shall have the initial burden of persuasion to show that the provider has engaged in conduct that has caused, or is likely to cause, harm to a child. If the Department meets this burden of persuasion, the vision-screening provider has the burden to prove that the conduct of the provider in providing vision-screening services would not harm a child.

**310:531-7-5. Appearance before the Advisory Committee**

Except as provided for in section 310:531-7-3, if the Advisory Committee recommends that the status of a vision screener be modified, suspended, or terminated by these provisions the Committee shall first give a vision screener, or applicant an opportunity to appear before the Advisory Committee at the next regularly scheduled meeting by providing written notice at least thirty (30) days in advance of the meeting. The vision screener or applicant must advise in writing at least ten (10) days by postmarked notification to the Committee of his request to appear before the Committee. Failure to so notify may be deemed a waiver of the right to appear before the Advisory Committee.

**310:531-7-6. Right to a hearing**

Except as provided for in section 310:531-7-3, the name of a vision screening provider may not be removed from the vision screening registry until the Department provides notice to the vision screening provider and an opportunity for a hearing to contest the Department's allegations. The notice to the vision screening provider must comply with 75 O.S. § 309. The vision screening provider must request a hearing within twenty

(20) days of receiving the notice from the Department or the sanction may be imposed by default.

*[OAR Docket #09-1000; filed 5-20-09]*

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

*[OAR Docket #09-1001]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Adult Immunizations  
310:535-3-2 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. §-1-206.1

**DATES:**

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N/A

**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

This rule change allows for an increase in the administration fee charged for vaccination of adults in county health department facilities in Oklahoma. It allows county health departments to increase administration fees to not more than \$5.00 higher than the current reimbursement rate for vaccine administration set by the Centers for Medicare and Medicaid Services for each dose of vaccine administered to adults.

**CONTACT PERSON:**

Susan Mendus, Immunization Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-4073; facsimile: (405) 271-6133 electronic mail: susanm@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, 2009:**

**SUBCHAPTER 3. ADULT IMMUNIZATIONS**

# Permanent Final Adoptions

## 310:535-3-2. Fees and charges

(a) The county health departments may collect for the cost of the vaccine, and an administration fee of not more than \$5.00 higher than the current reimbursement rate established by the Centers for Medicare and Medicaid Services up to \$10.00 per dose of vaccine administered. The cost for each immunization referenced in section 310:535-3-1 shall be posted in plain view in the county health departments that offer adult immunizations. Any adult who requests immunizations shall be informed of the specific fee prior to receiving the immunization.

(b) Documentation confirming the cost of an adult immunization shall be available upon request.

[OAR Docket #09-1001; filed 5-20-09]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 546. FEE SCHEDULE FOR PUBLIC HEALTH LABORATORY SERVICE

[OAR Docket #09-1002]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

310:546-1-2 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Health; 63 O.S. §-1-206.1

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#### INCORPORATION BY REFERENCE:

N/A

#### ANALYSIS:

The increase is being requested to cover costs for test kits, shipping of supplies used in testing and courier service to return tests to the PHL in a timely and controlled manner. The rules in this Chapter implement the fee provisions of the Public Health Code, which authorizes fees for services of the Oklahoma State Department of Health.

#### CONTACT PERSON:

Garry L. McKee, Chief, Public Health Laboratory, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-5070; facsimile: (405) 271-4850 electronic mail: GarryM@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, 2009:

## 310:546-1-2. Public Health Laboratory Service fee schedule

Fees for services of the Public Health Laboratory are as follows:

- (1) ~~\$18.00~~ \$5 - Enteric Bacteria
- (2) ~~\$5~~ Group A Streptococci
- (3) ~~\$17.00~~ \$5 - TB & Fungus Culture
- (4) ~~\$19.00~~ \$5 - Parasite Exam
- (5) Rate Not to Exceed Current Medicaid Rate for Oklahoma - Newborn Screening Approved by the Board of Health
- (6) \$7 - Hepatitis B Surface Antigen
- (7) \$7 - Hepatitis B Core Antibody
- (8) ~~\$10~~ Rubella (Immunity)
- (9) ~~\$5~~ Passport Certification (for Saudi Arabia)
- (10) ~~\$18.00~~ \$5 - Gonorrhea Culture
- (11) ~~\$18~~ HIV-1 Screen
  - (A) \$25 - Private Sector
  - (B) \$8.50 - Indian Health
  - (C) \$8.50 - Dept. of Corrections
- (12) \$50 - HIV-1 Western Blot
- (13) There is no charge to county health departments for the services listed in 1 through 12 of this section.

[OAR Docket #09-1002; filed 5-20-09]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 551. ADVANCEMENT IN STEM CELL CURES AND THERAPIES ACT

[OAR Docket #09-1003]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions [NEW]

310:551-1-1 [NEW]

310:551-1-2 [NEW]

Subchapter 3. Reporting of Stem Cell Research [NEW]

310:551-3-1 [NEW]

### AUTHORITY:

Oklahoma State Board of Health; 63 O.S. Sections 1-105 and 1-2710 et seq.

### DATES:

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**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

This proposal establishes a stem cell research reporting system to the Oklahoma State Department of Health as defined by house bill 3126 The Advancement in Stem Cell Cures and Therapies Act.

**CONTACT PERSON:**

John Corpolongo, MS, Chief, Screening, Special Services, and SoonerStart, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6617; email: John@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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:551-1-1. Purpose**

The rules in this chapter implement the Advancement in Stem Cell Cures and Therapies Act, 63 O.S. 270.1, *et seq.*, and are designed to provide a reporting system to capture and collect simple or basic identifying information regarding any work conducted in the State of Oklahoma related to, or associated with, stem cell research, in order to assist the State and those persons and entities engaged in stem cell research to identify, expand, encourage and otherwise enhance opportunities for greater research funding for such entities and persons involved in advancing knowledge about cell-based therapies to treat disease.

**310:551-1-2. Definitions**

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

**"Adult stem cell"** means undifferentiated cells, found throughout the body after embryonic development, that multiply by cell division to replenish dying cells and regenerate damaged tissues. These stem cell types include but are not limited to, Adipose stem cells (ASC), Connective Tissue Progenitors (CTP), Hematopoietic stem cells (HSC), Hemangioblast (AC133) from umbilical cell blood (HB1), Mesenchymal Stem Cells (MSC), Multi-potent adult stem cells (MAPC), Neural stem cells/oligodendrocyte progenitors (NSC), Skeletal myoblast (SKMS), and Umbilical cord blood derived stem cells (UCB).

**"Board"** means the Oklahoma State Board of Health.

**"Classification"** means the business form of the information provider.

**"Commissioner"** means the Commissioner of the Oklahoma State Department of Health or his designated representative.

**"Completed report"** means a submitted data file that has been reviewed by the Department and found to contain no observed errors.

**"Data element"** means a unit of specific information collected and recorded by the Department that identifies the persons and entities engaged in stem cell research in Oklahoma and the nature of the stem cell research being conducted.

**"Data file"** means an electronic file containing data elements.

**"Data provider"** means either an information provider or an IRB who agrees to provide information on behalf of an information provider.

**"Department"** means the Oklahoma State Department of Health.

**"Donor"** means the person or entity with legal custody of a fertilized egg or oocyte.

**"Embryonic stem cell"** means cells derived from embryos that develop from eggs that have been fertilized in vitro and then lawfully donated for research purposes with informed consent of the donor.

**"Human Embryo"** refers to a living organism of the species *Homo sapiens* at the earliest stage of development, including the single-cell stage, that is not located in the body of a woman. [1-270.2 of Title 63]

**"Human tissue regeneration"** means any cell-based therapy that involves the regeneration of human tissue using stem cells.

**"Information provider"** means a private or public institution or other entity, or a person who is not affiliated with an institution or entity, that has initiated or is conducting research.

**"IRB" or "Institutional Review Board"** means the body or committee that is established in accordance with federal law and charged with the responsibility to provide oversight functions within a private or public institution where biomedical research involving human subjects is being conducted or performed. An IRB may include a Stem Cell Research Oversight Committee.

**"Research"** means any work, labor or effort into discovering, discerning or advancing knowledge of the science of cell regeneration.

**"Somatic cell nuclear transfer"** means a laboratory technique for creating an ovum with a donor nucleus.

**"Stem cell"** means an adult stem cell or an embryonic stem cell.

**SUBCHAPTER 3. REQUIRED INFORMATION FOR REPORTING**

**310:551-3-1. Required Information to be Collected from Information Providers**

(a) The Department is required by law to collect the following types of information from information providers:

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- (1) Information relating to research performed or conducted on human tissue regeneration using human embryos or adult stem cells.
- (2) Information relating to research performed or conducted on human disease using human embryos or adult stem cells.
- (b) The data elements to be submitted by information providers include the following:
  - (1) Identifying name of the research project having unique or individual IRB approval;
  - (2) Information provider name;
  - (3) Information provider street address;
  - (4) Information provider city;
  - (5) Information provider state;
  - (6) Information provider address postal zip code;
  - (7) Information provider EIN or Tax Identification Number;
  - (8) Information provider telephone number;
  - (9) Information provider facsimile number;
  - (10) Information provider electronic mail address;
  - (11) Information provider contact person name;
  - (12) Information provider contact person telephone number;
  - (13) Information provider contact person facsimile number;
  - (14) Information provider contact person electronic mail address;
  - (15) Project initiation date;
  - (16) Project suspension date, if applicable;
  - (17) Project restart date, if applicable;
  - (18) Project completion date, if applicable;
  - (19) An affirmative indication if the research involves human embryonic stem cells in vitro;
  - (20) An affirmative indication if the research involves human embryonic stem cells in vivo;
  - (21) An affirmative indication if the research involves the creation or derivation of human embryonic stem cells or cell lines;
  - (22) An affirmative indication if the research involves or requires consent for human participation in a research project using human embryonic stem cells or adult stem cells;
  - (23) An affirmative indication if the research involves or requires consent for donation of tissue to derive adult stem cells;
  - (24) An affirmative indication if the research involves the use of human oocytes for purposes other than assisting a person to achieve a successful childbirth;
  - (25) An affirmative indication if the research involves the use of human embryos for purposes other than assisting a person to achieve a successful childbirth;
  - (26) An affirmative indication if the research involves somatic cell nuclear transfer for purposes other than assisting a person to achieve a successful childbirth; and
  - (27) The name of the IRB or Stem Cell Research Oversight Committee to which the research institution, entity or research individual makes periodic reports.
- (c) Data file formats that will be accepted include:

- (1) PDF Flat File Format, or,
- (2) Other formats agreed upon by OSDH and the data provider prior to submission.
- (d) Information submitted containing the appropriate data elements but do not adhere to an acceptable file format shall be deemed to be unreadable and will be not be accepted by the Department.

[OAR Docket #09-1003; filed 5-20-09]

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

[OAR Docket #09-1004]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions

310:661-1-2 [AMENDED]

Subchapter 2. Licenses

310:661-2-1 [AMENDED]

310:661-2-4 [AMENDED]

Subchapter 3. Administration

310:661-3-2 [AMENDED]

310:661-3-3.1 [NEW]

Subchapter 5. Minimum Standards

310:661-5-1.1 [NEW]

310:661-5-1.2 [NEW]

310:661-5-1.3 [NEW]

310:661-5-2 [AMENDED]

310:661-5-2.1 [NEW]

310:661-5-2.2 [NEW]

310:661-5-2.3 [NEW]

310:661-5-2.4 [NEW]

310:661-5-3.1 [NEW]

310:661-5-4.1 [NEW]

310:661-5-6 [NEW]

310:661-5-7 [NEW]

310:661-5-8 [NEW]

310:661-5-9 [NEW]

Subchapter 6. Hospice Inpatient Service Requirements

310:661-6-7 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Health; 63 O.S. Section 1-104 and Section 1-860.1 et seq.

### DATES:

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N/A

**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed amendments to Subchapter 1 add certain definitions in order to clarify and provide standard meanings for terms used in proposed new language contained in subsequent sections of this rule; new terms include "Alternate administrative office", "Bereavement counseling", "Clinical note", "Comprehensive assessment", "Dietary counseling", "Employee", "Initial assessment", "Palliative care", and "Physician designee". Conforming changes have been made throughout the rule and obsolete language has been removed.

The existing rule language of Chapter 2 describes the licensure application and issuance process and establishes the fee structure. The amendments to Subchapter 2 add a new fee requirement of \$500.00 for each alternate administrative office requested as part of a licensed hospice. This new fee will help defray the Department's expenses associated with providing oversight for these additional licensed hospice locations.

The current rule language contained in Subchapter 3 explains the required elements for the administration and business practices of a licensed hospice. The proposed amendments add new language to give a more complete description of some of these required elements, removes obsolete and potentially contradictory language, and better defines certain practices such as those associated with the required initial certification of a terminal illness and training of personnel. Amendments to this Subchapter also add a new section of rule that specifies the content of clinical records, describes how these records are protected, transferred, and retrieved, as well as how entries are authenticated.

Existing rule language in Subchapter 5 sets forth "minimum standards" for the operation and clinical care practices of a licensed hospice. The proposed language provides for a significant expansion of existing requirements for quality assurance/performance improvement functions, patient rights and responsibilities, and as well as the implementation of new concepts and standards including initial and comprehensive assessments, interdisciplinary groups and care planning, core services, infection control, supervision of hospice aides, and rules concerning drugs and biologicals.

The proposed change in Subchapter 6 changes the term "medical director" to "medical advisor" in order to be consistent with the changes made in Subchapter 3.

These changes are necessary in order to align state licensure rules with the new Conditions of Participation for hospice providers issued by the Centers for Medicare & Medicaid Services (CMS) that became effective on December 2, 2008. By aligning the state licensure rules with the CMS Conditions of Participation, hospice providers in Oklahoma will not be subject to disparate and potentially conflicting standards issued by two separate regulatory bodies allowing them to operate in a more effective and efficient manner while providing high quality hospice services to their 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, 2009:**

**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.

"Alternate Administrative Office" means an approved location from which the hospice provides the same full range of hospice care and services that is required of the hospice issued the license and meets the requirements of 310:661-2-1(f)(2). Each location shall meet all of the applicable requirements of Chapter 661. Hospice.

"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.

"Bereavement counseling" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

"Clinical note" means a notation of a contact with the patient and/or the family that is written and dated by any person providing services and that describes signs and symptoms, treatments and medications administered, including the patient's reaction and/or response, and any changes in physical, emotional, psychosocial or spiritual condition during a given period of time.

"Comprehensive assessment" means an evaluation of the patient's physical, psychosocial, emotional and spiritual status related to the terminal illness and related conditions. This includes an evaluation of the caregiver's and family's willingness and capability to care for the patient.

"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.

"Dietary counseling" means education and interventions provided to the patient and family regarding nutritional intake as the patient's condition changes. Dietary counseling is provided by qualified individuals, which may include a registered nurse or dietitian, when identified in the patient's plan of care.

"Employed" means contracting with a person for services, regardless of compensation. This term also includes volunteers.

"Employee" means a person who: (1) Works for the hospice and for whom the hospice is required to issue a W-2 form on his or her behalf; (2) if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned to the hospice; or (3) is a volunteer under the jurisdiction of the hospice.

"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

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governance in accordance with these regulations and the laws of this state.

**"Initial assessment"** means an evaluation of the patient's physical, psychosocial and emotional status related to the terminal illness and related conditions to determine the patient's immediate care and support needs.

**"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.

**"Palliative care"** means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice.

**"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.

**"Physician designee"** means a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical advisor when the medical advisor is not available.

**"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.**

(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 alternate 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.

(C) The offices shall be operated under the same administration and governing body as an extension site for services of the main hospice. These offices shall operate under the same name(s) as the licensee.

(D) An application for license, or renewal thereof, to establish or operate each hospice alternate administrative office of an agency licensed in the State of Oklahoma shall be accompanied by a nonrefundable licensing fee of five hundred dollars (\$500.00) and application at least thirty (30) days before beginning operations.

(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.

**310:661-2-4. 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 first-year license with an initial application fee of five hundred dollars (\$500.00) and a first-year license fee of one thousand five hundred dollars (\$1500.00) and five hundred dollars (\$500.00) for each alternate administrative office operated by the agency 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.

**SUBCHAPTER 3. ADMINISTRATION**

**310:661-3-2. Organization**

(a) **Organization and administration of services.** The hospice shall organize, manage, and administer its resources to provide the hospice care and services to patients, caregivers and families necessary for the palliation and management of the terminal illness and related conditions.

(b) **Serving the hospice patient and family.** The hospice shall provide hospice care that:

- (1) Optimizes comfort and dignity; and
- (2) Is consistent with patient and family needs and goals, with patient needs and goals as priority.

(c) **Continuation of care.** A hospice shall not discontinue or reduce care provided because of the inability to pay for that care.

(d) **Professional management responsibility.** A hospice that has a written agreement with another agency, individual, or organization to furnish any services under arrangement shall retain administrative and financial management, and oversight of staff and services for all arranged services, to ensure the provision of quality care. Arranged services shall be supported by written agreements that require that all services be:

- (1) Authorized by the hospice;
- (2) Furnished in a safe and effective manner by qualified personnel; and
- (3) Delivered in accordance with the patient's plan of care.

(ae) **Narrative program.** Each Hospice shall provide a narrative program with its application which describes the functions, staffing, services available to the patient and other basic information relating to the fulfillment of the facility's objectives.

(bf) **Governing body.** A hospice shall have a governing body that assumes full legal responsibility for determining, implementing and monitoring policies governing the total operations of the hospice. The governing body shall designate an individual who is responsible for the day-to-day management of the hospice program. The governing body shall also ensure that all services provided are consistent with accepted standards of practice.

(eg) **Hospice team.** A hospice team shall be developed and function according to the Act. The hospice team is responsible for:

- (1) Participation in the establishment of the plan of care.
- (2) Provision or supervision of hospice care and services.
- (3) Periodic review and updating of the plan of care for each individual receiving hospice care.

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(4) Implementation of policies governing the day-to-day provisions of hospice care and services.

(dh) **Medical director advisor.** The ~~medical director advisor~~ shall be a medical doctor or osteopathic physician and shall assume overall responsibility for the medical component of the patient care program for the hospice. The physician shall also serve as medical advisor to the hospice and shall possess a license free of sanctions. The medical advisor shall be a doctor of medicine or osteopathy who is an employee, or be under contract with the hospice. When the medical advisor is not available, a physician designated by the hospice assumes the same responsibilities and obligations as the medical advisor.

(1) **Medical advisor contract.** When contracting for medical advisor services, the contract shall specify the physician who assumes the medical advisor responsibilities and obligations. A hospice may contract with either of the following:

- (A) A self-employed physician; or
- (B) A physician employed by a professional entity or physicians group.

(2) **Initial certification of terminal illness.** The medical advisor or physician designee reviews the clinical information for each hospice patient and provides written certification that it is anticipated that the patient's life expectancy is one (1) year or less if the illness runs its normal course. The physician shall consider the following when making this determination:

- (A) The primary terminal condition;
- (B) Related diagnosis(es), if any;
- (C) Current subjective and objective medical findings;
- (D) Current medication and treatment orders; and
- (E) Information about the medical management of any of the patient's conditions unrelated to the terminal illness.

(3) **Medical advisor responsibility.** The medical advisor or physician designee has responsibility for the medical component of the hospice's patient care program.

(ei) **Patient care coordinator.** A registered nurse shall be appointed and approved by the hospice governing body and employed by the hospice as patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice team.

(fj) **Medical social services.** Medical social services shall be provided by a social worker employed by the hospice.

(gk) **Support services.** Support services shall be available to both the individual and the family. These services include bereavement support provided ~~after~~ before the patient's death, spiritual support and any other support or service needed by the patient or family. These services may be provided by members of the interdisciplinary group as well as other qualified professionals as determined by the hospice.

(l) **Training.**

(1) A hospice shall provide orientation about the hospice philosophy to all employees and contracted staff who have patient and family contact.

(2) A hospice shall provide an initial orientation for each employee that addresses the employee's specific job duties.

(3) A hospice shall assess the skills and competence of all individuals furnishing care, including volunteers furnishing services, and, as necessary, provide in-service training and education programs where required. The hospice shall have written policies and procedures describing its method(s) of assessment of competency and maintain a written description of the inservice training provided during the previous twelve(12) months.

(hm) **Volunteers.** Volunteers shall be used in defined roles and under the supervision of a designated hospice employee. The hospice shall provide appropriate orientation and training.

(1) **Training.** The hospice shall maintain, document, and provide volunteer orientation and training.

(2) **Role.** Volunteers shall be used in day-to-day administrative and/or direct patient care roles.

(3) **Recruiting and retaining.** The hospice shall document and demonstrate viable and ongoing efforts to recruit and retain volunteers.

(4) **Utilization.** The hospice shall document

(A) The identification of each position that is occupied by a volunteer.

(B) The work time spent by volunteers occupying those positions.

(n) **Criminal background checks.**

(1) The hospice shall obtain a criminal background check on all hospice employees who have direct patient contact or access to patient records. Hospice contracts shall require that all contracted entities obtain criminal background checks on contracted employees who have direct patient contact or access to patient records.

(2) Each such criminal background check shall meet the criteria established for certified nurse aides as provided for in O.S. Title 63 Section 1-1950.1. [The Nursing Home Care Act] shall be obtained in accordance with State requirements.

### **310:661-3-3.1. Clinical records**

(a) **General.** A clinical record containing past and current findings is maintained for each hospice patient. The clinical record shall contain accurate clinical information that is available to the patient's attending physician and hospice staff. The clinical record may be maintained electronically.

(b) **Content.** Each patient's record shall include at least the following:

(1) The initial plan of care, updated plans of care, initial assessment, comprehensive assessment, updated comprehensive assessments, and clinical notes;

(2) Signed copies of the notice of patient rights;

(3) Responses to medications, symptom management, treatments, and services;

(4) Outcome measure data elements, as described in 310:661-5-3.1;

(5) Physician certification of terminal illness;

(6) Any advance directives; and

(7) Physician orders.

- (c) **Authentication.** All entries shall be legible, clear, complete, and appropriately authenticated and dated in accordance with hospice policy.
- (d) **Protection of information.** The clinical record, its contents and the information contained therein shall be safeguarded against loss or unauthorized use. The hospice shall be in compliance with all Federal and State privacy laws.
- (e) **Discharge or transfer of care.**
  - (1) If the care of a patient is transferred to another licensed hospice, the hospice shall forward to the receiving hospice within twenty-four (24) hours, a copy of:
    - (A) The hospice discharge summary; and
    - (B) The patient's clinical record, as requested.
  - (2) If a patient revokes the election of hospice care, or is discharged from hospice, the hospice shall forward to the patient's attending physician within twenty-four (24) hours, a copy of:
    - (A) The hospice discharge summary; and
    - (B) The patient's clinical record, if requested.
  - (3) The hospice discharge summary as required above shall include:
    - (A) A summary of the patient's stay including treatments, symptoms and pain management;
    - (B) The patient's current plan of care;
    - (C) The patient's current physician orders; and
    - (D) Any other documentation that will assist in post-discharge continuity of care or that is requested by the attending physician or receiving hospice.
- (f) **Retrieval of clinical records.** The clinical record, whether hard copy or in electronic form, shall be made readily available on request.

SUBCHAPTER 5. MINIMUM STANDARDS

**310:661-5-1.1. Admission to hospice care**

- (a) The hospice admits a patient only on the recommendation of the medical advisor in consultation with, or with input from, the patient's attending physician (if any).
- (b) In reaching a decision to certify that the patient is terminally ill, the hospice medical advisor shall consider at least the following information:
  - (1) Diagnosis of the terminal condition of the patient;
  - (2) Other health conditions, whether related or unrelated to the terminal condition; and
  - (3) Current clinically relevant information supporting all diagnoses.

**310:661-5-1.2. Discharge from hospice care**

- (a) **Reasons for discharge.** A hospice may discharge a patient if:
  - (1) The patient moves out of the hospice's service area or transfers to another hospice;
  - (2) The hospice determines that the patient is no longer terminally ill; or
  - (3) The hospice determines, under a policy set by the hospice for the purpose of addressing discharge for

cause that meets the requirements of paragraphs (a)(3)(A) through (a)(3) (D) of this section, that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired. The hospice shall do the following before it seeks to discharge a patient for cause:

- (A) Advise the patient that a discharge for cause is being considered;
  - (B) Document efforts to resolve the problem(s) presented by the patient's behavior or situation;
  - (C) Ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; and
  - (D) Document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into its medical records.
- (b) **Discharge order.** Prior to discharging a patient for any reason listed in paragraph (a) of this section, the hospice must obtain a written physician's discharge order from the hospice medical advisor. If a patient has an attending physician involved in his or her care, this physician shall be consulted before discharge and his or her review and decision included in the discharge note.
  - (c) **Discharge planning.**
    - (1) The hospice shall have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change such that the patient cannot continue to be certified as terminally ill.
    - (2) The discharge planning process shall include planning for any necessary family counseling, patient education, or other services before the patient is discharged because he or she is no longer terminally ill.

**310:661-5-1.3. Initial and comprehensive assessment of the patient**

- (a) **General.** The hospice shall conduct and document in writing a patient-specific comprehensive assessment that identifies the patient's need for hospice care and services, and the patient's need for physical, psychosocial, emotional, and spiritual care. This assessment includes all areas of hospice care related to the palliation and management of the terminal illness and related conditions.
- (b) **Initial assessment.** The hospice registered nurse shall complete an initial assessment within forty-eight (48) hours after the physician's order for hospice care is received (unless the physician, patient, or representative requests that the initial assessment be completed in less than 48 hours.)
- (c) **Timeframe for completion of the comprehensive assessment.** The hospice interdisciplinary group, in consultation with the individual's attending physician (if any), shall complete the comprehensive assessment no later than five (5) calendar days after the election of hospice care .
- (d) **Content of the comprehensive assessment.** The comprehensive assessment shall identify the physical, psychosocial, emotional, and spiritual needs related to the terminal illness that shall be addressed in order to promote the

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hospice patient's well-being, comfort, and dignity throughout the dying process. The comprehensive assessment shall take into consideration the following factors:

- (1) The nature and condition causing admission (including the presence or lack of objective data and subjective complaints);
  - (2) Complications and risk factors that affect care planning;
  - (3) Functional status, including the patient's ability to understand and participate in his or her own care;
  - (4) Imminence of death;
  - (5) Severity of symptoms;
  - (6) A review of all of the patient's prescription and over-the-counter drugs, herbal remedies and other alternative treatments that could affect drug therapy. This includes, but is not limited to, identification of the following:
    - (A) Effectiveness of drug therapy;
    - (B) Drug side effects;
    - (C) Actual or potential drug interactions;
    - (D) Duplicate drug therapy; and
    - (E) Drug therapy currently associated with laboratory monitoring.
  - (7) An initial bereavement assessment of the needs of the patient's family and other individuals focusing on the social, spiritual, and cultural factors that may impact their ability to cope with the patient's death. Information gathered from the initial bereavement assessment shall be incorporated into the plan of care and considered in the bereavement plan of care; and
  - (8) The need for referrals and further evaluation by appropriate health professionals.
- (e) **Update of the comprehensive assessment.** The update of the comprehensive assessment shall be accomplished by the hospice interdisciplinary group (in collaboration with the individual's attending physician, if any) and shall consider changes that have taken place since the initial assessment. It shall include information on the patient's progress toward desired outcomes, as well as a reassessment of the patient's response to care. The assessment update shall be accomplished as frequently as the condition of the patient requires, but no less frequently than every fifteen(15) days.
- (f) **Patient outcome measures.**
- (1) The comprehensive assessment shall include data elements that allow for measurement of outcomes. The hospice shall measure and document data in the same way for all patients. The data elements shall take into consideration aspects of care related to hospice and palliation.
  - (2) The data elements shall be an integral part of the comprehensive assessment and shall be documented in a systematic and retrievable way for each patient. The data elements for each patient shall be used in individual patient care planning and in the coordination of services, and shall be used in the aggregate for the hospice's quality assessment and performance improvement program.

### **310:661-5-2. Plan of care**

- (a) A written plan of care shall be established and maintained for each patient admitted to a hospice program and the

care provided to an individual shall be in accordance with the plan.

- (b) The plan shall be established by the attending physician, the medical advisor, and the interdisciplinary group.
- (c) The plan of care shall be reviewed and updated by the hospice team at intervals specified in the plan. These reviews shall be documented by the team members.
- (d) The content of the plan shall include an assessment of the patient's needs and identify the services provided. The plan shall state in detail the scope and frequency of services needed to meet the patient's and family's needs.
- (e) Continuous care shall be provided under a plan of care that shall be developed specifically to resolve the patient's medical crisis. These plans shall include:
  - (1) Caregiver education;
  - (2) Anticipated duration of the continuous care;
  - (3) Necessity of continuous care;
  - (4) Interventions required;
  - (5) Identification of interdisciplinary team members developing the plan; and,
  - (6) Physician orders for continuous care.

### **310:661-5-2.1. Interdisciplinary group, care planning, and coordination of services**

- (a) **General.** The hospice shall designate an interdisciplinary group or groups which, in consultation with the patient's attending physician, shall prepare a written plan of care for each patient. The plan of care shall specify the hospice care and services necessary to meet the patient and family-specific needs identified in the comprehensive assessment as such needs relate to the terminal illness and related conditions.
- (b) **Approach to service delivery.**
- (1) The hospice shall designate in writing an interdisciplinary group or groups composed of individuals who work together to meet the physical, medical, psychosocial, emotional, and spiritual needs of the hospice patients and families facing terminal illness and bereavement. Interdisciplinary group members shall provide the care and services offered by the hospice, and the group, in its entirety, shall supervise the care and services. The hospice shall designate a registered nurse that is a member of the interdisciplinary group to provide coordination of care and to ensure continuous assessment of each patient's and family's needs and implementation of the interdisciplinary plan of care. The interdisciplinary group shall include, but is not limited to, individuals who are qualified and competent to practice in the following professional roles:
    - (A) A doctor of medicine or osteopathy (who is an employee or under contract with the hospice);
    - (B) A registered nurse;
    - (C) A social worker; and
    - (D) A pastoral or other counselor.
  - (2) If the hospice has more than one interdisciplinary group, it shall identify a specifically designated interdisciplinary group to establish policies governing the day-to-day provision of hospice care and services.

(c) **Plan of care.** All hospice care and services furnished to patients and their families shall follow an individualized written plan of care established by the hospice interdisciplinary group in collaboration with the attending physician (if any), the patient or representative, and the primary caregiver in accordance with the patient's needs. The hospice shall ensure that each patient and the primary care giver(s) receive education and training provided by the hospice as appropriate to their responsibilities for the care and services identified in the plan of care.

(d) **Content of the plan of care.** The hospice shall develop an individualized written plan of care for each patient. The plan of care shall reflect patient and family goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments. The plan of care shall include all services necessary for the palliation and management of the terminal illness and related conditions, including at least the following:

- (1) Interventions to manage pain and symptoms;
- (2) A detailed statement of the scope and frequency of services necessary to meet the specific patient and family needs;
- (3) Measurable outcomes anticipated from implementing and coordinating the plan of care;
- (4) Drugs and treatment necessary to meet the needs of the patient;
- (5) Medical supplies and appliances necessary to meet the needs of the patient; and
- (6) The interdisciplinary group's documentation of the patient's or representative's level of understanding, involvement, and agreement with the plan of care, in accordance with the hospice's own policies, in the clinical record.

(e) **Review of the plan of care.** The hospice interdisciplinary group (in collaboration with the individual's attending physician, if any) shall review, revise and document the individualized plan as frequently as the patient's condition requires, but no less frequently than every fifteen (15) calendar days. A revised plan of care shall include information from the patient's updated comprehensive assessment and shall note the patient's progress toward outcomes and goals specified in the plan of care.

(f) **Coordination of services.** The hospice shall develop and maintain a system of communication and integration, in accordance with the hospice's own policies and procedures, to:

- (1) Ensure that the interdisciplinary group maintains responsibility for directing, coordinating, and supervising the care and services provided;
- (2) Ensure that the care and services are provided in accordance with the plan of care;
- (3) Ensure that the care and services provided are based on all assessments of the patient and family needs;
- (4) Provide for and ensure the ongoing sharing of information between all disciplines providing care and services in all settings, whether the care and services are provided directly or under arrangement; and
- (5) Provide for an ongoing sharing of information with other non-hospice healthcare providers furnishing

services unrelated to the terminal illness and related conditions.

### **310:661-5-2.2. Core Services**

(a) **General.** A hospice shall provide substantially all core services directly by hospice trained and oriented employees. These services include nursing services, medical social services, and bereavement and spiritual counseling. The hospice may contract for physician services.

(b) **Physician services.** The hospice medical advisor, physician employees, and contracted physician(s) of the hospice, in conjunction with the patient's attending physician, are responsible for the palliation and management of the terminal illness and conditions related to the terminal illness.

(1) All physician employees and those under contract, shall function under the supervision of the hospice medical advisor.

(2) All physician employees and those under contract shall meet this requirement by either providing the services directly or through coordinating patient care with the attending physician.

(3) If the attending physician is unavailable, the medical advisor, contracted physician, and/or hospice physician employee is responsible for meeting the medical needs of the patient.

(c) **Nursing services.**

(1) The hospice shall provide nursing care by licensed nurses under the supervision of a registered nurse. Nursing services shall ensure that the nursing needs of the patient are met as identified in the patient's initial assessment, comprehensive assessment, and updated assessments.

(2) If State law permits registered nurses to see, treat, and write orders for patients, then registered nurses may provide services to patients receiving hospice care.

(3) Highly specialized nursing services that are provided so infrequently that the provision of such services by direct hospice employees would be impracticable and prohibitively expensive, may be provided under contract.

(d) **Medical social services.** Medical social services shall be provided by a qualified social worker, under the direction of a physician. Social work services shall be based on the patient's psychosocial assessment and the patient's and family's needs and acceptance of these services.

(e) **Counseling services.** Counseling services shall be available to the patient and family to assist the patient and family in minimizing the stress and problems that arise from the terminal illness, related conditions, and the dying process. Counseling services shall include, but are not limited to, the following:

(1) **Bereavement counseling.** The hospice shall:

(A) Have an organized program for the provision of bereavement services furnished under the supervision of a qualified professional with experience or education in grief or loss counseling;

(B) Make bereavement services available to the family and other individuals in the bereavement plan of care up to one (1) year following the death of

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the patient. Bereavement counseling also extends to residents of a care facility when appropriate and identified in the bereavement plan of care;

(C) Ensure that bereavement services reflect the needs of the bereaved; and

(D) Develop a bereavement plan of care that notes the kind of bereavement services to be offered and the frequency of service delivery.

(2) **Dietary counseling.** Dietary counseling, when identified in the plan of care, shall be performed by a qualified individual, which include dietitians as well as nurses and other individuals who are able to address and assure that the dietary needs of the patient are met.

(3) **Spiritual counseling.** The hospice shall:

(A) Provide an assessment of the patient's and family's spiritual needs;

(B) Provide spiritual counseling to meet these needs in accordance with the patient's and family's acceptance of this service, and in a manner consistent with patient and family beliefs and desires;

(C) Make all reasonable efforts to facilitate visits by local clergy, pastoral counselors, or other individuals who can support the patient's spiritual needs to the best of its ability; and

(D) Advise the patient and family of this service.

### **310:661-5-2.3. Physical therapy, occupational therapy, speech-language pathology**

Physical therapy services, occupational therapy services, and speech-language pathology services shall be available.

### **310:661-5-2.4. Licensed Professional Services**

(a) Licensed professional services provided directly or under arrangement shall be authorized, delivered, and supervised only by health care professionals who meet the appropriate qualifications specified by the State and who practice under the hospice's policies and procedures.

(b) Licensed professionals shall actively participate in the coordination of all aspects of the patient's hospice care, in accordance with current professional standards and practice, including participating in ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care, and contributing to patient and family counseling and education.

(c) Licensed professionals shall participate in the hospice's quality assessment and performance improvement program and hospice sponsored in-service training.

### **310:661-5-3.1. Quality Assessment/Performance Improvement**

(a) The hospice shall develop, implement, and maintain an effective, ongoing, hospice-wide data-driven quality assessment and performance improvement program. The hospice's governing body shall ensure that the program: Reflects the complexity of its organization and services; involves all hospice services (including those services furnished under contract or arrangement); focuses on indicators

related to improved palliative outcomes; and takes actions to demonstrate improvement in hospice performance. The hospice shall maintain documentary evidence of its quality assessment and performance improvement program and be able to demonstrate its operation to the Department of Health.

(b) **Program scope.**

(1) The program shall at least be capable of showing measurable improvement in indicators related to improved palliative outcomes and hospice services.

(2) The hospice shall measure, analyze, and track quality indicators, including adverse patient events, and other aspects of performance that enable the hospice to assess processes of care, hospice services, and operations.

(c) **Program data.**

(1) The program shall use quality indicator data, including patient care, and other relevant data, in the design of its program.

(2) The hospice shall use the data collected to do the following:

(A) Monitor the effectiveness and safety of services and quality of care; and

(B) Identify opportunities and priorities for improvement.

(3) The frequency and detail of the data collection shall be approved by the hospice's governing body.

(d) **Program activities.**

(1) The hospice's performance improvement activities shall:

(A) Focus on high risk, high volume, or problem-prone areas;

(B) Consider incidence, prevalence, and severity of problems in those areas; and

(C) Affect palliative outcomes, patient safety, and quality of care.

(2) Performance improvement activities shall track adverse patient events, analyze their causes, and implement preventive actions and mechanisms that include feedback and learning throughout the hospice.

(3) The hospice shall take actions aimed at performance improvement and, after implementing those actions, the hospice shall measure its success and track performance to ensure that improvements are sustained.

(e) **Performance improvement projects.** Hospices shall develop, implement, and evaluate performance improvement projects.

(1) The number and scope of distinct performance improvement projects conducted annually, based on the needs of the hospice's population and internal organizational needs, shall reflect the scope, complexity, and past performance of the hospice's services and operations.

(2) The hospice shall document what performance improvement projects are being conducted, the reasons for conducting these projects, and the measurable progress achieved on these projects.

(f) **Executive responsibilities.** The hospice's governing body is responsible for ensuring the following:

- (1) That an ongoing program for quality improvement and patient safety is defined, implemented, and maintained, and is evaluated annually;
- (2) That the hospice-wide quality assessment and performance improvement efforts address priorities for improved quality of care and patient safety, and that all improvement actions are evaluated for effectiveness; and
- (3) That one or more individual(s) who are responsible for operating the quality assessment and performance improvement program are designated.

**310:661-5-4.1. Additional rights of the patient**

(a) **General.** The patient has the right to be informed of his or her rights, and the hospice shall protect and promote the exercise of these rights.

(b) **Notice of rights and responsibilities.**

- (1) During the initial assessment visit in advance of furnishing care the hospice shall provide the patient or representative with verbal (meaning spoken) and written notice of the patient's rights and responsibilities in a language and manner that the patient understands.
- (2) The hospice shall inform and distribute written information to the patient concerning its policies on advance directives, including a description of applicable State law.
- (3) The hospice shall obtain the patient's or representative's signature confirming that he or she has received a copy of the notice of rights and responsibilities.

(c) **Exercise of rights and respect for property and person.**

- (1) The patient has the right:
  - (A) To exercise his or her rights as a patient of the hospice;
  - (B) To have his or her property and person treated with respect;
  - (C) To voice grievances regarding treatment or care that is (or fails to be) furnished and the lack of respect for property by anyone who is furnishing services on behalf of the hospice; and
  - (D) To not be subjected to discrimination or reprisal for exercising his or her rights.
- (2) If a patient has been adjudged incompetent under state law by a court of proper jurisdiction, the rights of the patient are exercised by the person appointed pursuant to state law to act on the patient's behalf.
- (3) If a state court has not adjudged a patient incompetent, any legal representative designated by the patient in accordance with state law may exercise the patient's rights to the extent allowed by state law.
- (4) The hospice shall:
  - (A) Ensure that all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone furnishing services on behalf of the hospice, are reported immediately by hospice employees and contracted staff to the hospice administrator;
  - (B) Immediately investigate all alleged violations involving anyone furnishing services on behalf of the

hospice and immediately take action to prevent further potential violations while the alleged violation is being verified. Investigations and/or documentation of all alleged violations shall be conducted in accordance with established procedures;

(C) Take appropriate corrective action in accordance with state law if the alleged violation is verified by the hospice administration or an outside body having jurisdiction, such as the State survey agency or local law enforcement agency; and

(D) Ensure that verified violations are reported to State and local bodies having jurisdiction (including to the State survey and certification agency) within 5 working days of becoming aware of the violation.

(d) **Rights of the patient.** The patient has a right to the following:

- (1) Receive effective pain management and symptom control from the hospice for conditions related to the terminal illness;
- (2) Be involved in developing his or her hospice plan of care;
- (3) Refuse care or treatment;
- (4) Choose his or her attending physician;
- (5) Have a confidential clinical record. Access to or release of patient information and clinical records is permitted in accordance with State and Federal law.
- (6) Be free from mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property;
- (7) Receive information about the services covered under the hospice benefit; and
- (8) Receive information about the scope of services that the hospice will provide and specific limitations on those services.

**310:661-5-6. Infection Control**

(a) **General.** The hospice shall maintain and document an effective infection control program that protects patients, families, visitors, and hospice personnel by preventing and controlling infections and communicable diseases.

(b) **Prevention.** The hospice shall follow accepted standards of practice to prevent the transmission of infections and communicable diseases, including the use of standard precautions.

(c) **Control.** The hospice shall maintain a coordinated agency-wide program for the surveillance, identification, prevention, control, and investigation of infectious and communicable diseases that:

- (1) Is an integral part of the hospice's quality assessment and performance improvement program; and
- (2) Includes the following:
  - (A) A method of identifying infectious and communicable disease problems; and
  - (B) A plan for implementing the appropriate actions that are expected to result in improvement and disease prevention.

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(d) **Education.** The hospice shall provide infection control education to employees, contracted providers, patients, and family members and other caregivers.

### **310:661-5-7. Supervision of hospice aides**

(a) A registered nurse shall make an on-site visit to the patient's home:

(1) No less frequently than every fourteen (14) calendar days to assess the quality of care and services provided by the hospice aide and to ensure that services ordered by the hospice interdisciplinary group meet the patient's needs. The hospice aide does not have to be present during this visit.

(2) If an area of concern is noted by the supervising nurse, then the hospice shall make an on-site visit to the location where the patient is receiving care in order to observe and assess the aide while he or she is performing care.

(3) If an area of concern is verified by the hospice during the on-site visit, then the hospice shall conduct, and the hospice aide shall complete a competency evaluation.

(b) A registered nurse shall make an annual on-site visit to the location where a patient is receiving care in order to observe and assess each aide while he or she is performing care.

(c) The supervising nurse shall assess an aide's ability to demonstrate initial and continued satisfactory performance in meeting outcome criteria that include, but is not limited to:

(1) Following the patient's plan of care for completion of tasks assigned to the hospice aide by the registered nurse;

(2) Creating successful interpersonal relationships with the patient and family;

(3) Demonstrating competency with assigned tasks;

(4) Complying with infection control policies and procedures; and

(5) Reporting changes in the patient's condition.

### **310:661-5-8. Drugs and Biologicals, Medical Supplies, Durable Medical Equipment**

(a) **General.** Medical supplies and appliances; durable medical equipment; and drugs and biologicals related to the palliation and management of the terminal illness and related conditions, as identified in the hospice plan of care, shall be provided by the hospice while the patient is under hospice care.

(b) **Managing drugs and biologicals.**

(1) The hospice shall ensure that the interdisciplinary group confers with an individual with education and training in drug management as defined in hospice policies and procedures and State law, who is an employee of or under contract with the hospice to ensure that drugs and biologicals meet each patient's needs.

(2) A hospice that provides inpatient care directly in its own facility shall provide pharmacy services under the direction of a qualified licensed pharmacist who is an employee of or under contract with the hospice. The provided

pharmacist services shall include evaluation of a patient's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.

(c) **Ordering of drugs.**

(1) Only a licensed independent practitioner with prescriptive authority, in accordance with the plan of care and State law, may order drugs for the patient.

(2) If the drug order is verbal or given by or through electronic transmission:

(A) It shall be given only to a licensed health care practitioners within their scope of practice under state law and authorized by hospice policy to receive verbal orders; and

(B) The individual receiving the order shall record and sign it immediately and have the prescribing person sign it in accordance with State and Federal regulations.

(d) **Dispensing of drugs and biologicals.** The hospice shall obtain drugs and biologicals from community or institutional pharmacists or stock drugs and biologicals itself.

(e) **Administration of drugs and biologicals.** The interdisciplinary group, as part of the review of the plan of care, shall determine the ability of the patient and/or family to safely self-administer drugs and biologicals to the patient in his or her home.

(f) **Labeling, disposing, and storing of drugs and biologicals.**

(1) **Labeling.** Drugs and biologicals shall be labeled in accordance with currently accepted professional practice and shall include appropriate usage and cautionary instructions, as well as an expiration date (if applicable).

(2) **Disposing.** The hospice shall have written policies and procedures for the management and disposal of controlled drugs in the patient's home. At the time when controlled drugs are first ordered the hospice shall:

(A) Provide a copy of the hospice written policies and procedures on the management and disposal of controlled drugs to the patient or patient representative and family;

(B) Discuss the hospice policies and procedures for managing the safe use and disposal of controlled drugs with the patient or representative and the family in a language and manner that they understand to ensure that these parties are educated regarding the safe use and disposal of controlled drugs; and

(C) Document in the patient's clinical record that the written policies and procedures for managing controlled drugs was provided and discussed.

(g) **Use and maintenance of equipment and supplies.**

(1) The hospice shall ensure that manufacturer recommendations for performing routine and preventive maintenance on durable medical equipment are followed. The equipment shall be safe and work as intended for use in the patient's environment. Where a manufacturer recommendation for a piece of equipment does not exist, the hospice shall ensure that repair and routine maintenance policies

are developed. The hospice may use persons under contract to ensure the maintenance and repair of durable medical equipment.

(2) The hospice shall ensure that the patient, where appropriate, as well as the family and/or other caregiver(s), receive instruction in the safe use of durable medical equipment and supplies. The hospice may use persons under contract to ensure patient and family instruction. The patient, family, and/or caregiver shall be able to demonstrate the appropriate use of durable medical equipment to the satisfaction of the hospice staff.

**310:661-5-9. Short-term inpatient care**

(a) Inpatient care shall be available for pain control, symptom management, and respite purposes.

(b) If the hospice has an arrangement with another facility to provide for short-term inpatient care, the arrangement is described in a written agreement, coordinated by the hospice, and at a minimum specifies:

(1) That the hospice supplies the inpatient provider a copy of the patient's plan of care and specifies the inpatient services to be furnished;

(2) That the inpatient provider has established patient care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its patients;

(3) That the hospice patient's inpatient clinical record includes a record of all inpatient services furnished and events regarding care that occurred at the facility; that a copy of the discharge summary be provided to the hospice at the time of discharge; and that a copy of the inpatient clinical record is available to the hospice at the time of discharge;

(4) That the inpatient facility has identified an individual within the facility who is responsible for the implementation of the provisions of the agreement; and

(5) That the hospice retains responsibility for ensuring that the training of personnel who will be providing the patient's care in the inpatient facility has been provided and that a description of the training and the names of those giving the training are documented.

**SUBCHAPTER 6. HOSPICE INPATIENT SERVICE REQUIREMENTS**

**310:661-6-7. Pharmaceutical services**

(a) The hospice inpatient facility shall provide appropriate methods and procedures for dispensing and administering drugs and biologicals. Whether drugs and biologicals are obtained from community or institutional pharmacies or maintained and stocked by the facility, the facility shall be responsible for the pharmaceutical services and ensure services are provided in accordance with accepted professional standards of practice in compliance with Federal, State, and local laws.

(b) Each facility shall employ or contract with a licensed pharmacist to supervise services and ensure drugs and biologicals are obtained, stored, administered and disposed of as required by Federal and State law.

(c) A physician or licensed independent practitioner shall order all medications for each patient. If the physician or practitioner's order is verbal, the physician or practitioner shall give the order to a licensed nurse or other individual authorized by State law to receive the order. The individual receiving the order shall record and sign the order immediately and have the prescribing physician or practitioner sign as soon as possible in a manner consistent with good medical practice. Another covering or attending physician or practitioner may sign another physician or practitioner's verbal order if the facility allows this practice and specific procedures are approved by the governing body to permit the practice. If a covering or attending physician or practitioner authenticates the ordering physician or practitioner's verbal order, such an authentication indicates that the covering or attending physician or practitioner assumes responsibility for his or her colleague's order and verifies the order is complete, accurate, appropriate, and final.

(d) Drugs and biologicals shall be administered only by a physician, licensed nurse, an individual authorized by State law to administer, or the patient if his or her attending physician has approved.

(e) The pharmaceutical service shall have procedures for control and accountability of all drugs and biologicals in the facility. Drugs are dispensed in compliance with Federal and State law. Records of receipt and disposition of all controlled drugs are maintained in sufficient detail to enable an accurate reconciliation. The pharmacist shall ensure the drug records are in order and that an account of all controlled drugs is maintained and reconciled.

(f) The labeling of drugs and biologicals is based on currently accepted professional principles in compliance with State law, and includes the appropriate accessory and cautionary instructions, as well as the expiration date and lot number when applicable.

(g) All drugs and biologicals shall be stored in locked compartments under proper temperature controls. Only authorized personnel shall have access. Separately locked compartments shall be provided for storage of Schedule II controlled drugs. All stores of Schedule II drugs not individually dispensed to a patient shall be accounted for at regular intervals to ensure the drugs are not diverted.

(h) If the facility only maintains drugs and biologicals by individual patient prescription, an emergency medication kit approved by the Medical ~~director~~ advisor shall also be maintained.

(i) Controlled drugs no longer needed by the patient shall be disposed of in compliance with Federal and State requirements. The pharmacist and a facility registered nurse or two (2) facility registered nurses shall document disposal and maintain a record.

[OAR Docket #09-1004; filed 5-20-09]

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

[OAR Docket #09-1005]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Compliance with Federal, State, and Local Laws

310:667-5-4 [AMENDED]

Subchapter 59. Classification of Hospital Emergency Services

310:667-59-1 [AMENDED]

310:667-59-3 [AMENDED]

310:667-59-5 [AMENDED]

310:667-59-20 [NEW]

### AUTHORITY:

Oklahoma State Board of Health; 63 O.S. Sections 1-104, 1-705, and 1-707.

### DATES:

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#### Public hearing:

March 12, 2009

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March 23, 2009

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Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2009

#### Final adoption:

May 15, 2009

#### Effective:

June 25, 2009

### SUPERSEDED EMERGENCY ACTIONS:

N/A

### INCORPORATION BY REFERENCE:

N/A

### ANALYSIS:

310:667-5-4. The current rule outlines the requirements licensed hospitals must meet related to "Employee and/or worker health examinations" in order to establish an environment that will help protect hospital patients and staff from the risks associated with some common vaccine preventable diseases and tuberculosis. This proposal adds a requirement that hospitals implement an annual influenza vaccination program and offer influenza vaccine to all hospital workers onsite at no cost to the worker when seasonally appropriate. Hospitals would also be required to obtain a signed declination statement from each employee who does not have a medical contraindication yet chooses to decline the influenza vaccine. This rule is necessary to help protect vulnerable patients and hospital staff from being exposed to the influenza virus during influenza season and will help to improve health care worker influenza vaccination rates.

310:667-59. The proposal amends three rules and adds a new rule in SUBCHAPTER 59. CLASSIFICATION OF HOSPITAL EMERGENCY SERVICES, in order to establish classification standards for "Primary Stroke Center" and "Secondary Stroke Facility." These standards are intended to stratify hospitals into those hospitals capable of administering an intravenous thrombolytic agent within three hours of the onset of ischemic stroke symptoms and those hospitals that are not able to provide this therapeutic intervention for stroke.

The rules allow OSDH to recognize verification as a Primary Stroke Center by The Joint Commission (formerly known as the Joint Commission for Accreditation of Healthcare Organizations or JCAHO) for the purposes of state classification. The proposed rule requires a Primary Stroke Center to provide an organized emergency department with a physician on call and immediately available; an identified stroke team with documented response time criteria;

standard practice protocols specifying the appropriate administration of an FDA-approved thrombolytic agent within sixty minutes of the arrival of the patient at the emergency department; the availability of computerized tomography diagnostic imaging services and certain laboratory services twenty-four hours a day; as well as the availability of certain supplies and equipment.

These proposed amendments are the first steps in creating an organized system of stroke care in Oklahoma and will help ensure that those patients whose onset of ischemic stroke symptoms is recognized immediately are directed to a hospital willing and able to provide peripheral thrombolytic therapy in order to provide the patient with the greatest chance of achieving a positive outcome.

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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, 2009:**

## SUBCHAPTER 5. COMPLIANCE WITH FEDERAL, STATE, AND LOCAL LAWS

### 310:667-5-4. Employee and/or worker health examinations

(a) **Pre-employment.** Each employee and/or worker (with or without patient care responsibilities, paid or volunteer, full-time or part-time: physicians, nurses, emergency medical personnel, dental professionals and students, medical and nursing students, laboratory and pharmacy workers, hospital volunteers, and administrative staff, including food service workers) in the hospital shall have a pre-employment health examination, which shall include (but not be limited to):

(1) An immunization history shall be part of each pre-employment examination or application for hospital privileges. The immunization history shall include documentation of immunity to measles, mumps, rubella and varicella.

(A) Birth before 1957 is considered acceptable evidence of immunity to measles, mumps, and rubella, with the exception that birth before 1957 is not acceptable evidence of immunity to rubella for female employees and/or workers born before 1957 who can become pregnant.

(B) Persons born in 1957 or later can be considered immune to measles, mumps or rubella only if they have documentation of one of the following:

(i) measles or mumps disease diagnosed by a physician or licensed independent practitioner;

(ii) laboratory evidence of measles, mumps, or rubella immunity; or

(iii) vaccination on or after the first birthday with two doses of live measles vaccine separated by at least 28 days, at least one dose of live mumps vaccine, and at least one dose of live rubella vaccine.

(C) Persons can be considered immune to varicella if they have a reliable history of having had varicella or if they have received one dose of varicella vaccine on or after the first birthday prior to the 13th birthday, or two doses of varicella vaccine separated by at least 28 days on or after the 13th birthday.

(D) Serologic screening need not be done before vaccinating against measles, mumps, rubella and varicella unless the facility considers it cost-effective.

(E) Serologic screening is not necessary for persons who have documentation of appropriate vaccination or other acceptable evidence of immunity to measles, mumps, rubella, and varicella. (F) Contraindications to MMR or varicella vaccines should be followed.

(2) A tuberculin skin test utilizing the Mantoux technique shall be included as part of the pre-employment health examination or application for hospital privileges. Only a previous reactive tuberculin skin test or documented evidence of tuberculin skin testing within the previous twelve (12) months as a part of another licensed health care facility's tuberculosis control program would negate this requirement. If PPD (Purified Protein Derivative) is less than 10 mm., repeat PPD in one to two (1-2) weeks, if it has been more than a year since the employee's and/or worker's last non-reactive tuberculin test (Booster Effect). A history of vaccination with BCG (Bacillus of Calmette and Guerin) does not preclude initial tuberculin skin testing, and a reaction of ten (10) mm. or more should be managed in the same manner as it would be in a patient with no history of BCG vaccination.

(3) Hepatitis B vaccine shall be offered consistent with 29 CFR Section 1910.1030 (Occupational Exposure to Bloodborne Pathogens).

(4) Each hospital shall meet Occupational Safety and Health Act standards applicable to the facility.

(b) **Periodic health examinations.** A tuberculin skin test utilizing the Mantoux technique shall be repeated at regular intervals on those employees and/or workers who have potential for exposure to *Mycobacterium tuberculosis* unless the employee and/or worker has a previous documented reactive skin test on file. Such periodic tuberculin skin testing shall be part of a documented tuberculosis control program that is based on a facility-specific risk assessment that considers at a minimum: the type and size of the facility, the prevalence of tuberculosis in the community, the patient population served by the facility, the occupational group the person represents, the area of the facility where the person works, and the effectiveness of the facility's tuberculosis control program. The following guidelines shall be used for the information and education of facilities with regard to their tuberculosis control program: "Centers for Disease Control and Prevention. Guidelines for preventing the transmission of *Mycobacterium tuberculosis* in health care facilities, 1994. MMWR 1994;43(No. RR-13)".

(1) Follow-up examinations for employees and/or workers who react significantly to a tuberculin skin test shall be conducted.

(2) Employees and/or workers with an initial negative chest x-ray, whether they take appropriate preventive therapy (treatment of latent tuberculosis infection) or not, shall be exempt from yearly, routine chest x-rays unless signs or symptoms suggestive of tuberculosis develop.

(3) Employees and/or workers with a documented reactive skin test and a proven negative chest x-ray, whether they have taken appropriate preventive therapy (treatment of latent tuberculosis infection) or not, shall be exempt from yearly, routine chest x-rays unless signs or symptoms suggestive of tuberculosis develop.

(4) Employees and/or workers with documented prior reactive tuberculin skin tests shall be seen yearly by medical personnel to determine if signs or symptoms are present. The results of such examinations shall be recorded on the individual employee's and/or worker's health record.

(c) **Interim health examinations.** Employees and/or workers, when found to be likely to transmit a communicable disease as determined by a physician or licensed independent practitioner, shall be removed from patient contact duties, consistent with state and federal laws, until such time as a physician or licensed independent practitioner certifies that the risk of transmission of communicable disease is within acceptable limits as defined by the infection control program in its written policies and procedures.

(d) **Follow-up examinations.** Follow-up of an employee and/or workers, who, while employed at the facility, is a contact to active tuberculosis:

(1) An employee and/or worker who is a known tuberculosis contact shall have a tuberculin skin test. If this test is reactive for the first time, the individual shall have a chest x-ray. If the individual with a reactive skin test does not take preventive medication (treatment of latent tuberculosis infection), the employee and/or worker shall be monitored.

(2) If an employee and/or worker is a known, recent tuberculosis contact, he or she shall have a tuberculin skin test and, if non-reactive, and if the individual is asymptomatic for tuberculosis, then a repeat tuberculin skin test shall be done in three (3) months. If the employee and/or worker is symptomatic, an x-ray shall be done immediately.

(3) If an employee and/or worker is a contact to active tuberculosis and has a documented previous reactive skin test, he or she shall be exempt from yearly, routine x-rays unless signs or symptoms develop suggestive of tuberculosis.

(e) **Annual influenza vaccination program.** Each hospital shall have an annual influenza vaccination program consistent with the recommendations of the Centers for Disease Control and Prevention Advisory Committee on Immunization Practices that shall include at least the following:

(1) The offer of influenza vaccination onsite, at no charge to all employees and/or workers in the hospital or acceptance of documented evidence of current season vaccination from another vaccine source or hospital;

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(2) Documentation of vaccination for each employee and/or worker or a signed declination statement on record from each individual who refuses the influenza vaccination for other than medical contraindications; and

(3) Education of all employees and/or workers about the following:

(A) Influenza vaccination;

(B) Non-vaccine influenza control measures; and

(C) The symptoms, transmission, and potential impact of influenza.

(4) Each hospital influenza vaccination program shall conduct an annual evaluation of the program including the reasons for non-participation.

(5) The requirements to complete vaccinations or declination statements for each employee and/or worker may be suspended by the hospital's medical staff executive in the event of a shortage of vaccine as recognized by the Commissioner of Health.

(ef) **Health examination records.** A file shall be maintained for each employee and/or worker, containing the results of the evaluations and examinations specified at OAC 310:667-5-4 (a) through (d) and the dates of illnesses as relate to employment.

(fg) **Credentialing records.** For credentialed non-employee workers, including physicians, hospitals may meet these requirements if as part of the credentialing process such workers provide evidence of an immunization history and tuberculin skin test, consistent with the tuberculosis control program required at 310:667-5-4(b), in the form of a signed attestation statement from the non-employee worker that documents the worker's immunization history and the date and results of the latest tuberculin skin test.

### SUBCHAPTER 59. CLASSIFICATION OF HOSPITAL EMERGENCY SERVICES

#### 310:667-59-1. General

(a) All hospitals that treat emergency patients shall identify the extent of the stabilizing and definitive emergency services they provide. For each of the clinical areas listed in OAC 310:667-59-7 for which a hospital provides emergency services, the hospital shall designate which classification level of service it provides.

(b) All hospitals shall participate in the state-wide trauma ~~and stroke registries~~ registry and shall submit data on stroke and trauma related injury and illness to the Department as required. Hospitals shall submit data on the other emergency medical services they provide as required by the Department as the data collection tools to capture this information become available.

#### 310:667-59-3. Inspections and deemed status

(a) All hospitals required to have a license are subject to inspection by Department staff in accordance with OAC 310:667-1-4.

(b) The Commissioner shall designate representatives to verify a hospital's emergency services are accurately classified for trauma and emergency operative services Levels II, III and IV, and all other classified emergency services. Survey teams for facilities providing trauma and emergency operative services at Levels II and III shall include a physician. If it is determined a hospital does not meet the requirements for a service to be classified at the Level reported on the Emergency Medical Services Classification Report (ODH Form 911), the Department shall classify that service at the next lowest Level where all requirements are met.

(c) Hospitals holding current verification as a Level I or Level II trauma center issued after an on-site review of their trauma services by a verification team from the American College of Surgeons Committee on Trauma (ACS COT) shall be deemed to meet the classification requirements for Trauma and Emergency Operative Services listed in OAC 310:667-59-9(c) or OAC 310:667-59-9(d). Such hospitals shall be classified by the Department as providing definitive trauma and emergency operative services at either classification Level I or Level II as reported by the ACS based on the provisions of this Subchapter.

(d) The services provided by hospitals classified at Level II for Trauma and Emergency Operative Services may be verified by either ACS COT surveyors or other representatives deemed qualified by the Commissioner.

(e) Only hospitals holding current verification as a Level I trauma center after an on-site review of their trauma services by a verification team from the ACS COT according to the standards at OAC 310:667-59-9(d) shall be classified at Level I for trauma and emergency operative services.

(f) The Department may grant Primary Stroke Center classification to hospitals holding current verification as a Primary Stroke Center issued after an on-site review of their emergency stroke services by a verification team from The Joint Commission. Such classification shall also be granted to hospitals that meet the requirements of a Primary Stroke Center as specified at OAC 310:607-59-20 (relating to the classification of emergency stroke services) and verified by Department staff.

#### 310:667-59-5. Notification

(a) Each hospital shall notify the regional emergency medical services system control when treatment services are at maximum capacity and that emergency patients should be diverted to another hospital (divert status). If the hospital is located in an area in which no regional emergency medical services system control is active, the hospital shall notify each entity providing emergency medical services, such as ambulance services, in their catchment area. Each hospital shall maintain written records documenting the date and time of the start and end of each interval of divert status.

(b) Each hospital shall develop and maintain written criteria that describe the conditions under which any one or all of the hospital's emergency services are deemed to be at maximum capacity.

(c) A hospital classified at Level I or Level II for Trauma and Emergency Operative Services or as a Primary Stroke Center shall notify the Department in writing or by facsimile

or other electronic means within twenty-four (24) hours of the complete loss of verified status as a Level I or Level II trauma center by ACS COT, or as a Primary Stroke Center by the Joint Commission.

(d) A hospital shall notify the Department in writing or by facsimile or other electronic means within twenty-four hours (24) if it is unable to provide any classified emergency medical service at the current classified level, such as through the unavailability of professional personnel or required equipment which is beyond the scope of the facility's normal divert protocols. If such an interruption of service is expected to be brief and the hospital notifies the Department promptly, at the discretion of the Commissioner, it may not be necessary to permanently reclassify the service to a lower Level.

(e) A hospital may request a permanent change in classification for any classified emergency medical service by notifying the Department in writing and submitting a new Emergency Medical Services Classification Report (ODH Form 911) at least thirty (30) days prior to the effective date of the change.

**310:667-59-20. Classification of emergency stroke services**

(a) **Secondary Stroke Facility.** A Secondary Stroke Facility shall provide services with at least a licensed independent practitioner, registered nurse, licensed practical nurse, or intermediate or paramedic level emergency medical technician on site twenty-four (24) hours a day. A hospital shall be classified as a Secondary Stroke Facility if it meets the following requirements:

(1) **Clinical services and resources.** No diagnostic, surgical, or medical specialty services are required.

(2) **Personnel.** A physician, licensed independent practitioner, registered nurse, licensed practical nurse, or intermediate or paramedic level emergency medical technician shall be on site twenty-four (24) hours a day. In the absence of a physician, licensed independent practitioner, registered nurse, or paramedic level emergency medical technician, at least one of the practitioners on duty shall have received training in advanced life support techniques and be deemed competent to initiate treatment of the emergency stroke patient.

(A) If the facility is licensed as a General-Medical Surgical Hospital it shall also meet the personnel and staffing requirements at OAC 310:667-29-1 (relating to emergency service or department) and any other applicable parts of this Chapter.

(B) If the facility provides emergency medical services and is licensed as a Specialized Hospital: Psychiatric, it shall also meet the personnel and staffing requirements at OAC 310:667-33-2 (relating to services) and any other applicable parts of this Chapter.

(C) If the facility provides emergency medical services and is licensed as a Specialized Hospital: Rehabilitation, it shall also meet the personnel and staffing requirements at OAC 310:667-35-3 (relating to specialized requirements - policy and personnel) and any other applicable parts of this Chapter.

(D) If the facility provides emergency medical services and is licensed as a Critical Access Hospital, it shall also meet the personnel and staffing requirements at OAC 310:667-39-14 (relating to emergency services) and any other applicable parts of this Chapter.

(3) **Supplies and equipment.** In addition to the requirements at OAC 310:667-59-9(a)(3) (relating to classification of trauma and emergency operative services at Level IV), the hospital shall have the following equipment and supplies on site, functional, and immediately available:

(A) Seizure control agents;

(B) Thiamine and glucose for intravenous administration; and

(C) Antipyretics and procedures for reducing body temperature when necessary.

(4) **Agreements and policies on transfers.**

(A) The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(B) The facility shall have a written agreement with a hospital classified as a Primary Stroke Center, or with a board certified, board eligible, or residency trained neurologist, or group of neurologists to provide immediate consultative services for stroke patients twenty-four (24) hours a day. Such services shall include providing instructions for the initiation of appropriate therapy and/or patient transfer.

(b) **Primary Stroke Center.** A Primary Stroke Center shall provide emergency medical services with an organized emergency department. A physician shall be on call and immediately available to respond to the emergency department and nursing staff with special capability in emergent stroke care shall be on site twenty-four (24) hours a day. A hospital shall be classified as a Primary Stroke Center if it meets the following requirements:

(1) **Clinical services and resources.**

(A) **Emergency services.** A physician deemed competent in the care of the emergent stroke patient and credentialed by the hospital to provide emergency medical services shall be on call and immediately available to respond to the emergency department. Nursing personnel with special capability in emergent stroke care shall be on site twenty-four (24) hours a day.

(i) For a hospital licensed as a general medical surgical hospital or specialty hospital, emergency services shall also comply with the requirements of OAC 310:667-29-1 through OAC 310:667-29-2 (relating to emergency service or department and patient transfers.)

(ii) For a hospital licensed as a critical access hospital, emergency services shall also comply with OAC 310:667-39-14 (relating to emergency services.)

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(B) **Stroke Team.** A stroke team shall be identified in writing and shall be on site or immediately available to respond to the emergency department:

- (i) Stroke team members shall have at least annual training in the care of the stroke patient;
- (ii) Response time standards for the stroke team shall be established and monitored;
- (iii) Standard practice protocols for the care of the stroke patient shall be in place, including appropriate administration of an FDA-approved thrombolytic agent within sixty (60) minutes of the arrival of the patient at the emergency department.

(C) **Diagnostic imaging.** The hospital shall have diagnostic x-ray and computerized tomography services available twenty-four (24) hours a day. A radiologic technologist and computerized tomography technologist shall be on duty or on call and immediately available twenty-four (24) hours a day. A single technologist designated as qualified in both diagnostic x-ray and computerized tomography procedures by the radiologist may be used to meet this requirement if an on call schedule of additional diagnostic imaging personnel is maintained.

- (i) For a hospital licensed as a general medical surgical hospital or specialty hospital, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 23 of this Chapter (relating to diagnostic and treatment services.)
- (ii) For a hospital licensed as a critical access hospital, diagnostic imaging services shall also comply with the applicable requirements in Subchapter 39 of this Chapter (relating to critical access hospitals.)

(D) **Clinical laboratory service.** The hospital shall have clinical laboratory services available twenty-four (24) hours a day. All or part of these services may be provided by arrangements with certified reference laboratories provided these services are available on an emergency basis twenty-four (24) hours a day. At least the following shall be available:

- (i) Standard analysis of blood, urine, and other body fluids to include routine chemistry and hematology testing;
- (ii) Cerebrospinal fluid, cell count, white blood cell differential, protein, glucose, Gram stain, and antigen testing when appropriate;
- (iii) Coagulation studies;
- (iv) Blood gas/pH analysis; and
- (v) Drug and alcohol screening.
- (vi) For a hospital licensed as a general medical surgical hospital or specialty hospital, clinical laboratory services shall also comply with the applicable requirements in Subchapter 23 of this Chapter (relating to diagnostic and treatment services.)
- (vi) For a hospital licensed as a critical access hospital, clinical laboratory services shall

also comply with the applicable requirements in Subchapter 39 of this Chapter (relating to critical access hospitals.)

(2) **Personnel.**

(A) **Emergency services director.** The medical staff shall designate a physician credentialed to provide emergency medical care as emergency services director.

(B) **Neurologist.** A physician board certified, board eligible, or residency trained, in neurology shall be available for consultation on site or immediately available by telephone or other electronic means twenty-four (24) hours a day.

(3) **Supplies and equipment.** In addition to the requirements at OAC 310:667-59-9(a)(3) (relating to classification of trauma and emergency operative services at Level IV), the hospital shall have the following equipment and supplies on site, functional, and immediately available:

- (A) Seizure control agents;
- (B) Thiamine and glucose for intravenous administration;
- (C) Antipyretics and procedures for reducing body temperature when necessary;
- (D) Sterile procedure trays for lumbar puncture and measurement of intracranial pressure; and
- (E) Thrombolytic agents for treatment of acute nonhemorrhagic stroke.

(4) **Agreements and policies on transfers.**

(A) The hospital shall have written policies defining the medical conditions and circumstances for those emergency patients, which may be retained for treatment in-house, and for those who require stabilizing treatment and transfer to another facility.

(B) If the facility does not have a neurologist, either board certified, board eligible, or residency trained, or group of neurologists similarly qualified, on staff to provide immediate consultative services for emergent stroke patients twenty-four (24) hours a day, the facility shall have a written agreement with a hospital, or a neurologist, either board certified, board eligible, or residency trained, or group of neurologists similarly qualified, to provide such services for emergent stroke patients on a twenty-four (24) hour basis. Such services shall include providing instructions for the initiation of appropriate therapy and/or patient transfer.

(5) **Quality Improvement.** The hospital shall ensure an appropriate quality improvement process is in place to monitor and evaluate the care provided to the critically ill stroke patient, and to provide regular feedback to emergency medical service agencies and referring hospitals on the optimal care of the critically ill stroke patient.

[OAR Docket #09-1005; filed 5-20-09]

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

[OAR Docket #09-1006]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 3. Licenses  
310:675-3-1.1 [AMENDED]  
310:675-3-5 [AMENDED]  
310:675-3-5.1 [AMENDED]  
310:675-3-8 [AMENDED]  
Subchapter 7. Administration  
310:675-7-4 [AMENDED]  
310:675-7-12.1 [AMENDED]  
310:675-7-20 [AMENDED]  
Subchapter 11. Intermediate Care Facilities for the Mentally Retarded (16 beds and less (ICF/MR-16))  
310:675-11-1 [AMENDED]  
310:675-11-5 [AMENDED]  
310:675-11-8 [AMENDED]  
310:675-11-9 [AMENDED]  
Subchapter 13. Staff Requirements  
310:675-13-8 [AMENDED]  
310:675-13-9 [AMENDED]  
Subchapter 19. Feeding Assistants  
310:675-19-6 [AMENDED]

**AUTHORITY:**

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

**DATES:**

**Comment period:**

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**Public hearing:**

March 12, 2009

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**Submitted to Governor:**

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**Submitted to House:**

March 23, 2009

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March 23, 2009

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Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2009

**Final adoption:**

May 15, 2009

**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATION BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed rule changes address Department course approval requirements, ownership disclosure requirements; removal or reduction of duplicative facility program regulations, and reductions in the application review burden of the Department.

Language regarding filing a certification of tax compliance with initial and renewal applications at 310:675-3-1.1(g) and (h) is stricken to eliminate a conflict with the supporting statute, 63 O.S. § 1-1930.1, which requires notification of certain tax events within twenty-four hours of their occurrence. A scrivener's error is addressed at 310:675-3-5.

Amendments are proposed to OAC 310:675-5.1 pertaining to ownership disclosure when applying for initial and renewal licenses. Added detail is provided on who is to be disclosed in the Disclosure Statement and Detail Attachment and limits the disclosure to those with a five percent (5%) or greater

ownership interest. Industry representatives petitioned the Department for this change to address disclosures where there are multiple and diluted ownership interests. Rule language in this section pertaining to the Department's use of the form, Certification of Tax Liens and Timely Payment of Taxes, and notification of changes in such filings are removed from the rule to eliminate a conflict with the statute at 63 O.S. § 1-1930.1. This change reduces the filing burden on the industry.

Language at 310:675-3-8(a)(6) is struck regarding filing a notice of change to the certification of tax compliance. As noted above, striking the certification requirement is proposed to correct a conflict with statute and a desire to reduce the filing burden.

Section 310:675-7-4 - Involuntary transfer or discharge. The current rule provides for the procedure and terms of involuntary transfer or discharge by the facility. This proposal establishes timing of the notice made by the facility before the transfer or discharge of the resident and clarifies the timing of notice procedures. This change is necessary because state law does not distinguish that the current requirement is only applicable to state licensed facilities. The effect of the rule change will be consistent language in both state law and the Code of Federal Regulations.

Section 310:675-7-12.1, Incident reports, addresses who is responsible for preparing and signing an incident report. The proposed rule change clarifies who may sign and the allowable form of signature. This change is necessary to expedite electronic filing of incident reports.

Amendments at 310:675-7-20 are in response to a change in statute at 63 O.S. § 1-1930.1 in 2003 which removed language specifying the method to determine the financial resources to operate a facility. The references in rule to this methodology are removed.

Subchapter 11, Intermediate care facilities for the mentally retarded (16 beds and less (ICF/MR-16)), contains the rules specific to the sixteen (16) bed or less ICF/MR facility. The rule change updates 310:675-11-1 to include the Chapter definitions that were excluded in error. This change is necessary to provide definitions to terms used in Subchapter 11. The proposed change at 310:675-11-5, Physical plant, updates the reference to the Food Service Establishment Regulations from Chapter 255 to Chapter 257. The proposed change at 310:675-11-8, Administration, corrects a scrivener's error that referred to Subchapter 11 instead of Subchapter 7, the subchapter providing the applicable rules for the administration of facilities. The rule at 310:675-11-9, Resident care services, identifies the language in Subchapter 9, Resident Care Services, as applicable to the 16-bed or less ICF/MR. The reference is updated to reflect changes to the applicable section numbers in Subchapter 9 and the addition of section 310:675-9-31, Influenza and pneumococcal vaccinations, to Subchapter 9. As currently written, the rule reference is not inclusive to this section on influenza and pneumococcal vaccinations. The rules on these vaccinations are intended for residents in all nursing and specialized facilities regardless of size.

The changes to subchapter 13 address an industry request to specify criteria for Department approval of courses qualifying Activity and Social Services Directors at OAC 310:675-13(8) and (9). The current rule provides that activities and social services directors shall be qualified by, among others, successful completion of a Department approved training course. The current rule does not provide criteria for Department approval of a training course. This request is based in part on the desire of the industry to ensure training programs met certain minimum requirements. The Long Term Care Advisory Board created an ad-hoc committee to assist the Department in developing criteria, for adoption in rule, for the approval of training courses to qualify Activities and Social Services Directors for employment in Nursing Homes. The proposed rules address the application, course, and certificate content; entities eligible to provide training; restrictions on advertisement; instructor requirements; course length; renewal requirements; and a fee.

Section 310:675-19-6 sets forth the requirement for feeding assistants to register with the Department prior to providing services and to renew their registration every twenty-four (24) months. The proposed rule would create a fee of ten dollars (\$10) for the initial and renewal registration.

**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.,**

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## SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:

### SUBCHAPTER 3. LICENSES

#### 310:675-3-1.1. Application for licensure

- (a) No person or entity shall operate a facility without first obtaining a license.
- (b) The applicant shall file a licensure application in a timely manner, on the forms provided by the Department, with a check for the filing fee payable to the Oklahoma State Department of Health. The filing fee is set by statute, and currently is calculated as Ten Dollars (\$10.00) per licensed bed.
- (c) The facility owner shall be the applicant for the license, unless a receiver has been appointed. If there is a receiver, the receiver shall be the applicant.
- (d) If the facility is leased, then the person or entity to whom the facility is leased shall be the applicant. If the lessee does not assume all rights to the facility and the lessor reserves some participatory rights in the operation of the facility, then both entities shall make joint application for the license.
- (e) The applicant ~~or licensee~~ for license shall disclose the name, address, and tax identification number of a person or entity who has the legal duties of filing employment tax returns and paying employment taxes with respect to staff required to meet the needs of facility residents, including but not limited to administrators, nurses, nurse aides, certified medication aides, dietitians, nutritionists, food service staff, qualified mental retardation professionals, and activities, social services, maintenance and housekeeping personnel.
- (f) An application is not considered to be filed unless it is accompanied by the application fee. The application fee, however, shall not be required from a receiver or temporary manager appointed by, or at the request of, the Department.
- ~~(g) An initial or renewal application for a license shall include a certification by the applicant that, at the time of the filing of the application:~~
- ~~(1) The applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) are current in their payment of all state and federal income, employment and unemployment taxes;~~
  - ~~(2) The applicant and any person or entity disclosed pursuant to 310:675-3-1.1(e) have filed all required returns for such taxes;~~
  - ~~(3) Whether any state tax warrants or federal tax liens have been filed against the applicant, the facility or any person or entity disclosed pursuant to 310:675-3-1.1(e); and~~
  - ~~(4) Whether any state attachments or federal levies have been made and are currently pending to collect delinquent state or federal income, employment or unemployment taxes owed by the applicant, the facility, or any person or entity disclosed pursuant to 310:675-3-1.1(e).~~
- ~~(h) An applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e) is current with its federal and state taxes~~

~~if at the time of the submission of its initial or renewal application it has filed all tax returns that are due for state and federal income taxes, Form 941 federal employment taxes, Form 940 federal unemployment taxes, and all state employment and unemployment taxes and has paid all such taxes, interest, and penalties in full.~~

#### 310:675-3-5. Suspension/revocation of license

- (a) The period for an extension granted pursuant to 63 O.S. Supp. 2002 Section 1-1906-4(H)(2) shall not exceed three (3) years.
- (b) During the period of suspension, the licensee shall file a Periodic Report for Suspended License that demonstrates the facility's progress towards reopening the facility or the extenuating or unusual circumstances for requesting the extension of the suspended license, in the form of, but not limited to: contract for sale, contract with real estate agent or builder, or a pending Certificate of Need application.
- (c) The facility shall file periodic reports at least once every six months. The Department shall send a notice to each facility's contact, at least thirty (30) days prior to the due date of the periodic report.
- (d) The Department's consideration of financial insufficiency as a reason for suspension or revocation of a license pursuant to 63 O.S. Section 1-1906(E)(4), may include, but is not limited to, the following bases:
- (1) The applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e) is not current with filing and payment requirements for state and/or federal taxes;
  - (2) The State of Oklahoma has filed a tax warrant or warrants against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e); or
  - (3) The Internal Revenue Service has filed a notice of federal tax lien against the applicant or any person or entity disclosed pursuant to 310:675-3-1.1(e).

#### 310:675-3-5.1. Description of forms

- (a) The forms used to apply for a facility license are the following.
- (1) The License Application for a Nursing or Specialized Facility (Form 953-A) requires: identification of the type of license; the name and address of the facility; the administrator's name; the number and type of beds; the applicant's name; confirmation of changes in the owner, lessee, manager or any person or entity disclosed pursuant to 310:675-3-1.1(e); a zoning statement for new facilities; and an oath affirming the truth, correctness and completeness of the information provided.
  - (2) The Disclosure Statement of Owner, Lessee and Manager for a Nursing or Specialized Facility (Form 953-B) requires: the names and types of legal entities for the owner, lessee and manager; name, address and tax identification number for any person or entity disclosed pursuant to 310:675-3-1.1(e); and an oath affirming the truth, correctness and completeness of the information provided.

(3) The Detail Attachment (Form 953-C) supplements the Disclosure Statement (Form 953-B) and requires the names and addresses for the following as applicable:

- (A) All shareholders and owning 5% or more of a corporate entity and all officers of a corporate entity;
- (B) All partners of a general or limited partnership;
- (C) All general partners and all limited partners that own 5% or more of a limited partnership;
- (D) All managers and members that own 5% or more of a limited liability company and all managers of a limited liability company;
- ~~(DE) The All trustees and beneficiaries of that hold a 5% or more beneficial interest in a trust and all trustees of the trust;~~
- ~~(E) All persons or entities that own an interest of a joint venture;~~
- (F) All persons or entities that own a 5% or more interest of an association in a joint venture;
- (G) All persons or entities that own a 5% or more interest in an association;
- (H) The owners holding a 5% or more interest of any other type of legal entity; and
- ~~(H) Each shareholder that owns, at the time of application, 5% or more of the outstanding stock of any corporation that is publicly traded and is required to file annual reports with the Securities and Exchange Commissioner;~~
- ~~(I) Any other person holding at least a five percent (5%) interest in the entity which owns, operates, or manages the facility; and~~
- ~~(J) The owners of any shareholder, partner, member or other person or entity disclosed in (A) through (G) of this paragraph that is in turn an entity described in (A) through (G) of this paragraph.~~
- (I) Any other person holding at least a five percent (5%) interest in any entity which owns, operates, or manages the facility.
- (J) As a substitute to submitting a Disclosure Statement and Detail Attachment, if the owner, lessee and/or manager is an entity that is publicly traded and is required to file periodic reports under the Securities and Exchange Act of 1934, or is a wholly owned subsidiary of such a publicly held company, the applicant may submit the applicable portions of the most recent annual and quarterly reports required by the Securities and Exchange Commission (SEC). The applicant shall include an index reflecting where each item of information required to be disclosed pursuant to the Disclosure Statement and Detail Attachment may be located in the SEC filings. Submission of the complete SEC filing is not required. Only those portions applicable to the Disclosure Statement and Detail Attachment are to be submitted.
- (K) The required disclosure shall also be made by all persons or entities with an ownership interest in any entity required to be disclosed in paragraphs (A) through (I) of this section that is equal to a 5% or

more indirect ownership interest in the owner, lessee and/or manager. The disclosure shall be made at each level of the organization to the extent required by this subsection.

(L) For purposes of subsection (K), the percentage of indirect ownership interest in the owner, lessee and/or manager is determined by multiplying the percentages of ownership in each entity. For example, if A owns 10% of the stock in a corporation that owns 80% of the applicant for license, A's interest equates to an 8% indirect ownership interest in the applicant and must be reported. Conversely, if B owns 80% percent of the stock of a corporation that owns a 5% interest of the stock of the applicant, B's interest equates to a 4% indirect ownership interest in the applicant and need not be reported.

(4) The Affirmation Attachment (Form 953-D) supplements the Disclosure Statement (Form 953-B) and requires the following: the names and addresses of individuals, members, officers and/or registered agents required to be disclosed for the applicant pursuant to 310:675-3-5.1(a)(3); and an affirmation from each of the above concerning their age, character and health.

(5) The Staffing Projection and Professional Certification for a Nursing or Specialized Facility (Form 953-E) requires: a projected staffing pattern; and a certification from the director of nursing, the physician on call for medical emergencies, and the pharmacist providing consultation and emergency pharmacy services.

(6) The Periodic Report for Suspended License (Form 953-F) requires: the name and address of the facility; the applicant's name and address, contact person and address; report of progress in reopening the facility; request for extension based on extenuating circumstances; and an oath affirming the truth, correctness and completeness of the information provided.

~~(7) The Certification of Tax Liens and Timely Payment of Taxes (Form 953-G) requires: certification of compliance with OAC 310:3-1-1(g).~~

(b) The Notice of Change requests information on the name and address of the facility; the administrator; the number and type of beds; the applicant; confirmation of changes in the owner, lessee or manager; and any change in disclosure of persons or entities pursuant 310:675-3-1.1(e); and any change in compliance status with the tax certification requirements specified in 310:675-3-1.1(g).

**310:675-3-8. Notice of change**

(a) If changes occur so that information previously submitted in a facility's license application is no longer correct, the facility shall notify the Department. Notice is required of changes to the following information:

- (1) Facility identification including facility business name, mailing address, telephone number or facsimile number;
- (2) Changes in licensed bed capacity, including proposed increases;
- (3) The administrator;

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- (4) Owner, lessee or manager disclosure or detail information that does not otherwise necessitate an initial license;
  - (5) Disclosure of persons or entities required to be disclosed pursuant 310:675-3-1.1(e); and
  - ~~(6) Compliance status with the tax filing and payment requirements certified pursuant to 310:675-3-1.1(e).~~
- (b) The facility shall file the Notice of Change form with the Department on or before the effective date of the change, with the following exceptions.
- (1) When a change is unexpected or beyond the control of the facility, the facility shall provide notice to the Department within five (5) working days after the change.
  - (2) For an increase in licensed bed capacity, the facility shall file the notice of change prior to the requested license amendment date. The notice of change shall be accompanied by the \$10 per-bed license fee pursuant to 63 O.S. Section 1-1905(A), prorated by the number of beds to be added and the proportion of time remaining on the license until expiration. Prior to occupying additional beds, the facility shall obtain an amended license from the Department.
- (c) Following receipt of information that an applicant or any person or entity disclosed pursuant 310:675-3-1.1(e) is not in compliance with the tax filing, payment or disclosure requirements of 310:675-3-1.1. or 63 O.S. Section 1-1930.1, the Department may require an applicant or licensee to submit proof that the applicant or person or entity disclosed pursuant to 310:675-3-1.1(e) is in compliance with state or federal taxes. Such proof may include a letter from the taxing agency, a file-stamped copy of a return, a receipt for a tax payment, or a tax transcript or account.

## SUBCHAPTER 7. ADMINISTRATION

### 310:675-7-4. Resident transfers or discharge

- (a) **Reasons for transfer or discharge.** Involuntary transfer or discharge of a resident may be initiated by a facility only for one or more of the following:
- (1) Medical reasons, including needs that the facility is unable to meet, as documented by the attending physician, in consultation with the medical director if the medical director and attending physician are not the same person.
  - (2) The resident's safety, or for the safety of other residents, as documented by the clinical record. The facility shall show through medical records that:
    - (A) the resident has had a comprehensive assessment by an interdisciplinary team and alternative measures have been attempted unsuccessfully; or
    - (B) the resident is a danger to himself, herself or other resident as documented by the medical record and the facility is not capable of managing that resident.
  - (3) The non-payment of charges for the resident's care as documented by the facility's business records for services for more than 30 days.

(b) **Procedures.** Procedures for involuntary transfer or discharge by the facility are as follows:

- (1) Written notice shall be provided at least ~~ten~~thirty (30) days in advance of the transfer or discharge date to the resident, resident's legal representative, person responsible for payment of charges for the resident's care, if different from any of the foregoing, and the Department.
- (2) The ten day requirement shall not apply when an emergency transfer is mandated by the resident's health care needs and is in accordance with the attending physician's written orders and medical justification; or the transfer or discharge is necessary for the physical safety of other residents as documented in the clinical record. The facility shall not use a discharge to a hospital as a reason for failing to re-admit a resident after release from the hospital to the first available bed in a semi-private room. Such action shall be considered to be an involuntary discharge subject to all the requirements of this section, unless the discharge was required by the Department.
- (3) The written notice shall include:
  - (A) A full explanation of the reasons for the transfer or discharge;
  - (B) The date of the notice;
  - (C) The date notice was given to the resident and the resident's representative;
  - (D) The date by which the resident must leave the facility; and
  - (E) Information that the resident's representative or person responsible for payment of the resident's care who is aggrieved by the facility's decision, may file within ten (10) days of notice a written request for a hearing with the Department by sending a letter to the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117.
- (4) Failure of the facility to give the notice as substantially specified above shall result in an order without hearing from the Department denying the right of the facility to discharge the resident.
- (5) If a written request for a hearing is properly filed by an eligible aggrieved party, the Department shall convene a hearing within ten working days of receipt of the request. The request may be in the form of a letter or a formal request for hearing from the resident or resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request should state the reason for the discharge and attach a copy of the letter from the facility.
- (6) During the pendency of the hearing, the facility shall not discharge the resident unless the discharge was required by the Department or is an emergency situation. If the resident relocates from the facility but wants to be readmitted, the Department may proceed with the hearing and the facility shall be required to readmit the resident to the first available bed in a semi-private room if the

discharge is found not to meet the requirements of the Nursing Home Care Act and OAC 310:675.

(7) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the facility, may be represented by counsel or may represent themselves.

(8) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the facility or at another place. Providing the hearing room in such a case shall be the responsibility of the parties. The Department shall maintain a record on the case as it does for any other individual proceeding.

(9) The hearing shall be conducted in accordance with the Department's procedures, Chapter 2 of this Title. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the transfer or discharge was according to law. If a facility receives federal funds for services, it shall also comply with the certification standards. The more restrictive rule toward the facility shall be applied.

(10) If the Administrative Law Judge finds that the discharge was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.

(11) If the discharge is according to law, the order shall give the facility the right to discharge the resident.

(12) The scope of the hearing may include:

- (A) Inadequate notice;
- (B) Discharge based on reason not stated in the law;
- (C) Sufficiency of the evidence to support the involuntary discharge; or
- (D) The finding of emergency.

(13) The Administrative Law Judge shall render a written decision within ten working days of the close of the record.

(14) If the Administrative Law Judge sustains the facility, the facility may proceed with the discharge. If the Administrative Law Judge finds in favor of the resident, the facility shall withdraw its notice of intent to transfer or discharge the resident. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed under the Administrative Procedures Act.

(c) **Room relocation**

(1) If a facility wants to relocate a resident from one room to another, the facility shall give the resident at least forty-eight hours written notice. The notice shall include the cost of transferring the resident's telephone, if applicable.

(2) If the resident or the resident's representative agrees in writing to the relocation, the relocation may take place in less than forty-eight hours.

(3) No hearing is required if the resident requests or agrees to relocation from one room to another.

**310:675-7-12.1. Incident reports**

(a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury, where injury may have occurred, including but not limited to, head injuries,

medication, treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents).

(b) **Incident records.** Each facility shall maintain an incident report record and shall have incident report forms available.

(c) **Incident report format.** Incident reports shall be on a printed incident report form. The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report Form requires: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

(d) ~~Incident reports signatures report preparation. The charge nurse, at the time of the incident, shall prepare and sign the report. At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator's absence, shall be notified of the incident and prepare the report.~~ The report shall include the names of the persons witnessing the incident and their signatures where applicable.

(e) **Incident reporting: scope.** The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

(f) Incident records on file. A copy of each incident report shall be on file in the facility.

(g) **Incident in clinical record.** The resident's clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.

(h) **Incidents: reviewers.** All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

**310:675-7-20. Financial solvency and reports**

(a) The facility shall maintain financial solvency sufficient to ensure its operation as evidenced by ~~maintaining financial resources adequate to operate the facility for at least a period of forty five (45) days and by the timely payment of obligations~~ including but not limited to:

- (1) Employee payrolls;
- (2) Amounts owed to consultants, medical directors, vendors, suppliers, and utility service providers;
- (3) Taxes and provider fees; and
- (4) Leases, rents and mortgages.

(b) The owner shall report to the Department the occurrence of financial events as required in 63 O.S. Section 1-1930.1.

- (1) The owner shall:
  - (A) File a written report within 24 hours of the reportable event; or
  - (B) Make an oral report by telephone within 24 hours of the reportable event, and file written confirmation within five days of the reportable event.

(2) Notice of a judgment against the facility or any of the assets of the facility or the licensee shall be required from the date the judgment becomes final.

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(3) The owner shall include information in the written notification to accurately identify the event, including but not limited to:

- (A) The date of each action or event;
  - (B) The name of each person involved in the event, including each legal entity, governmental agency, financial institution or trustee, and each employee whose regular payroll check has not been honored;
  - (C) The amount of each judgement, lien, payroll, or tax payment related to the event; and
  - (D) The style of the case and index or docket numbers as applicable.
- (~~E~~) Bankruptcy or appointment of trustee by the bankruptcy court.

(4) ~~Financial resources needed to operate the facility for a period of at least 45 days [63:1-1930.1(A)(4)] are determined by:~~

~~(A) Projected facility revenues shall be based upon the current number of occupied beds in the facility, multiplied by the current daily Medicaid reimbursement rate, multiplied by forty five (45) days [63:1-1930.1(A)(4)].~~

~~(B) Projected revenue may be decreased based on known or reasonably anticipated declines in numbers of occupied beds or in the daily Medicaid reimbursement rate.~~

~~(C) The provisions of 63:1-1930.1(B)(4) shall not be interpreted to require a facility to maintain unencumbered liquid assets in the amount equivalent to current occupied beds at the daily Medicaid reimbursement rate for 45 days. The purpose of 63:1-1930.1(B)(4) is to provide the Department with advance notice when the owner becomes aware that the financial condition of a facility is likely to jeopardize current operations within 45 days.~~

~~(5) Notification provided by the owner pursuant to 63:1-1930.1 does not relieve the owner of the obligation to provide ninety (90) days' notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent (10%) of the residents [63:1-1930].~~

referenced in this subsection. In addition to these requirements, all facilities must meet the provisions of the Nursing Home Care Act.

## 310:675-11-5. Physical plant

(a) ICF/MR-16 facilities shall be of one hour (minimum) fire resistant construction as approved by the Department and the State Fire Marshal, or shall be fully protected by an automatic sprinkler system approved by the Department and the State Fire Marshal. In addition, ICF/MR-16 facilities shall comply with the requirements of Chapter 21, "Life Safety Code; NFPA 101, 1985", applicable to residential board and care occupancies for small facilities. The text and commentary provided in the "Life Safety Code Handbook, Third Edition: based on the "Life Safety Code: NFPA 101, 1985", shall be the official interpretation for the Code.

(b) Prior to issuance of license, the essential operation functions of the physical plant shall be submitted to licensing agency for review and approval. This submittal shall be in such detail as will depict compliance with applicable codes, including emergency evacuation and day to day living accommodations. This submittal shall be accompanied by the applicant's written certification declaring the classification (prompt, slow, impractical) shown for "evacuation capabilities" Chapter 21, LSC 1985 Edition. The certified evacuation classification shall not change without written approval of State Fire Marshal and Licensing Agency. The Department shall receive, prior to each required survey, a written declaration by a physician or nurse or qualified mental retardation professional, stating that each resident qualifies for the evacuation classification, as previously submitted and approved.

(c) Each facility must have a license. Any facility licensed under this part shall consist of contiguous construction.

(1) **Resident rooms.** The following requirements shall be provided:

- (A) Capacity shall be a maximum of four (4) residents.
- (B) Minimum area shall be 80 square feet per occupant in multi-bed rooms and 100 square feet in single bed rooms.
- (C) Each resident shall have a minimum of three square feet of closet or locker space which shall contain at least a clothes rod and one adjustable shelf.

(2) **Service areas.** The following shall be provided:

- (A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.
- (B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.
- (C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ICF-MR-16 to be conducted in private, and

## SUBCHAPTER 11. INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (16 BEDS AND LESS (ICF/MR-16))

### 310:675-11-1. Scope

This Subchapter is applicable to small facilities serving the mentally retarded which provide residential accommodations and transitional living training to aid residents in adapting to live in the general society. Resident accommodations are limited to not more than 16 residents, plus any required "live-in" staff. Facilities qualifying under this subsection shall be exempt from other subsections of this Chapter, except for the definitions provided in 310:675-1-2 and as may be specifically

space for the maintenance of records pertaining to resident care.

(D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.

(E) Meal service space shall be provided as follows:

(i) Kitchen. Space for conventional food preparation and baking with sufficient storage for maintaining at least a four day supply of all foods required for a general diet, including cold storage.

(ii) Dining. There shall be 15 square feet per person allocated to permit residents and on-duty staff to dine at the same time.

(iii) Warewashing shall be in accordance with the requirements of the care facilities as stated in Chapter ~~255~~ 257 (relating to Food Service Establishments) of ~~the~~ this Title.

(F) Housekeeping materials and supplies shall be maintained in a designated area which is apart from the food service and sleeping areas.

(3) **Recreation, lounge and public areas.** Each ICF/MR-16 shall provide interior lounge and recreation space at a rate of no less than 20 square feet per bed. If public visitation areas are included, the lounge and recreation space shall be no less than 25 square feet per bed. Outside recreation lounge areas shall be provided. These areas shall have sufficient lighting to permit utilization after sundown.

(4) **Natural lighting and ventilation of rooms.** All habitable and occupiable rooms or spaces shall contain windows, skylights, monitors, glazed doors, transoms, glass block panels or other light transmitting media opening to the sky or on a public street, yard or court. The light transmitting properties and the area of the devices used shall be adequate to meet the minimum day lighting and ventilating requirements specified herein.

(5) **Window size.** Windows and exterior doors may be used as a natural means of light and ventilation, and when so used their aggregate glass area shall amount to not less than eight percent of the floor area served, and with not less than one half of this required area available for unobstructed ventilation.

**310:675-11-8. Administration**

All sections of Subchapter ~~11-7~~ of this Chapter shall be applicable to the ICF/MR-16 facilities and operations.

**310:675-11-9. Resident care services**

In accordance with the needs of the residents, ~~Subsections 9-1 through 9-22-6B~~ Subchapter 9 of this Chapter shall be applicable to the ICF/MR-16.

**SUBCHAPTER 13. STAFF REQUIREMENTS**

**310:675-13-8. Activities personnel**

(a) The facility shall have sufficient, trained activities program staff, on duty, to meet the ~~residents~~ resident's needs. There shall be at least twenty hours per week of designated activity staff.

(b) The activities director shall be qualified by training, or experience, under one of the following:

(1) An associate degree or a baccalaureate from an accredited university or college in art, music, physical education, recreational therapy, education, or similar program.

(2) A licensed occupational therapist or an occupational therapy assistant.

(3) Successful completion of a Department approved training course.

(4) One year experience in a recreational activity or long term care environment, and is enrolled within 180 days of employment, in a Department approved course for activities directors.

**(c) Department approval of activities director course.** Any person or entity seeking to conduct an approved activities director-qualifying course pursuant to 310:675-13-8(b)(3) (pertaining to successful completion of a department approved course) shall make application to the Department.

**(1) Application Content.** Applications shall include the following information:

(A) Name and address of the individual or entity applying to sponsor the course;

(B) Contact person and his or her address, telephone number and fax number;

(C) Course outlines, which list the summarized topics covered in the course and the time allotted for each topic and, upon request, a copy of any course materials;

(D) Information as to how the proposed course meets the course content standard provided in Section 310:675-13-8(c)(9);

(E) A sample certificate of completion;

(F) Procedures for monitoring attendance; and

(G) Procedures for evaluating successful course completion.

**(2) Application Review.** The Department shall complete review of the application within thirty (30) calendar days. If the Department finds the application has not addressed all requirements in 310:675-13-8(c)(1) (relating to application content) written notice shall be provided detailing the requirements not met and providing opportunity for amendment to the application.

**(3) Program affiliation.** Training shall be provided through a program sponsored or approved by a nationally affiliated association of providers subject to this chapter, regionally accredited institution of higher learning, Oklahoma career technology center, or nationally recognized professional accrediting body for activity professionals.

**(4) Loss of approval.** The Department may, upon notice and right to hearing, withhold or withdraw approval

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of any course for violation of or non-compliance with any provision of this section.

(5) **Advertisement.** No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Department. Nor shall any person or entity sponsoring or conducting a course advertise or advise program participants that completion of the program grants a certification. Such person or entity may indicate that the Department has approved the course to qualify for employment as an activities director.

(6) **Failure to prepare.** The Department may, upon notice and right to hearing, decline to renew, or revoke the approval of, any previously approved course upon a showing or demonstration that the course, instructor or entity has substantially failed to adequately prepare its attendees or participants as activity directors.

(7) **Instructor requirements.** Instructors shall have a degree or substantial recent experience in the subject matter being taught, or other educational, teaching, or professional qualifications determined by the course provider.

(8) **Course content.** The course shall address the following content:

(A) The guidance and regulations for activities as detailed in the Centers for Medicare and Medicaid Services, State Operations Manual, Appendix PP - Guidance to Surveyors for Long Term Care Facilities and the Code of Federal Regulations at CFR § 483.15(f);

(B) Oklahoma regulation for activity services as specified at OAC 310:675-9-10.1;

(C) Resident rights as detailed in state and federal statute and regulation;

(D) State and federal statute and regulation for resident protection from abuse, neglect and misappropriation;

(E) Working with volunteers and the community to enhance activity options;

(F) Specialized programming for Alzheimer's and related dementias;

(G) Role play or actual experience in leading group and one-on-one activities programming;

(H) Issues in aging; and,

(I) Infection Control.

(J) Where course content is delivered through Internet or other self-directed media, course content shall include not less than twelve (12) hours of role play or actual experience in leading group and one-on-one activities programming.

(9) **Duration.** The approved course will consist of not less than twenty-four (24) hours of instruction. A course taught in combination with social services director training may share eight (8) hours of programming.

(10) **Certificate.** Participants shall be issued a certificate of attendance indicating the name of the sponsoring entity; participant name; course name; course dates; printed name and signature of official representing the sponsoring entity.

(11) **Course approval expires.** Course approval shall be for a period of three (3) years from the date of approval issuance. In the interest of updated curriculum, reflecting the latest best practice, a new application, and curriculum review are required triennially. Currently approved training programs shall apply under this section within twelve (12) months of the effective date of this rule.

(12) **Continuing education.** This section creates no obligation for continuing education beyond requirements specified otherwise in this Chapter. The Department will not approve continuing education or update courses for activity directors.

(13) **Records retention.** The course sponsor shall maintain course records for at least five (5) years. The Department may order an examination of the records for good cause shown.

(14) **Fee.** A non-refundable application fee of one hundred dollars (\$100) shall be included with each application for course approval.

### 310:675-13-9. Social services personnel

(a) The facility shall provide sufficient, trained social services staff to meet the ~~residents~~ resident's needs. There shall be at least thirty (30) minutes per resident a week of designated social service staff based on the daily census. The facility shall have at least twenty (20) hours per week, of designated social service staff, regardless of the number of residents.

(b) The social services director shall be qualified by training, or experience, under one of the following:

(1) A baccalaureate, from an accredited college or university, in social work or in a human services field including, but not limited to, sociology, special education, rehabilitation, counseling or psychology.

(2) Successful completion of the Department approved training course.

(3) One year experience in social work or long term care environment, and is enrolled within 180 days of employment, in a course approved by the Department.

(c) **Department approval of social services director course.** Any person or entity seeking to conduct an approved social services director-qualifying course pursuant to 310:675-13-9(b)(2) (pertaining to successful completion of a department approved course) shall make application to the Department.

(1) **Application Content.** Applications shall include the following information:

(A) Name and address of the individual or entity applying to sponsor the course;

(B) Contact person and his or her address, telephone number and fax number;

(C) Course outlines, which list the summarized topics covered in the course and the time allotted for each topic and, upon request, a copy of any course materials;

(D) Information as to how the proposed course meets the course content standard provided in Section 310:675-13-(c)(9);

(E) A sample certificate of completion;

- (F) Procedures for monitoring attendance; and
- (G) Procedures for evaluating successful course completion.
- (2) **Application Review.** The Department shall complete review of the application within thirty (30) calendar days. If the Department finds the application has not addressed all requirements in 310:675-13-9(c)(1) (relating to application content) written notice shall be provided detailing the requirements not met and providing opportunity for amendment to the application.
- (3) **Program affiliation.** Training shall be provided through a program sponsored or approved by a nationally affiliated association of providers subject to this chapter, regionally accredited institution of higher learning, Oklahoma career technology center, or nationally recognized professional accrediting body for activity professionals.
- (4) **Loss of approval.** The Department may, upon notice and right to hearing, withhold or withdraw approval of any course for violation of or non-compliance with any provision of this section.
- (5) **Advertisement.** No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the Department. Nor shall any person or entity sponsoring or conducting a course advertise or advise program participants that completion of the program grants a certification. Such person or entity may indicate that the Department has approved the course to qualify for employment as a social services director.
- (6) **Failure to prepare.** The Department may, upon notice and right to hearing, decline to renew, or revoke the approval of, any previously approved course upon a showing or demonstration that the course, instructor or entity has substantially failed to adequately prepare its attendees or participants as activity directors.
- (7) **Instructor requirements.** Instructors shall have a degree or substantial recent experience in the subject matter being taught, or other educational, teaching, or professional qualifications determined by the course provider.
- (8) **Course content.** The course shall address the following content:
  - (A) The guidance and regulations for social services as detailed in the Centers for Medicare and Medicaid Services, State Operations Manual, Appendix PP - Guidance to Surveyors for Long Term Care Facilities and the Code of Federal Regulations at CFR § 483.15(g);
  - (B) Oklahoma regulation for social services as specified at OAC 310:675-9-11.1;
  - (C) Resident rights as detailed in state and federal statute and regulation;
  - (D) State and federal statute and regulation for resident protection from abuse, neglect and misappropriation;
  - (E) Alzheimer's and social services;

- (F) Issues in Aging; and
- (E) Ombudsman services.
- (9) **Duration.** The approved course will consist of not less than twenty-four (24) hours of instruction. A course taught in combination with activity director training may share eight (8) hours of programming.
- (10) **Certificate.** Participants shall be issued a certificate of attendance indicating the name of the sponsoring entity; participant name; course name; course dates; printed name and signature of official representing the sponsoring entity.
- (11) **Course approval expires.** Course approval shall be for a period of three (3) years from the date of approval issuance. In the interest of updated curriculum, reflecting the latest best practice, a new application, and curriculum review are required triennially. Currently approved training programs shall apply under this section within twelve (12) months of the effective date of this rule.
- (12) **Continuing education.** This section creates no obligation for continuing education beyond requirements specified otherwise in this Chapter. The Department will not approve continuing education or update courses.
- (13) **Records retention.** The course sponsor shall maintain course records for at least five (5) years. The Department may order an examination of the records for good cause shown.
- (14) **Fee.** A non-refundable application fee of one hundred dollars (\$100) shall be included with each application for course approval.

**SUBCHAPTER 19. FEEDING ASSISTANTS**

**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.
- (c) A non-refundable application fee of ten dollars (\$10) shall be included with an application for initial or renewal registration.

*[OAR Docket #09-1006; filed 5-20-09]*

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

[OAR Docket #09-1007]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1. General Provisions

310:677-1-3 [AMENDED]

310:677-1-6 [AMENDED]

Subchapter 3. Nurse Aide Training and Competency Examination Program

310:677-3-2 [AMENDED]

Subchapter 5. Nurse Aide Registry

310:677-5-2 [AMENDED]

Subchapter 7. Hearings

310:677-7-5 [NEW]

Subchapter 11. Long Term Care Aides

310:677-11-4 [AMENDED]

Subchapter 13. Certified Medication Aides

310:677-13-8 [AMENDED]

310:677-13-12 [AMENDED]

### **AUTHORITY:**

Oklahoma State Board of Health; 63 O.S. §§ 1-104 and 106.1; and 63 O.S. §§ 1-1950.1 through 1-1950.9, and Section 1-1951

### **DATES:**

#### **Comment period:**

February 2, 2009 through March 12, 2009

#### **Public hearing:**

March 12, 2009

#### **Adoption:**

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#### **Submitted to House:**

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#### **Gubernatorial approval:**

April 28, 2009

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 15, 2009

#### **Final adoption:**

May 15, 2009

#### **Effective:**

June 25, 2009

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

N/A

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

N/A

#### **ANALYSIS:**

310:677-1-3, 310:677-5-2, and 310:677-13-8 - The current rules provide fees for certain initial and renewal certifications for Home Health, Residential Care, Adult Day Care, Developmentally Disabled, and Medication aides. The proposed rule amendments would increase those fees. 310:677-1-6, 310:677-3-2 and 310:677-13-12 - The current rules set fees and processes for the processing of facility nurse aide temporary emergency waiver (NATEW) applications, applications to approve training and competency evaluation programs and certified medication aide continuing education programs. The proposed rule amendments increase fees for the processing of these applications for the certifications cited.

The fee increases are requested to cover a greater portion of program operating costs while the Department simultaneously looks to greater efficiencies in operations to reduce costs. These rule amendments correct scrivener's errors in numbering beginning at 310:677-1-3(i).

310:677-7-5, Petition for removal of finding of neglect, this new section of rule implements requirements in federal statute at 42 USC 1396(g)(1)(D) which requires the State to establish a procedure to permit a nurse aide to petition the State to have the finding of neglect removed from a nurse aide's

registry record. The nurse aide may not petition to remove the finding until at least one (1) year has passed from the order issuing the notation of neglect and must show the incident does not reflect a pattern of abusive behavior or neglect and the neglect involved in the original finding was a singular occurrence.

310:677-11-4. This rule section provides the curriculum requirements to be addressed in the long term care aide training program. The proposed change replaces some existing language and creates a reference to language in the Code of Federal Regulations at 42 CFR 483.152(b)(2) through (7). The amendment replicates the specific requirements in the Code of Federal Regulations at 42 CFR 483.152(b) and are necessary to ensure the state training program rules fully implement the federal statute and rule as required in federal statute at 42 U.S.C. 1396r(e)(1)(B) and rule at 42 CFR 483.152(a)(2). The rule is amended to add the statutory requirement at 63 O.S. 1-1951(A)(3) that training programs include a minimum of ten (10) hours of training in the care of Alzheimer's 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, 2009:**

### **SUBCHAPTER 1. GENERAL PROVISIONS**

#### **310:677-1-3. Applicability**

(a) This Chapter shall apply to specified employers, nurse aides, certified medication aides and other unlicensed employees providing health related services, and training and competency evaluation programs.

(b) An employer shall not use an individual as a nurse aide unless the employer has consulted the Oklahoma Nurse Aide Registry to determine whether the individual is listed on the nurse aide registry and whether the individual has no confirmed findings of abuse, neglect or misappropriation of patient/resident/client property.

(c) The Department shall grant an exception to the nurse aide training requirements in 310:677-9-4 for home health aides, 310:677-11-4 for long term care aides, 310:677-13-4 for certified medication aides, 310:677-15-3 for developmentally disabled direct care aides, 310:677-17-3 for residential care aides and 310:677-19-3 for adult day care aides, and allow an individual to sit for the competency examination if the individual submits all information specified on the Training Exception Application (ODH Form 832), which requires the following:

- (1) Individual's full name and personal identifying information;
- (2) Telephone number and address to include street, city, state, and zip code;
- (3) Copy of official transcript documenting classroom and clinical training equal to or greater than the classroom and clinical training as prescribed in 310:677-9-4, 310:677-11-4, 310:677-13-4, 310:677-15-3, 310:677-17-3 and 310:677-19-3; and
- (4) Type of nurse aide training to be excepted.

(d) The Department shall grant to a graduate of an approved practical or registered nurse program located in the United

States a waiver to be placed on the nurse aide registry if the following criteria are met:

- (1) The individual submits all information specified on the Department's Nurse Aide Training and Competency Evaluation Program Waiver Application (ODH Form 844), which requires the following:
    - (A) Individual's full name and personal identifying information;
    - (B) Telephone number and address to include street, city, state, and zip code;
    - (C) Photocopy of diploma from an approved practical or registered nurse program;
    - (D) Type of nurse aide training and competency testing requesting to be waived; and
    - (E) Identification of all states, territories and districts of the United States and other countries where the individual has practiced or been licensed, certified or registered as a nurse; and
  - (2) The individual does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or similar agency in another state, territory or district of the United States or in another country, to be evidenced by the individual's attestation.
- (e) The Department shall allow a graduate of an approved practical or registered nurse program located outside the United States a training exception and shall be authorized to sit for a nurse aide competency examination if the following criteria are met:
- (1) The individual submits the Foreign Graduate Training Exception Application (ODH Form 843), which requires the following:
    - (A) Individual's full name;
    - (B) Telephone number and address to include street, city, state, and zip code;
    - (C) The location outside of the United States where the individual received their nursing education and licensing examination if applicable;
    - (D) The type of nurse aide training requesting to be excepted;
    - (E) Documentation verifying legal entry and resident status in the United States including but not limited to a photocopy of a Social Security Card, Visa, Green Card or naturalization papers; and
    - (F) A photocopy of a certified, translated diploma and transcript in English; and
  - (2) The individual does not have a denied, revoked or suspended license or certificate or an administrative penalty or disciplinary action imposed by the Oklahoma Board of Nursing or similar agency in another state, territory or district of the United States, to be evidenced by the individual's attestation.
- (f) An individual who has not completed an approved Oklahoma Nurse Aide Training program and is submitting an application to be included on the Oklahoma Nurse Aide Registry as a certified nurse aide shall submit the following nonrefundable fee with the required completed application:

- (1) Deeming Application, ~~\$10.00~~fifteen dollar ~~(\$15.00)~~ fee applicable to each of the following deeming applications except (A) of this paragraph:
    - (A) Home Health Aide Deemed to Long Term Care Aide (ODH Form 755) with no fee required;
    - (B) Home Health Aide Deemed to Developmentally Disabled Direct Care Aide (ODH Form 836);
    - (C) Home Health Aide Deemed to residential Care Aide (ODH Form 837);
    - (D) Home Health Aide Deemed to Adult Day Care Aide (ODH Form 838);
    - (E) Long Term Care Aide Deemed to Developmentally Disabled Direct Care Aide (ODH Form 830);
    - (F) Long Term Care Aide Deemed to residential Care Aide, (ODH Form 831);
    - (G) Long Term Care Aide Deemed to Adult Day Care Aide, (ODH Form 839);
    - (H) Developmentally Disabled Direct Care Aide Deemed to Residential Care Aide (ODH Form 834); and
    - (I) Developmentally Disabled Direct Care Aide Deemed to Adult Day Care Aide (ODH Form 835);
  - (2) Home Health Aide Reciprocity Application (ODH Form 735), \$15.00 fee;
  - (3) Training Exception Application (ODH Form 832), or Foreign Graduate Training Exception Application (ODH Form 843), \$15.00 fee; or
  - (4) Nurse Aide Training and Competency Evaluation Program Waiver Application (ODH Form 844), \$15.00 fee.
  - (5) The fees specified in (1) through (4) of this subsection apply to applications for home health aides, certified medication aides, developmentally disabled direct care aides, residential care aides, and adult day care aides. A fee shall not be charged on an application requesting certification as a long term care aide only.
- (g) An individual who has previously completed a Department approved Nurse Aide Training and Competency Evaluation Program and is unable to renew certification may obtain approval to take a retest by filing a Certified Nurse Aide Retest Application (ODH Form 841) if any of the following criteria are met:
- (1) The individual did not provide eight (8) hours of nursing or health related services for compensation during the twenty-four (24) months prior to expiration of the certification;
  - (2) The individual did not provide eight (8) hours of nursing or health related services for compensation up to twenty-four (24) months after expiration; or
  - (3) The individual's nurse aide certification has been expired for over two (2) years but less than three (3) years.
  - (4) A Certified Nurse Aide Retest Application (ODH Form 841) submitted by a home health aide, developmentally disabled direct care aide, residential care aide, or adult day care aide shall be accompanied by a ~~\$10.00~~fifteen dollar ~~(\$15.00)~~ nonrefundable fee.
  - (5) An individual who fails the approved retest shall be required to retrain before taking any subsequent retests.

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(jh) An individual may request a duplicate or amended certification card by submitting a Duplicate or Amended Nurse Aide Card Application (ODH Form 738) with a nonrefundable ~~\$5.00~~ ten dollar (\$10.00) fee. A fee shall not be charged on an application requesting a duplicate or amended long term care aide certification card.

### 310:677-1-6. Temporary emergency waiver

(a) **Purpose.** This section implements temporary emergency waivers authorized in 63:1-1950.3(A)(2) for nursing facilities, specialized facilities, continuum of care facilities, assisted living centers, adult day care centers, and residential care homes.

(b) **Eligibility for waiver.** A facility, center or home is eligible to receive a waiver if it:

(1) Makes diligent efforts to recruit and retain certified nurse aides, to be evidenced by one or more of the following:

- (A) Employment advertisements;
- (B) Competitive salaries;
- (C) Retention incentives; or
- (D) Recruitment incentives; and

(2) Has not been cited with a deficiency or violation that:

- (A) Was identified by the department during an investigation or inspection conducted on or after the effective date of this section; and
- (B) Relates to one or more of the following areas of noncompliance:
  - (i) Failure to develop and implement policies and procedures that prohibit mistreatment, neglect, abuse and misappropriation of property;
  - (ii) Failure to implement infection control procedures;
  - (iii) Failure to ensure that staff observe resident rights and responsibilities;
  - (iv) Failure to comply with criminal history background checks in 63:1-1950.1;
  - (v) Failure of a nurse aide to perform proficiently on nursing or personal care services;
  - (vi) Incompetence of a nurse aide; or
  - (vii) Failure to conduct performance appraisals or training as required for nurse aides; and

(C) Is associated with one or both of the following aggravating circumstances:

- (i) The deficiency or violation has not been corrected within required time frames; and/or
- (ii) The deficiency or violation is based on activity or inactivity of an uncertified nurse aide that caused a resident serious injury, harm, impairment or death.

(c) **Process.** This subsection specifies the process to obtain a waiver.

(1) A facility, center or home shall submit a written request on an application form made available by the Department. The form shall require:

- (A) Identifying information for the facility;

(B) Documentation that the facility complies with the eligibility requirements specified in OAC 310:677-1-6(b);

(C) Numbers of certified nurse aides, uncertified nurse aides, and other direct care staff persons projected to be employed by the facility during the effectiveness of the waiver;

(D) A narrative describing the reasons why the facility is unable to meet the staffing requirements of 63:1-1950.3, the means by which uncertified nurse aides shall be trained and evaluated during the waiver, and the anticipated duration of the waiver, not to exceed six months; and

(E) An attestation of the truth of the information provided in the application.

(2) If the Department finds that an application is incomplete, the Department shall advise the applicant in writing and offer an opportunity to submit additional or clarifying information.

(3) Within thirty days after receipt of a completed request for a waiver, the Department shall approve or disapprove the request and send written notice of the decision to the facility, center or home.

(4) The Department shall provide notice to the Office of the Oklahoma Long Term Care Ombudsman established under section 307(a)(12) of the Older Americans Act of 1965 of the Department's action on each waiver application.

(5) The facility, center or home shall notify residents, clients or participants (or, where appropriate, the guardian or legal representative) and members of their immediate families of the Department's action on the waiver application. A copy of the notice shall be posted in an easily accessible and conspicuous place in the facility, center or home.

(6) An applicant who disagrees with the Department's disapproval of the waiver application may file a written petition requesting review by an administrative law judge in an individual proceeding under the Oklahoma Administrative Procedures Act.

(7) A non-refundable fee of one hundred dollars (\$100) shall be included with the initial application for waiver.

(8) A non-refundable fee of seventy-five dollars (\$75) shall be included with an application for subsequent waiver under paragraph (d)(3) of this section.

(d) **Conditions for obtaining waiver.** The following additional conditions apply.

(1) To remain eligible for a waiver, the facility must continue after November 1, 2004 to comply with the substantive training limitations specified in 63:1-1950.3(A)(1), (B), (C) and (D).

(2) A waiver approved by the Department is effective for the period specified by the Department and not to exceed six months, unless sooner withdrawn by the Department for failure to meet eligibility requirements.

(3) If a facility, center or home applies for a subsequent waiver it shall submit another application for waiver in

accordance with (c) of this section and include the following additional information on each uncertified nurse aide employed during the preceding waiver period:

- (A) Name and date of birth;
- (B) Date the facility began using the person as a nurse aide;
- (C) Date the person entered training and competency evaluation; and
- (D) Date the person completed training and competency evaluation, or, if training and evaluation have not been completed, the person's status at the time of application and the projected date when evaluation will be completed.

**SUBCHAPTER 3. NURSE AIDE TRAINING AND COMPETENCY EXAMINATION PROGRAM**

**310:677-3-2. Approved programs**

- (a) The Department shall approve a nurse aide training and/or competency examination program that meets the criteria for a State approved program.
- (b) An entity seeking approval of a nurse aide training and/or competency examination program shall file the appropriate application form (ODH-743) and, for training programs other than long term care aide, a non-refundable application fee of fifty-one hundred dollars (\$50.00)–(\$100.00). There is no application fee for long-term care aide training, or long-term care aide competency evaluation, programs.
- (c) The Department's approval of a program shall not be transferable or assignable.

**SUBCHAPTER 5. NURSE AIDE REGISTRY**

**310:677-5-2. Registry operation**

- (a) The Department shall maintain overall operation of the registry.
- (b) Only the Department may place in the registry findings of abuse, neglect, mistreatment or misappropriation of property.
- (c) The nurse aide registry shall indicate which individuals:
  - (1) Successfully completed a nurse aide training and competency examination;
  - (2) Were given a training exception to bypass training requirements and sit for the competency examination;
  - (3) Had the nurse aide training and competency examination program requirements waived; or
  - (4) Were placed on the Oklahoma Nurse Aide Registry via reciprocity from another state.
- (d) A home health aide, long term care aide, developmentally disabled direct care aide, residential care aide, and adult day care aide shall renew individual certification once every two (2) years. The individual certified as a home health aide, developmentally disabled direct care aide, residential care aide, or adult day care aide shall file a Recertification Application (ODH Form 717). The individual certified as a long term care aide shall file a Recertification Application for Long Term

Care Aide (ODH Form 840). Each recertification application requires:

- (1) Personal identifying and contact information for the applicant;
- (2) Documentation that the applicant has provided at least eight (8) hours of nursing or health related services for compensation during the preceding 24 months. On and after July 1, 2008, the documentation shall consist of one of the following:
  - (A) A statement signed by the administrator or the administrator's representative for the licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility where the applicant provided services;
  - (B) A statement signed by a physician or nurse under whose supervision the applicant provided services; or
  - (C) A check stub, IRS Form W-2 or similar proof of wages paid to the applicant by a licensed nursing facility, specialized facility, residential care home, home health or home care agency, adult day care center, assisted living center, continuum of care facility, Oklahoma Department of Veterans Affairs nursing facility, or Oklahoma correctional facility; and
- (3) An oath of truthfulness and completeness to be signed by the applicant.
- (e) A home health aide, developmentally disabled direct care aide, residential care aide, or adult day care aide shall pay a five ten dollar \$5.00–(\$10.00) fee for the processing and renewal of certifications and for replacement of a wallet card for change of name or other reason.

**SUBCHAPTER 7. HEARINGS**

**310:677-7-5. Petition for removal of finding of neglect**

- (a) **Petition.** If more than one (1) year has expired since the day the finding of neglect notation was placed upon the file of the certified nurse aide or nurse aide trainee, the certified nurse aide or nurse aide trainee may request a hearing and an individual proceeding shall be commenced upon the filing of a petition or request by the certified nurse aide or nurse aide trainee which states:
  - (1) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and
  - (2) the neglect involved in the original finding was a singular occurrence.
- (b) **Notice of hearing.** All parties shall be given notice of the date, time and place of the hearing. The notice of hearing shall include a copy of the petition.
- (c) **Time.** The hearing shall be scheduled at least fifteen (15) working days after the certified nurse aide or nurse aide trainee has received notice of the hearing.

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(d) **Authority.** The Administrative Law Judge shall issue a decision within fifteen (15) working days following the close of the hearing record. The decision shall include Findings of Fact and Conclusions of Law separately stated.

(e) **Registry notification.** If the Administrative Law Judge finds that the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect and the neglect involved in the original finding was a singular occurrence, the Administrative Law Judge shall take the following into consideration in making a decision whether to direct the nurse aide registry to remove the finding of neglect notation from the Registry:

- (1) The degree of negligence;
- (2) The severity of the potential negative resident outcome;
- (3) The severity of the actual negative resident outcome;
- (4) The forthrightness and cooperation of the individual;
- (5) Any rehabilitation or education completed by the individual since the incident; and
- (6) Any other factors or considerations the judge determines to be pertinent to the court's decision. In all other instances, the name and information of the nurse aide upon the nurse aide registry shall remain unchanged.

(f) **Status of certification.** Where the Administrative Law Judge directs that the finding of neglect notation be removed, the following shall apply:

- (1) If the nurse aide is no longer certified and has no other disqualifying notations on the registry, the nurse aide shall successfully complete a nurse aide competency evaluation program prior to re-establishing certification. All applicable retesting fees shall apply.
- (2) An individual who fails a nurse aide competency evaluation program under the prior paragraph shall be required to retrain before taking any subsequent retests.
- (3) If the aide is a nurse aide trainee and has no other disqualifying notations on the registry, the nurse aide trainee shall successfully complete a nurse aide training and competency evaluation program to establish certification.

## SUBCHAPTER 11. LONG TERM CARE AIDES

### 310:677-11-4. Curriculum

(a) The training program for long term care aides shall include:

- (1) At least, seventy-five (75) hours of training or the equivalent.
- (2) At least sixteen (16) hours of training in the following areas prior to any direct contact with a resident that is documented and signed by the nurse aide trainee:
  - (A) Communication and interpersonal skills.
  - (B) Infection control.
  - (C) Safety and emergency procedures, including the Heimlich maneuver.

(D) Promoting a resident's independence.

(E) Respecting a resident's rights.

(3) At least sixteen (16) hours of supervised practical training that is documented and signed by the nurse aide trainee.

(b) The long term care aide training program shall include, ~~but is not limited to, the subjects specified in paragraphs (b)(2) through (7) of 42 CFR 483.152(b)~~ each of the following subject areas:

- (1) ~~Basic nursing skills.~~
- (2) ~~Personal care skills.~~
- (3) ~~Mental health and social service needs.~~
- (4) ~~Care of cognitively impaired residents.~~
- (5) ~~Basic restorative services.~~
- (6) ~~Resident's rights which shall include:~~
  - (A) ~~Providing privacy and maintenance of confidentiality.~~
  - (B) ~~Promoting the resident's right to make personal choices to accommodate individual needs.~~
  - (C) ~~Assisting in resolving grievances and disputes.~~
  - (D) ~~Maintaining care and security of the resident's personal possessions.~~
  - (E) ~~Promoting the resident's right to be free from abuse, neglect, mistreatment or misappropriation of property, and the need to report any instances to appropriate facility staff.~~
  - (F) ~~Avoiding the need for restraints in accordance with current professional standards.~~

(c) Pursuant to 63 O.S. 1-1951(A)(3), the long term care aide training program shall include a minimum of ten (10) hours of training in the care of Alzheimer's patients.

## SUBCHAPTER 13. CERTIFIED MEDICATION AIDES

### 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 for recertification are as follows:

- (1) The certified medication aide shall submit a Recertification Application (ODH Form 717) that requires information to demonstrate compliance with 310:677-13-1(d).
- (2) The Recertification Application (ODH Form 717) shall be accompanied by a ~~five ten~~ ten dollar ~~(\$5.00)~~ (\$10.00) fee.

(3) Each recertification shall be effective for twelve months from the expiration date of the medication aide's previous certification.

(4) The medication aide shall be required to retest if certification has expired by more than one year. The individual may obtain approval to take a retest by filing a Certified Medication Aide Retest Application (ODH Form 842) with a ~~\$10~~fifteen dollar (~~\$10.00~~\$15.00) nonrefundable fee. The aide shall retrain and test if the aide fails the retest or if certification has expired by more than three years.

(5) The Recertification Application (ODH Form 717) for a medication aide shall include documentation of continuing education equivalent to eight hours for every twelve months of certification, excluding the first year of certification.

(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 A request for endorsement shall be accompanied by the a \$5.00 ten dollar (\$10.00) certification-endorsement fee required in this section~~ 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.

**310:677-13-12. Medication aide continuing education**

(a) An entity seeking approval of a certified medication aide continuing education program shall file a nonrefundable application fee of ~~twenty five~~seventy-five dollars (~~\$25.00~~\$75.00) and a Certified Medication Aide Continuing Education Form, which requires the following:

(b) Within 30 days after receipt of an application for a continuing education 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.

(c) Department-approved continuing education 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) An approved continuing education program shall submit to the Department within 30 days after the conclusion of a continuing education class the following information:

- (1) The title of the class and number of hours offered;

(2) The name, certification number, and number of hours attended for each certified medication aide who satisfactorily completed the continuing education class.

[OAR Docket #09-1007; filed 5-20-09]

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

[OAR Docket #09-919]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
317:2-1-7. [AMENDED]  
(Reference APA WF # 08-40)

**AUTHORITY:**  
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.902; 42 CFR 435.930

**DATES:**  
**Comment period:**  
January 15, 2009 through February 14, 2009

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**Legislative approval:**  
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 7, 2009

**Final adoption:**  
May 7, 2009

**Effective:**  
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**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**  
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(Reference APA WF # 08-40)

**Gubernatorial approval:**  
January 2, 2009

**Register publication:**  
26 Ok Reg 525

**Docket number:**  
09-68

**INCORPORATIONS BY REFERENCE:**  
N/A

**ANALYSIS:**  
Agency rules are revised to ensure policy is consistent with the agency's practices. Currently, agency's practices are an appeal is forwarded to the Legal Services Division after it has been docketed. The revision is needed to reflect accurate agency practices and to ensure provider appeals are forwarded to the correct division without unnecessary delays.

**CONTACT PERSON:**  
Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED  
FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

# Permanent Final Adoptions

## SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:

### 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)~~ 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~~ should 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 Medical Advisory Committee (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~~ OHCA Legal Services Division 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.

[OAR Docket #09-919; filed 5-14-09]

## TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #09-922]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 7. SoonerCare

Part 1. General Provisions

317:25-7-1. through 317:25-7-2. [AMENDED]

317:25-7-3. [AMENDED]

317:25-7-5. through 317:25-7-6. [AMENDED]

Part 3. Enrollment Criteria

317:25-7-10. [AMENDED]

317:25-7-12. through 317:25-7-13. [AMENDED]

Part 5. Enrollment Process

317:25-7-25. through 317:25-7-28. [AMENDED]

Part 7. Coordination and Continuity of Care [NEW]

317:25-7-29. through 317:25-7-30. [AMENDED]

Part 9. Reimbursement [NEW]

317:25-7-40. [NEW]

(Reference APA WF # 08-19)

### AUTHORITY:

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

### DATES:

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February 19, 2009

#### Adoption:

March 12, 2009

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#### Gubernatorial approval:

April 13, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 7, 2009

#### Final adoption:

May 7, 2009

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Subchapter 7. SoonerCare

Part 1. General Provisions

317:25-7-1. through 317:25-7-2. [AMENDED]

317:25-7-3. [AMENDED]

317:25-7-5. through 317:25-7-6. [AMENDED]

Part 3. Enrollment Criteria

317:25-7-10. [AMENDED]

317:25-7-12. through 317:25-7-13. [AMENDED]

Part 5. Enrollment Process

317:25-7-25. through 317:25-7-28. [AMENDED]

Part 7. Coordination and Continuity of Care [NEW]

317:25-7-29, through 317:25-7-30. [AMENDED]

Part 9. Reimbursement [NEW]

317:25-7-40. [NEW]

(Reference APA WF # 08-19)

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26 Ok Reg 401

**Docket number:**

08-1502

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

SoonerCare rules are revised to incorporate the patient-centered medical home model of care in which providers are paid a monthly care coordination payment in addition to reimbursement for SoonerCare compensable services at the fee-for-service rate. The medical home model provides a partnership between a patient and a personal physician built around preventive and primary care. Currently, primary care providers (PCPs) in the SoonerCare Choice program are paid a capitated rate per member per month. This monthly fee assures the delivery of medically necessary primary care services and any non-capitated services are reimbursed at the traditional fee-for-service rate. After reviewing claims data, OHCA determined that an improvement to the current payment methodology would include the removal of the base capitation rate, reimbursement of all services based on OHCA's fee-for-service rate, and a monthly care coordination payment to the member's PCP. The care coordination payment would vary based on the scope of services provided by the PCP. Currently, SoonerCare Choice members select or are aligned with a primary care provider (PCP). Beginning January 1, 2009, PCPs will be responsible for serving as the medical home for enrolled members. Building on the success of the existing network, the OHCA believes this transition will help ensure that members get the right care at the right time from the right provider. OHCA intends to make this transition seamless to SoonerCare Choice members. SoonerCare rules are also amended to: (1) require provider or physician groups to designate a medical director to serve as primary contact with OHCA; (2) include a section on provider networks; and (3) include language regarding the development of a payment for excellence program. Without this transition, SoonerCare Choice members would be directly impacted by not allowing them the coordination of preventive and primary care services at the level promoted by the patient centered medical home model that is widely endorsed by primary care physicians' professional groups.

**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, 2009:**

**SUBCHAPTER 7. SOONERCARE**

**PART 1. GENERAL PROVISIONS**

**317:25-7-1. Purpose**

The purpose of this Subchapter is to describe the rules governing the statewide SoonerCare program. The rules provide assurances that ~~Medicaid clients~~ SoonerCare members have adequate access to primary care, while reducing costs and preventing unnecessary and inappropriate utilization.

**317:25-7-2. SoonerCare Choice: overview**

(a) The Oklahoma Health Care Authority (OHCA) operates a Primary Care Case Management (PCCM) system for SoonerCare Choice eligible members. ~~The program enrolls SoonerCare Choice members with Primary Care Provider/Case Managers PCP/CMs who provide and/or authorize all primary care services and all necessary specialty services, with the exception of services described in subsection (c) of this Section for which authorization is not required. PCCM is a managed care model in which each enrollee has a medical home with a primary care provider (PCP). Enrollees may select their own primary care provider or clinic as their PCP if that provider is enrolled with OHCA as a PCP and as a SoonerCare provider. For those who do not choose a PCP, they will be assigned to one. Members may change PCPs at any time.~~

(b) ~~In exchange for a fixed, periodic rate, which~~ The PCP is paid a monthly care coordination payment in accordance with the conditions in the PCP's SoonerCare Choice contract per member per month, the Primary Care Provider/Case Manager (PCP/CM) to provides, provide or otherwise assures ~~assure~~ the delivery of medically-necessary preventive and primary care medical services, including securing referrals for specialty services and prior authorizations for an enrolled group of eligible members, with the exception of services described in subsection (c) of this Section for which authorization is not required. The ~~PCP/CM~~ PCP assists the member in gaining access to the health care system and monitors the member's condition, health care needs and service delivery.

(c) Services which do not require a referral from the ~~PCP/CM~~ PCP include preventive or primary care services rendered by another SoonerCare contracted provider, outpatient behavioral health agency services, vision for refraction services for children, dental services, child abuse/sexual abuse examinations, prenatal and obstetrical services, family planning services, emergency physician and hospital services, disease management services, and services delivered to Native Americans at IHS, tribal, or urban Indian clinics. Female members may access a SoonerCare women's health specialist without a referral for covered routine and ~~preventative~~ preventive health care services. This is in addition to the enrollee's ~~PCP/CM~~ PCP if that source is not a woman's health specialist.

(d) ~~Non-capitated~~ SoonerCare Choice covered services delivered by the ~~PCP/CM~~ PCP are reimbursed at the SoonerCare ~~Traditional fee for service fee~~ schedule rate under the procedure code established for each individual service. To the extent services are provided or authorized by the Primary Care ~~Provider/Case Manager~~ Provider, the OHCA does not make SoonerCare Choice payments for services delivered outside the scope of coverage of the SoonerCare Choice program, thus a referral by the ~~Primary Care Provider/Case Manager~~ PCP does not guarantee payment.

(e) The PCP may charge a co-payment for services provided to SoonerCare members in accordance with OAC 317:30-3-5(d).

(f) Members with chronic conditions may elect to enroll in a health management program to improve their health.

(g) PCPs may elect to participate in Health Access Networks to improve access to care.

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## 317:25-7-3. Definitions

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

**"Aged, Blind and Disabled"** means the Medicaid covered populations under 42 U.S.C., Section 1396a (a)(10)(A)(i) and (F).

**"Board"** means the board designated by the Oklahoma legislature to establish policies and adopt and promulgate rules for the Oklahoma Health Care Authority.

**"CEO"** means the Chief Executive Officer of the Oklahoma Health Care Authority.

**"Custody"** means the custodial status, as reported by the Oklahoma Department of Human Services.

**"Medicaid"** means the medical assistance program authorized by 42 U.S.C., Section 1396a et seq. The program provides medical benefits for certain low-income persons. It is jointly administered by the federal and state governments.

**"Medicare"** means the program defined at 42 U.S.C. §1395 et seq.

**"OHCA"** means the Oklahoma Health Care Authority.

**"OKDHS"** means the Oklahoma Department of Human Services.

**"PCCM"** means Primary Care Case Management.

**"PCP/CM PCP"** means Primary Care ~~Provider/Case Manager~~ Provider, including a Provider or Physician Group.

**"Primary Care Case Management"** means a managed care health service delivery system in which health services are delivered and coordinated by Primary Care ~~Provider/Case Managers~~ Providers.

**"Primary Care ~~Provider/Case~~ Manager ~~Provider~~"** means a provider under contract ~~to~~ with the Oklahoma Health Care Authority to provide primary care services and case management, including securing all medically-necessary referrals for specialty services and prior authorizations.

**"Provider or Physician Group"** means a partnership, limited partnership, limited liability company, corporation or professional corporation composed of doctors of medicine and/or doctors of osteopathy and/or advanced ~~nurse~~ practice nurses, and/or physician assistants who provide health care of the nature provided by independent practitioners and ~~is~~ are permitted by state and federal law and regulations to receive ~~Medicaid~~ SoonerCare provider payments.

**"SoonerCare"** means the Medicaid program administered by the Oklahoma Health Care Authority.

**"SoonerCare Choice"** means a comprehensive medical benefit plan featuring a medical home including a Primary Care Provider for each member.

## 317:25-7-5. Primary care ~~provider/case managers~~ providers

For provision of health care services, the OHCA contracts with qualified Primary Care ~~Provider/Case Managers~~ Providers. All providers serving as ~~PCP/CMs~~ PCPs must have a valid ~~Medicaid Fee for Service~~ SoonerCare Fee-for-Service contract as well as a an exercised SoonerCare Choice contract addendum. Additionally, all ~~PCP/CMs~~ PCPs, excluding Provider or Physician Groups, must agree to accept a minimum

capacity of patients, however this does not guarantee ~~PCP/CMs~~ PCPs a minimum patient volume. Primary Care ~~Provider/Case Managers~~ Providers are limited to:

(1) **Physicians.** Any physician licensed to practice medicine in the state in which he or she practices who is engaged in a general practice or in family medicine, general internal medicine or general pediatrics may serve as a ~~PCP/CM~~ PCP. ~~In addition, physicians who meet all requirements for employment by the Federal Government as a physician, are employed by the Federal Government in an IHS facility, and practice in one of the four designated primary care specialties may serve as a PCP/CM.~~ The Chief Executive Officer (CEO) of the OHCA may designate physicians to serve as ~~PCP/CMs~~ PCPs who are licensed to practice medicine in the state in which they ~~practices~~ practice who are specialized in areas other than those described above. In making this determination, the CEO may consider such factors as the percentage of primary care services delivered in the physician's practice, the availability of primary care providers in the geographic area of the state in which the physician's practice is located, the extent to which the physician has historically provided services to ~~Medicaid clients~~ SoonerCare members, and the physician's medical education and training.

(A) For physicians serving as SoonerCare Choice ~~PCP/CMs~~ PCPs, the State caps the number of members per physician at 2,500. However, the CEO in his/her discretion may increase this number in underserved areas based on a determination that this higher cap is in conformance with usual and customary standards for the community. If a physician practices at multiple sites, the capacity at each site is determined based on the number of hours per week the physician holds office hours, not to exceed one FTE. Thus, the physician cannot exceed a maximum total capacity of 2500 members.

(B) In areas of the State where cross-state utilization patterns have developed because of limited provider capacity in the State, the CEO may authorize contracts with out-of-state providers for ~~PCP/CM~~ PCP services. Out-of-State ~~PCP/CMs~~ PCPs are required to comply with all access standards imposed on Oklahoma physicians.

(2) **Advanced Practice Nurses.** Advanced Practice Nurses who have prescriptive authority may serve as ~~PCP/CMs~~ PCPs for the Primary Care Case Management delivery system if licensed to practice in the state in which he or she practices. ~~Additionally, Advanced Practice Nurses who meet all requirements for employment by the Federal Government as an advanced practice nurse, and is employed by the Federal Government in an Indian Health Service facility, may serve as a PCP/CM.~~ Advanced Practice Nurses who have prescriptive authority may serve as primary care case managers PCPs for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.

(3) **Physician Assistants.** Physician Assistants may serve as ~~PCP/CMs~~ PCPs if licensed to practice in the state

in which he or she practices. ~~Additionally, Physician Assistants who meet all requirements for employment by the Federal Government as a Physician Assistant, and are employed by the Federal Government in an Indian Health Service facility, may serve as a PCP/CM. Physician Assistants may serve as primary care case managers PCPs for a maximum number of 1,250 members. However, the CEO in his/her discretion may increase this number.~~

**(4) Medical Residents.**

(A) Medical residents may serve as ~~PCP/CMs~~ PCPs when the following conditions are met:

- (i) The resident is licensed to practice in the state in which he or she practices.
- (ii) The resident is at least at the Post-Graduate 2 (PG-2) level.
- (iii) The resident serves as a ~~PCP/CM~~ PCP only within his or her continuity clinic setting (for example, Family Practice residents may only serve as the ~~PCP/CM~~ PCP within the Family Practice Residency clinic setting).
- (iv) The resident works under the supervision of a licensed attending physician.
- (v) The resident specifies the residency program or clinic to which payment will be made.

(B) Medical residents practicing as a ~~PCP/CM~~ PCP may not exceed a capacity of more than 875 members. However, the CEO in his/her discretion may increase this number.

**(5) Indian Health Service (IHS) Facilities and Federally Qualified Health Center (FQHC) provider groups.**

(A) Indian Health Service facilities whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements at OAC 317:30-5-1088 may serve as PCPs.

(B) Federally Qualified Health Centers whose professional staff meet the general requirements in paragraphs (1) through (3) of this Section and the provider participation requirements in OAC 317:30-5-660.2 may serve as PCPs.

**(5) Provider or physician group capacity and enrollment.**

(A) Provider or physician groups must agree to accept a minimum enrollment capacity and may not exceed 2,500 members per provider physician participating in the provider group.

(B) If licensed physician assistants or advanced practice nurses are members of a group, the capacity may be increased by 1,250 members if the provider is available full-time.

(C) Provider or physician groups must designate a medical director to serve as the primary contact with OHCA.

**317:25-7-6. Primary Care Provider/Case Manager Provider Payment to Subcontractors responsibilities**

- (a) Under the provisions of the SoonerCare Choice Contract, the contractor is responsible for providing ~~all capitated services contained in the benefit package~~ care coordination services for all enrolled members on his/her panel. ~~In the event that the PCP/CM orders a capitated service, the PCP/CM is responsible to make timely payment to the subcontractor or other provider.~~
- (b) For purposes of subsection (a) of this Section ~~timely payment or adjudication means payment or denial of a claim within 30 days of presentation to the PCP/CM. PCPs must provide access to medical care twenty-four hours per day, seven days a week, either directly or through coverage arrangements made with other providers, clinics, and/or local hospitals.~~
- (c) ~~No subcontractor of the PCP/CM may charge more than the Medicaid fee for service schedule for these services in the benefit package. The subcontractor may not bill the recipient for the services to the SoonerCare recipient until the PCP/CM has refused payment and the subcontractor/medical provider has appealed under OAC 317:2-1-2.1 and the OHCA permits the subcontractor to bill the recipient.~~

**PART 3. ENROLLMENT CRITERIA**

**317:25-7-10. Enrollment with a Primary Care Provider/Case Manager Provider**

(a) All SoonerCare Choice members described in OAC 317:25-7-12 are ~~enrolled may enroll~~ with a ~~PCP/CM~~ PCP. SoonerCare Choice applicants have the opportunity to select a ~~PCP/CM~~ PCP during the application process. Enrollment with a PCP may begin any day of the month. Enrollment with a PCP/CM for members determined to be eligible on or before the fifteenth day of the month are effective on the first day of the following month. Enrollment with a PCP/CM for members determined to be eligible after the fifteenth day of the month are effective on the first day of the second month following determination.

- (1) The OHCA offers all members the opportunity to choose a ~~PCP/CM~~ PCP from a directory which lists available ~~PCP/CMs~~ PCPs.
- (2) ~~If a SoonerCare Choice member moves more than the authorized distance/driving time from their current PCP/CM, that member will be disenrolled and assigned to an appropriate PCP/CM. When a notice of PCP/CM assignment PCP enrollment is sent to a member, the member is advised of the right to change the PCP/CM, PCP at any time, or after the effective date of enrollment with the PCP/CM pursuant to OAC 317:25-7-27.~~

(b) ~~Members are restricted to may receive services from the PCP/CM PCP or from a provider to which the member has been referred by the PCP/CM PCP. Notwithstanding this provision, subject to limitations which may be placed on services by the OHCA, members may self refer for preventive or primary care services rendered by another SoonerCare contracted provider, outpatient behavioral health agency services, vision for refraction services for children, dental services, child abuse/sexual~~

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abuse examinations, prenatal and obstetrical services, family planning services, services delivered to Native Americans at IHS, tribal, or urban Indian clinics, and emergency physician and hospital services.

### 317:25-7-12. Enrollment/eligibility requirements

(a) Eligible ~~SoonerCare~~ ~~SoonerCare Choice~~ members ~~mandatorily enrolled in SoonerCare Choice~~ include ~~Medicaid eligible persons or persons categorized categorically related to AFDC, Pregnancy-related services and as Aged, Blind or Disabled who are not dually-eligible for Medicaid SoonerCare and Medicare.~~

(b) Children in foster care may voluntarily enroll into SoonerCare Choice.

### 317:25-7-13. Enrollment ineligibility

Members in certain categories are excluded from participation in the SoonerCare Choice program. All other members are enrolled in the SoonerCare Choice program and subject to the provisions of this Subchapter. Members excluded from participation in SoonerCare Choice include:

- (1) Individuals receiving services in a nursing facility, in an intermediate care facility for the mentally retarded (ICF-MR) or through a Home and Community Based Waiver.
- (2) Individuals privately enrolled in an HMO.
- (3) Individuals who would be traveling more than 45 miles or an average of 45 minutes to obtain primary care services, ~~or a greater or lesser distance/driving time as determined pursuant to OAC 317:25-7-10(a).~~
- (4) Children who are known to the OHCA to be in custody, as reported by the Oklahoma Department of Human Services.
- (5) Individuals who are eligible for SoonerCare solely due to presumptive eligibility.
- (6) Non-qualified or ineligible aliens.
- (7) Children in subsidized adoptions.
- (8) Individuals who are dually-eligible for ~~Medicaid~~ SoonerCare and Medicare.
- (9) Individuals who are in an Institution for Mental Disease (IMD).

## PART 5. ENROLLMENT PROCESS

### 317:25-7-25. Recipient Member enrollment process

(a) ~~Medicaid SoonerCare~~ eligible individuals ~~residing in any of the areas defined in OAC 317:25-7-11~~ whose eligibility is based on one of the aid categories included in the program as defined in OAC 317:25-7-12 must enroll with a PCP/CM PCP. Parents or guardians will choose on behalf of minor clients members in the household. Families with more than one beneficiary enrollee may choose a different PCP/CM PCP for each family member. ~~If a beneficiary does not select a PCP/CM, the OHCA will assign the member to one, from the pool of providers within the established distance/driving time who have available capacity.~~

(b) Until the effective date of enrollment with a PCP/CM PCP, services for a newborn are reimbursed at a fee-for-service rate. Upon eligibility determination, newborns may enroll with a PCP/CM PCP ~~or are assigned to a PCP/CM~~ who is in general practice, family practice or general pediatrics. Enrollment materials will advise the parent or guardian of the right to change the PCP/CM PCP after the effective date of enrollment.

(c) A description of the PCCM program and the PCP/CM PCP directory is provided by the OHCA to OKDHS for distribution to OKDHS county offices.

(d) For purposes of determining the client's member's choice of PCP/CM PCP, the most recent PCP/CM PCP selection received by the OHCA determines the PCP/CM PCP which the client member is enrolled with as long as capacity is available. If capacity is not available ~~then~~ or the member does not choose, the client member is assigned according to the assignment mechanism as defined by the OHCA. A member who is eligible for SoonerCare Choice but is not assigned, may request enrollment with a PCP by contacting the SoonerCare Helpline.

(e) PCP/CMs PCPs may not refuse an assignment, seek to disenroll a client member, or otherwise discriminate against a client member on the basis of age, sex, race, physical or mental disability, national origin or type of illness or condition, unless that condition can be better treated by another provider type, except that IHS, tribal or urban Indian programs may provide services to Native American IHS beneficiaries members consistent with federal law.

~~(f) PCP/CMs must provide access to medical care twenty four hours per day, seven days per week, either directly or through coverage arrangements made with other providers, clinics, and/or local hospitals.~~

~~(g) Until PCP/CM enrollment is effective, Medicaid eligible individuals receive all services on a fee-for-services basis.~~

### 317:25-7-26. Automatic re-enrollment

~~Medicaid recipients who are not in the six month period of guaranteed eligibility~~ SoonerCare members who become disenrolled from a PCP/CM PCP solely by virtue of becoming temporarily (for ~~180~~ 365 days or less) ineligible for ~~Medicaid~~ SoonerCare services, are automatically re-enrolled with their previously-selected PCP/CM PCP, subject to capacity. The client member is notified of the automatic re-enrollment and any right to disenroll from that PCP/CM PCP.

### 317:25-7-27. Changing PCP/CMs PCPs

(a) The OHCA ~~shall be~~ is responsible for changing a member's enrollment from one PCP/CM PCP to another:

- (1) without cause ~~up to 4 times per year~~, upon the member's request; or
- (2) upon demonstration of good cause. For purposes of this paragraph, Good good cause shall mean means:

(A) those members who are habitually non-compliant with the documented medical directions of the provider; or

(B) those members who pose a threat to employees, or other patients of the PCP/CM PCP; or

(C) as a result of a grievance determination by the OHCA; or

(D) in those cases where reliable documentation demonstrates that the physician-patient relationship has so deteriorated that continued service would be detrimental to the member, the provider or both; or

(E) the member's illness or condition would be better treated by another type of provider; or

(3) when the state imposes an intermediate sanction.

(b) A written request by the PCP/CM PCP to change the enrollment of a member shall be acted upon by the OHCA within thirty (30) days of its receipt. The decision to change PCP/CMs PCPs for cause will be made at the discretion of the OHCA, subject to appeals policies delineated at OAC 317:2-1. The effective date of change shall be set so as to avoid the issue of abandonment.

(c) In the event a SoonerCare PCP/CM PCP contract is terminated by OHCA for any reason, or the PCP/CM PCP terminates participation in the SoonerCare program the CEO may, at his or her discretion, assign members to a participating PCP/CM PCP when it is determined to be in the best interests of the client member whose PCP/CM PCP has terminated.

**317:25-7-28. Disenrolling a client member from SoonerCare**

(a) The OHCA may disenroll a member from SoonerCare if:

(1) the member is no longer eligible for Medicaid SoonerCare services; or

(2) the member has been incarcerated; or

(3) the member dies; or

(4) disenrollment is determined to be necessary by the OHCA; or

(5) the status of the member changes, rendering him/her ineligible for SoonerCare; or

(6) the member is already enrolled in the SoonerCare Program, when they are taken or found to be in custody as reported by the Oklahoma Department of Human Services; or

(7) the member is authorized to receive services in a nursing facility, in an intermediate care facility for the mentally retarded (ICF-MR) or through a Home and Community Based Waiver; or

(8) the member becomes dually-eligible for Medicaid SoonerCare or Medicare.

(b) The OHCA may disenroll the member at any time if the client member is disenrolled for good cause, as it is defined in OAC 317:25-7-27. The OHCA will inform the PCP/CM PCP of any disenrollments from his or her member roster.

(c) OHCA may disenroll a member upon the PCP's request as described in (1) through (5) of this subsection.

(1) The PCP may file a written request asking OHCA to take action including, but not limited to, disenrolling a member when the member:

(A) is physically or verbally abusive to office staff, providers and/or other patients;

(B) is habitually non-compliant with the documented medical directions of the PCP; or

(C) regularly fails to arrive for scheduled appointments without cancelling and the PCP has made all reasonable efforts to accommodate the member.

(2) The request from the PCP for disenrollment of a member must include one of more of the following:

(A) documentation of the difficulty encountered with the member including the nature, extent and frequency of abusive or harmful behavior, violence, and/or inability to treat or engage the member;

(B) identification and documentation of unique religious or cultural issues that may be effecting the PCP's ability to provide treatment effectively to the member; or

(C) documentation of special assistance or intervention offered.

(3) The PCP may not request disenrollment because of a change in the member's health status, the member's utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from the member's special needs except when the member's enrollment with the PCP seriously impairs his/her ability to furnish services to this member or other members.

(4) The PCP must document efforts taken to inform the member orally or in writing of any actions that have interfered with the effective provision of covered services, as well as efforts to explain what actions or language of the member are acceptable and unacceptable and the consequences of unacceptable behavior, including disenrollment from the PCP.

(5) The OHCA will give written notice of the disenrollment request to the member.

**PART 7. COORDINATION AND CONTINUITY OF CARE**

**317:25-7-29. Plan-benefit package Screening, diagnosis and preventive benefits**

(a) The PCP/CM PCP is responsible for coordinating or delivering preventive and primary care and case management services defined in a benefit package developed by the OHCA which are medically necessary to all Medicaid beneficiaries SoonerCare members enrolled with him/her and is reimbursed for these services on a per member per month pre-determined capitated rate. The PCP/CM benefit package will be determined by the Medical Director, with the approval of the CEO, and will be included with the PCP/CM contract.

(b) Services which are not included in the PCP/CM capitated rates will be reimbursed at a fee-for-service rate under the procedure code established for each individual service.

(e) School and health department clinics may conduct EPSDT screening examinations on children who have not been screened by their PCP/CM PCP pursuant to the EPSDT periodicity schedule. If it is ascertained that a child is not current, the school or health department clinic must first contact the PCP/CM PCP and attempt to set up an appointment for the child within three weeks. If the PCP/CM PCP cannot meet this condition, the clinic will be permitted to conduct the screen

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and bill fee-for-service. ~~The State considers the cost of these screens in the rate setting process.~~

- (1) The school or health department clinic must submit a claim for reimbursement, as well as documentation that:
  - (A) ~~the PCP/CM PCP~~ was contacted and an examination could not be conducted by the PCP/CM PCP within the specified guidelines; and
  - (B) ~~the PCP/CM PCP~~ has forwarded information for the patient file regarding the diagnosis, services rendered and need for follow-up. This documentation must be returned to the child's record for verification that PCP/CMs PCPs have first been contacted and that school and health department clinics are providing PCP/CMs PCPs with the information necessary to ensure continuity of care.
- (2) The school-based clinic or health department must ~~obtain a referral number from the PCP/CM and~~ conduct the screening examination within ~~3~~ three weeks from the date the determination was made that the PCP/CM PCP could not conduct the exam within the specified guidelines.
- ~~(d) PCP/CM providers are protected from excessive losses incurred through the provision of services to Medicaid clients with conditions which result in costs to the provider which greatly exceed the average cost of a Medicaid client through a stop loss mechanism.~~
- ~~(e) The PCP/CM is prohibited from charging a co-payment for services provided to SoonerCare recipients.~~
- ~~(f) For capitated services purchased by the PCP/CM from a Medicaid contracted provider, the provider is prohibited from charging the PCP/CM more than the current Medicaid fee for service schedule for these services, but may charge less.~~
- ~~(g) The PCP/CM is not obligated to provide emergency services, and is not responsible for authorization or approval for payment for recipients seen in the emergency room. The PCP/CM may not require recipients to seek prior authorization for emergency services. However, the PCP/CM may provide emergency care in an emergency room setting, within his/her legal scope of practice. The PCP/CM may receive reimbursement for Medicaid covered emergency services at the fee for service rate.~~

### **317:25-7-30. Obtaining Medicaid SoonerCare services not covered by the PCP/CM**

- (a) Medical services ~~which are not included as capitated primary care services or~~ which are not the responsibility of the PCP/CM PCP to authorize under the case management care coordination component of SoonerCare, as described in OAC 317:25-7-2(d) and OAC 317:25-7-10(b), are obtained in the same manner as under the regular Medicaid SoonerCare fee-for-service program.
- (b) Authorization for out-of-state transportation for primary care and specialty care is determined by the OHCA Medical Director.
- (c) An eligible SoonerCare member may choose a PCP/CM PCP from the provider directory, including the IHS, tribal and Urban Indian clinics that participate as SoonerCare PCP/CMs

PCPs. The member needs to have the Certified Degree of Indian Blood information in order to enroll. An American Indian member in SoonerCare may enroll with a PCP/CM PCP who is not an IHS, tribal, or urban Indian clinic and still use the IHS, tribal or urban Indian clinic for medical care. A referral from the PCP/CM PCP is needed for services that the clinic cannot provide, except for self-referred services. ~~Except services delivered through an Indian facility for which the State receives 100% Federal reimbursement, services are reimbursed at the Medicaid fee for service rate under the procedure code established for each individual service.~~

- (d) If an IHS, tribal or urban Indian clinic is unable to deliver a service to a SoonerCare enrollee and must refer the client member for the service to a non-IHS, tribal or urban Indian clinic, Medicaid SoonerCare reimbursement is made only when the service is referred by the PCP/CM PCP, unless PCP/CM PCP authorization is not required under OAC 317:25-7-2(d) and OAC 317:25-7-10(b).
- ~~(e) Capitated services delivered at IHS, tribal, and urban Indian clinics during the preceding year to SoonerCare clients enrolled with non-Indian PCP/CMs are considered during the rate setting process.~~
- ~~(f) For non-capitated covered Medicaid compensable services provided for individuals enrolled in SoonerCare, reimbursement is made at the Medicaid fee for service rate under the procedure code established.~~
- (e) The PCP is not obligated to provide emergency services and is not responsible for authorization or approval for payment for members seen in the emergency room. The PCP may not require members to seek prior authorization for emergency services. However, the PCP may provide emergency care in an emergency setting, within his/her legal scope of practice.
- (f) Some outpatient procedures require prior authorization. The PCP is responsible for obtaining a list before an outpatient procedure is done.

## **PART 9. REIMBURSEMENT**

### **317:25-7-40. SoonerCare Choice reimbursement**

- (a) **Care coordination component.** Participating PCPs are paid a monthly care coordination payment to assure the delivery of medically-necessary preventive and primary care medical services, including referrals for specialty services for an enrolled group of eligible members. The PCP assists the member in gaining access to the health care system and monitors the member's condition, health care needs and service delivery.
- (b) **Visit-based fee-for-service component.** SoonerCare Choice covered services provided by the PCP are reimbursed at the SoonerCare fee schedule rate under the procedure code established for each individual service. To the extent services are authorized by the PCP, the OHCA does not make SoonerCare Choice payments for services delivered outside the scope of coverage of the SoonerCare Choice program, thus a referral by the PCP does not guarantee payment.
- (c) **Incentive program component.** Subject to the availability of funds, OHCA will develop a bonus payment program

to encourage coordination of services, to reward improvement in health outcome and promote efficiency.  
(d) SoonerCare networks. For every PCP who participates in an OHCA approved health care access network, a per-member-per-month payment is established by OHCA and paid to the network.

[OAR Docket #09-922; filed 5-14-09]

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

[OAR Docket #09-932]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. General Provider Policies
  - Part 4. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program/Child Health Services  
317:30-3-65.4. [AMENDED]
  - Subchapter 5. Individual Providers and Specialties
  - Part 1. Physicians  
317:30-5-2. [AMENDED]
  - Part 3. Hospitals  
317:30-5-49. [AMENDED]
  - Part 6. Inpatient Psychiatric Hospitals  
317:30-5-97. [AMENDED]
  - Part 103. Qualified Schools as Providers of Health Related Services  
317:30-5-1026. [AMENDED]
- (Reference APA WF # 08-54)**

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**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Rules are revised to update sections referencing an incorrect citation regarding a health care provider's obligation to report suspected child abuse and/or neglect discovered through screenings and regular examinations. Section 7103 of Title 10 of Oklahoma Statutes requires health care providers to report suspected abuse or neglect to the Oklahoma Department of Human

Services. Section 7104 of Title 10 of Oklahoma Statutes requires health care providers to report criminally injurious conduct to the nearest law enforcement agency.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 3. GENERAL PROVIDER POLICIES**

**PART 4. EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT) PROGRAM/CHILD HEALTH SERVICES**

**317:30-3-65.4. Screening components**

Comprehensive EPSDT screenings are performed by, or under the supervision of, a SoonerCare physician or other SoonerCare practitioner. SoonerCare physicians are defined as all licensed medical, allopathic and osteopathic physicians in accordance with the rules and regulations covering OHCA's SoonerCare program. Other SoonerCare practitioners are defined as all contracted physician assistants and advanced practice nurses in accordance with the rules and regulations covering the OHCA's ~~medical-care~~ SoonerCare program. 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;

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- (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/SoonerCare eligible children. Participating providers may bill for an administration fee to be set by the Centers for Medicare and Medicaid Services (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 to or greater than 10 micrograms per deciliter (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, the Oklahoma Childhood Lead Poison Prevention Program (OCLPPP) must be notified according to rules set forth by the Oklahoma State Board of Health (OAC 310:512-3-5).

(A) The OCLPPP schedules an environmental inspection to identify the source of the lead for children who have a persistent blood lead level 15 ug/dL or greater. Environmental inspections are provided through the Oklahoma State Department of Health (OSDH) upon notification from laboratories or

providers and reimbursed through the OSDH cost allocation plan approved by OHCA.

(B) 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. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency. 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 solely as a result of the filing of the report.~~

**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 Oklahoma Health Care Authority's (OHCA's) ~~medical programs~~ SoonerCare program, 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 must be based on a determination made by the OHCA's medical consultant in individual circumstances.

- (1) Coverage includes the following medically necessary services:
  - (A) Inpatient hospital visits for all SoonerCare covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent.
  - (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 surgical center 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 members with proven malignancies or opportunistic infections.
  - (G) Direct physician services on an outpatient basis. A maximum of four visits are allowed per month per member 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 physician services in a nursing facility for those members residing in a long-term care facility. A maximum of two nursing facility visits per month are allowed. To receive payment for a second

nursing facility visit in a month denied by Medicare for a Medicare/SoonerCare patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

- (I) Diagnostic x-ray and laboratory services.
- (J) Mammography screening and additional follow-up mammograms.
- (K) Obstetrical care.
- (L) Pacemakers and prostheses inserted during the course of a surgical procedure.
- (M) Prior authorized examinations for the purpose of determining medical eligibility for programs ~~under the jurisdiction of the Authority administered by OHCA~~. A copy of the authorization, OKDHS form ABCDM-16 08MA016E, Authorization for Examination and Billing, must accompany the claim.
- (N) If a physician renders direct care to a member on the same day as a dialysis treatment, payment is allowed for a separately identifiable service unrelated to the dialysis.
- (O) Family planning includes sterilization procedures for legally competent members 21 years of age and over who voluntarily request such a procedure and ~~executes~~ execute the federally mandated consent form with his/her physician. A copy of the consent form must be attached to the claim form. Separate payment is allowed for I.U.D. insertion 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 is not allowed. Reversal of sterilization procedures are allowed when medically indicated and substantiating documentation is attached to the claim.
- (P) Genetic counseling (requires special medical review prior to approval).
- (Q) Weekly blood counts for members receiving the drug Clozaril.
- (R) Complete blood count (CBC) and platelet count prior to receiving chemotherapeutic agents, radiation therapy or medication such as DPA-D-Penicillamine on a regular basis for treatment other than for malignancy.
- (S) Payment for 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 member 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;

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- (iii) Hold unrestricted license to practice medicine in Oklahoma;
  - (iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;
  - (v) Seeing members 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 SoonerCare 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 member must be at least minimally examined by the attending physician or a licensed physician under the supervision of the attending physician;
  - (ii) The 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) Medically necessary solid organ and bone marrow/stem cell transplantation services for children and ~~adult~~ adults are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:
- (i) Transplant procedures, 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 SoonerCare program, all organ transplants must be performed at a facility which meets the requirements contained in Section 1138 of the Social Security Act.
  - (iv) Procedures considered experimental or investigational are not covered.

(AA) Donor search and procurement services are covered for transplants consistent with the methods used by the Medicare program for organ acquisition costs.

(i) Donor expenses incurred for complications are covered only if they are directly and immediately attributable to the donation procedure.

(ii) Donor expenses that occur after the 90 day global reimbursement period must be submitted to the OHCA for review.

(BB) Total parenteral nutritional therapy (TPN) for identified diagnoses and when prior authorized.

(CC) Ventilator equipment.

(DD) Home dialysis equipment and supplies.

(EE) Ambulatory services for treatment of members 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~~ beyond the prescriptions covered under SoonerCare require prior authorization by the University of Oklahoma College of Pharmacy Help Desk using form "Petition for TB Related Therapy". Ambulatory services to members infected with TB are not limited to the scope of the SoonerCare program, but require prior authorization when the scope is exceeded.

(FF) 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 member to describe their smoking use;

(II) Advising the member to quit;

(III) Assessing the willingness of the member to quit;

(IV) Assisting the member 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, advanced registered nurse practitioners, certified nurse midwives, dentists, 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~~ care coordination 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 member 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.
- (GG) Immunizations as specified by the Advisory Committee on Immunization Practices (ACIP) guidelines.
- (2) General coverage 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.
  - (C) Services of two physicians for the same type of service to the same member 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 member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the procedure codes for subsequent hospital care must be used.
  - (D) Refractions and visual aids.
  - (E) A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care.
  - (F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.
  - (G) Sterilization of members who are under 21 years of age, mentally incompetent, or institutionalized or 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 member 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 member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, 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 in OHCA rules.
  - (Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury, or illness related to 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 when the pregnancy is the result of an act of rape or incest. (Refer to OAC 317:30-5-6 or 317:30-5-50.)
  - (R) Night calls ~~or unusual hours~~.
  - (S) Speech and Hearing services.
  - (T) Mileage.
  - (U) A routine hospital visit on the date of discharge unless the member expired.
  - (V) Direct payment to perfusionist as this is considered part of the hospital reimbursement.
  - (W) Inpatient chemical dependency treatment.
  - (X) Fertility treatment.
  - (Y) Payment for removal of benign skin lesions unless medically necessary.
- (b) **Children.** Payment is made to physicians for medical and surgical services for members under the age of 21 within the scope of the Authority's ~~medical programs~~ SoonerCare program, 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 members under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services are prior authorized to an approved length of stay. Non-authorized inpatient psychiatric services are not SoonerCare compensable.
    - (A) Effective October 1, 1993, all residential and acute psychiatric services are authorized based on the medical necessity criteria as described in OAC 317:30-5-95.25, 317:30-5-95.27 and 317:30-5-95.29.
    - (B) Out of state placements ~~will be~~ are 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 members in a particular border locality to use resources in another state. If a medical emergency occurs while a member is out of the State, treatment for medical services is covered as if provided within the State. A prime consideration for placements ~~will be~~ is 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 members 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

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necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options. Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation validating the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-95.26, 317:30-5-95.28 and 317:30-5-95.30. Requests must be made prior to the expiration of the approved inpatient stay. All decisions of OHCA or its designated agent are final.

(4) **Utilization control requirements for psychiatric beds.** Utilization control requirements for inpatient psychiatric services for members 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 made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of members 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.

(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. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency. 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 members 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 member 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 member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the codes for subsequent hospital care must be used.

(D) A separate payment for pre-operative care, if provided on the day before or the day of surgery, or for typical post-operative follow-up care.

(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. (Refer to 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 member including such items as quality assurance, utilization review, treatment staffing, tumor board review or multidisciplinary opinion, dictation, and similar functions.

(M) Payment for the services of physicians' assistants except as specifically set out in OHCA rules.

(N) Direct payment to perfusionist as this is considered part of the hospital reimbursement.

(O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(P) Night calls or ~~unusual hours~~.

(Q) Mileage.

(R) A routine hospital visit on date of discharge unless the member expired.

(S) Tympanometry.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the OHCA allowable for comparable services.

Claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits (EOMB) reflects a message that the claim was referred to SoonerCare. If such a message is not present, a claim for coinsurance and deductible must be filed with the OHCA within 90 days of the date of Medicare payment or within one year of the date of service in order to be considered timely filed.

(1) In certain circumstances, some claims do not automatically "cross over". Providers must file a claim for coinsurance and/or deductible to SoonerCare within 90 days of the Medicare payment or within one year from the date of service.

(2) If payment was denied by Medicare Part B and the service is a SoonerCare covered service, mark the claim "denied by Medicare" and attach the Medicare EOMB showing the reason for the denial.

PART 3. HOSPITALS

317:30-5-49. Child abuse

(a) Instances of child abuse and/or neglect are to be reported in accordance with State Law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency. 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. Provided 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.

(b) Each hospital must designate a person, or persons, within the facility who is responsible for reporting suspected instances of medical neglect, including instances of withholding of medically indicated treatment (including appropriate nutrition, hydration and medication) from disabled infants with life-threatening conditions. The hospital must report the name of the individual so designated to this agency, which is responsible for administering this provision within the State of Oklahoma. The hospital administrator ~~will be~~ is assumed to be the contact person unless someone else is specifically designated.

(c) The Child Abuse Unit of the Oklahoma Child Welfare Unit ~~will be~~ is responsible for coordination and consultation with the individual designated. In turn, the hospital is responsible for prompt notification to the Child Abuse Unit of any case of suspected medical neglect or withholding of medically-indicated treatment from disabled infants with life-threatening conditions. This information must be communicated to Child Abuse Unit, Child Welfare Services, P.O. Box 25352, Oklahoma City, OK 73125, Telephone: (405) 521-2283. Should a report need to be made when the office is closed, telephone the statewide toll-free Child Abuse Hot Line: 1-800-522-3511.

(d) Each Hospital should provide the name, title and telephone number of the designated individual and return it to the OHCA. This information ~~will be~~ is updated annually as part of the contract renewal. Should the designation change before that time, OHCA should be furnished revised information.

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-97. Child abuse

(a) Instances of child abuse and/or neglect are to be reported in accordance with State Law. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency. 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. Provided 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.

(b) Each hospital must designate a person, or persons, within the facility who is responsible for reporting suspected instances of medical neglect, including instances of withholding of medically indicated treatment (including appropriate nutrition, hydration and medication) from disabled infants with life-threatening conditions. The hospital must report the name of the individual so designated to this agency, which is responsible for administering this provision within the State of Oklahoma. The hospital administrator ~~will be~~ is assumed to be the contact person unless someone else is specifically designated.

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(c) The Child Abuse Unit of the Oklahoma Child Welfare Unit ~~will be~~ is responsible for coordination and consultation with the individual designated. In turn, the hospital is responsible for prompt notification to the Child Abuse Unit of any case of suspected medical neglect or withholding of medically-indicated treatment.

## PART 103. QUALIFIED SCHOOLS AS PROVIDERS OF HEALTH RELATED SERVICES

### 317:30-5-1026. 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. Section 7103 of Title 10 of the Oklahoma Statutes mandates reporting suspected abuse or neglect to the Oklahoma Department of Human Services. Section 7104 of Title 10 of the Oklahoma Statutes further requires reporting of criminally injurious conduct to the nearest law enforcement agency. 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 solely as a result of the filing of the report.

[OAR Docket #09-932; filed 5-14-09]

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

[OAR Docket #09-914]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 5. Individual Providers and Specialties  
Part 1. Physicians  
317:30-5-9. [AMENDED]  
(Reference APA WF # 08-13)

**AUTHORITY:**  
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes

**DATES:**

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**SUPERSEDED EMERGENCY ACTIONS:**  
N/A

**INCORPORATIONS BY REFERENCE:**  
N/A

**ANALYSIS:**  
Rules are revised to clarify that additional reimbursement is not allowed for joint injection codes that have a global coverage designation. Current rules are too broad and state that payment is made for both an office visit and an injection of joints performed during the visit. Although in some cases it is appropriate to reimburse for both the visit and the injection, in most cases the CPT joint injection code has a global coverage designation and should be excluded from additional reimbursement because it has been established to include an evaluation prior to the injection.

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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, 2009:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 1. PHYSICIANS

#### 317:30-5-9. Medical services

(a) **Use of medical modifiers.** The Physicians' Current Procedural Terminology (CPT) and the second level HCPCS provide for 2-digit medical modifiers to further describe medical services. Modifiers are used when appropriate.

(b) **Covered office services.**

(1) Payment is made for four office visits (or home) per month per member, for adults (over age 21), regardless of the number of physicians involved. Additional visits per month are allowed for services related to emergency medical conditions.

(2) Visits for the purpose of family planning are excluded from the four per month limitation.

(3) Payment is allowed for insertion of IUD in addition to the office visit.

- (4) Separate payment will be made for the following supplies when furnished during a physician's office visit.
    - (A) Casting materials
    - (B) Dressing for burns
    - (C) Intrauterine device
    - (D) IV Fluids
    - (E) Medications administered by IV
    - (F) Glucose administered IV in connection with chemotherapy in office
  - (5) Payment is made for routine physical exams only as prior authorized by the OKDHS and are not counted as an office visit.
  - (6) Medically necessary office lab and X-rays are covered.
  - (7) Hearing exams by physician for members between the ages of 21 and 65 are covered only as a diagnostic exam to determine type, nature and extent of hearing loss.
  - (8) Hearing aid evaluations are covered for members under 21 years of age.
  - (9) IPPB (Intermittent Positive Pressure Breathing) is covered when performed in physician's office.
  - (10) Payment is made for both an office visit and an injection of joints performed during the visit if the joint injection code does not have a global coverage designation.
  - (11) Payment is made for an office visit in addition to allergy testing.
  - (12) Separate payment is made for antigen.
  - (13) Eye exams are covered for members between ages 21 and 65 for medical diagnosis only.
  - (14) If a physician personally sees a member on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.
  - (15) Separate payment is made for the following specimen collections:
    - (A) Catheterization for collection of specimen; and
    - (B) Routine Venipuncture.
  - (16) The Professional Component for electrocardiograms, electroencephalograms, electromyograms, and similar procedures are covered on an inpatient basis as long as the interpretation is not performed by the attending physician.
  - (17) Cast removal is covered only when the cast is removed by a physician other than the one who applied the cast.
- (c) **Non-covered office services.**
- (1) Payment is not made separately for an office visit and rectal exam, pelvic exam or breast exam. Office visits including one of these types of exams should be coded with the appropriate office visit code.
  - (2) Payment cannot be made for prescriptions or medication dispensed by a physician in his office.
  - (3) Payment will not be made for completion of forms, abstracts, narrative reports or other reports, separate charge for use of office or telephone calls.
  - (4) Additional payment will not be made for night calls, unusual hours or mileage.
  - (5) Payment is not made for an office visit where the member did not keep appointment.
- (d) **Covered inpatient medical services.**
- (1) Payment is allowed for inpatient hospital visits for all SoonerCare covered admissions. Psychiatric admissions must be prior authorized.
  - (2) Payment is allowed for the services of two physicians when supplemental skills are required and different specialties are involved. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the member's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the member's care, the codes for subsequent hospital care are used.
  - (3) Certain medical procedures are allowed in addition to office visits.
  - (4) Payment for critical care is all-inclusive and includes payment for all services that day. Payment for critical care, first hour is limited to one unit per day and 4 units per month. Payment for critical care, each additional 30 minutes is limited to two units per day/month.
- (e) **Non-covered inpatient medical services.**
- (1) For inpatient services, all visits to a member on a single day are considered one service except where specified. Payment is made for only one visit per day.
  - (2) A hospital admittance or visit and surgery on the same day would not be covered if post-operative days are included in the surgical procedure. If there are no post-operative days, a physician can be paid for visits.
  - (3) Drugs administered to inpatients are included in the hospital payment.
  - (4) Payment will not be made to a physician for an admission or new patient work-up when the member receives surgery in out-patient surgery or ambulatory surgery center.
  - (5) Payment is not made to the attending physician for interpretation of tests on his own patient.
- (f) **Other medical services.**
- (1) Payment will be made to physicians providing Emergency Department services.
  - (2) Payment is made for two nursing home visits per month. The appropriate CPT code is used.
  - (3) When payment is made for "Evaluation of arrhythmias" or "Evaluation of sinus node", the stress study of the arrhythmia includes inducing the arrhythmia and evaluating the effects of drugs, exercise, etc. upon the arrhythmia.

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(4) When the physician bills twice for the same procedure on the same day, it must be supported by a written report.

*[OAR Docket #09-914; filed 5-14-09]*

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

*[OAR Docket #09-929]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Individual Providers and Specialties  
Part 21. Outpatient Behavioral Health Services  
317:30-5-240. [AMENDED]  
317:30-5-240.1. through 317:30-5-240.3. [NEW]  
317:30-5-241. [AMENDED]  
317:30-5-241.1. through 317:30-5-241.5. [NEW]  
317:30-5-244. [AMENDED]  
317:30-5-248. [AMENDED]  
317:30-5-249. [NEW]

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Subchapter 5. Individual Providers and Specialties  
Part 21. Outpatient Behavioral Health Services  
317:30-5-240. [AMENDED]  
317:30-5-240.1. through 317:30-5-240.3. [NEW]  
317:30-5-241. [AMENDED]  
317:30-5-241.1. through 317:30-5-241.5. [NEW]  
317:30-5-244. [AMENDED]  
317:30-5-248. [AMENDED]  
317:30-5-249. [NEW]

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N/A

### ANALYSIS:

Outpatient behavioral health rules are revised to: (1) add Multi-Systemic Therapy as a service option which will be provided by the Office of Juvenile Affairs staff who will also certify the state share; (2) revise rules to remove details related to billing procedures and terminology and instead refer providers to the Behavioral Health Provider Billing Manual; (3) amend policy to reflect appropriate terminology; and (4) expand the scope of provider qualifications for Psychiatric Social Rehabilitation Specialists.

### 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, 2009:**

## 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) ~~"CAR" means Clinical Assessment Record.~~
- (7) ~~"CARF" means Commission on Accreditation of Rehabilitation Facilities.~~
- (8) ~~"CHCs" means Community Health Centers.~~
- (9) ~~"CMHCs" means Community Mental Health Centers.~~
- (10) ~~"COA" means Council on Accreditation of Services for Families and Children, Inc.~~
- (11) ~~"Cultural Competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs, and values that reflect an individual's racial, ethnic, age group, religious, sexual orientation, and/or social group.~~
- (12) ~~"DSM" means the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.~~
- (13) ~~"EBP" means an Evidenced Based Practice per SAMHSA.~~
- (14) ~~"FQHC" means Federally Qualified Health Centers that are entities known as Community Health Centers.~~
- (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.
- (17) **"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.
- (18) **"LBHP"** means a Licensed Behavioral Health Professional.
- (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.
- (20) **"Objectives"** means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time limited.
- (21) **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse Services.
- (22) **"ODMHSAS Contracted 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 Health Care Authority to provide Outpatient Behavioral Health Services.
- (23) **"OHCA"** means the Oklahoma Health Care Authority.
- (24) **"Private Facilities"** means those providers that contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.
- (25) **"PSRS"** means Psychiatric Social Rehabilitation Specialist.
- (26) **"Public Facilities"** means those providers who are regionally based Community Mental Health Centers who are also contract directly with the Oklahoma Health Care Authority to provide Outpatient Behavioral Health Services.
- (27) **"RBMS"** means Residential Behavioral Management Services within a group home or therapeutic foster home.
- (28) **"RHC"** means Rural Health Clinic.
- (29) **"Recovery"** means an ongoing process of discovery and/or rediscovery that must be self defined, individualized and may contain some, if not all, of the ten fundamental components of recovery as outlined by SAMHSA.
- (30) **"SAMHSA"** means the Substance Abuse and Mental Health Services Administration.
- (31) **"T-ASI"** means the Teen Alcohol Severity Index.
- (32) **"Trauma Informed"** means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.
- (b) **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 SoonerCare compensated services are rendered. CARF/JCAHO/COA accredited providers will only receive SoonerCare reimbursement for services provided under the programs, which are accredited.
    - (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 SoonerCare 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. Providers in this category must have achieved accreditation from JCAHO, CARF, or COA for the provision of outpatient alcohol and other drug treatment services.
  - (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) One of the following licensed behavioral health professionals:
        - (I) A Psychologist, Clinical Social Worker, Professional Counselor, Behavioral Practitioner, 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.

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- (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.
  - (iii) An Alcohol and Other Drug Treatment Professional if treatment of alcohol and other drug disorders is provided.
  - (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 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, as applicable to their program. Providers must provide proper referral and linkage to providers of needed services if their agency does not have appropriate services:
- (i) Mental Health Assessments and/or Alcohol and Drug assessments;
  - (ii) Individual, Group, and Family Psychotherapy;
  - (iii) Individual and Group Rehabilitative services and Alcohol and other Drug Related Services Skill development services;
  - (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.
- (E) Provide or have a plan for referral to physician and other behavioral health 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, member grievances, member rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously.
- (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 and/or Substance Abuse Treatment Services.
  - (B) **Private Programs**—Private facilities are those facilities that contract directly with the Oklahoma 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.
- (e) **Provider enrollment and contracting.**
- (1) Organizations who have JCAHO, CARF, 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 SoonerCare 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 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 member's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.
- (d) **Licensed Behavioral Health Professional.** Licensed Behavioral Health Professionals (LBHP) 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 (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;
- (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) ~~Psychiatric Social Rehabilitation Specialist. The definition of a Psychiatric Social Rehabilitation Specialist (PSRS) is as follows:~~

(1) ~~Bachelor or master degree in a behavioral health related field including, but not limited to, psychology, social work, occupational therapy, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency, rehabilitative services, sociology, school guidance and counseling, criminal justice family studies, earned from a regionally accredited college or university recognized by the United States Department of Education; 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~~

(3) ~~A current license as a registered nurse in the state where services are provided with behavioral health experience; or~~

(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~~

(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 AOD treatment certifying and/or licensing body; or~~

(4) ~~A Licensed Behavioral Health Professional 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.~~

All outpatient behavioral health providers eligible for reimbursement under OAC 317:30-5-240 et seq. must be an accredited organization/agency and have a current contract on file with the Oklahoma Health Care Authority. Eligibility requirements for independent professionals (e.g., physicians and psychologists), who provide outpatient behavioral health services and bill under their own taxpayer identification number are covered under OAC 317:30-5-1 and OAC 317:30-5-275. Other outpatient ambulatory clinics (e.g. Federally Qualified Health Centers, Indian Health Clinics, school-based clinics) that offer outpatient behavioral health services are covered elsewhere in the agency rules.

**317:30-5-240.1. Definitions**

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

"Accrediting body" means one of the following:

(A) Accreditation Association for Ambulatory Health Care (AAAHC);

(B) American Osteopathic Association (AOA);

(C) Commission on Accreditation of Rehabilitation Facilities (CARF);

(D) Council on Accreditation of Services for Families and Children, Inc. (COA);

(E) The Joint Commission (TJC) formerly known as Joint Commission on Accreditation of Healthcare Organizations; or

(F) other OHCA approved accreditation.

"Adult" means an individual 21 and over, unless otherwise specified.

"AOD" means Alcohol and Other Drug.

"AODTP" means Alcohol and Other Drug Treatment Professional.

"BH" means behavioral health, which relates to mental, substance abuse, addictions, gambling, and other diagnosis and treatment.

"BHAs" means Behavioral Health Aides.

"BHRS" means Behavioral Health Rehabilitation Specialist.

"Child" means an individual younger than 21, unless otherwise specified.

"CHMCs" means Community Mental Health Centers who are state operated or privately contracted providers of behavioral health services for adults with severe mental illnesses, and youth with serious emotional disturbances.

"CM" means case management.

"Cultural competency" means the ability to recognize, respect, and address the unique needs, worth, thoughts, communications, actions, customs, beliefs and values that reflect an individual's racial, ethnic, age group, religious, sexual orientation, and/or social group.

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

"EBP" means an Evidence Based Practice per the Substance Abuse & Mental Health Services Administration (SAMHSA).

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"FBCS" means Facility Based Crisis Stabilization.

"FSPs" means Family Support Providers.

"ICF/MR" means Intermediate Care Facility for the Mentally Retarded.

"Institution" means an inpatient hospital facility or Institution for Mental Disease (IMD).

"IMD" means Institution for Mental Disease as per 42 CFR 435.1009 as a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. The regulations indicate that an institution is an IMD if its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases. Title XIX of the Social Security Act provides that, except for individuals under age 21 receiving inpatient psychiatric care, Medicaid (Title XIX) does not cover services to IMD patients under 65 years of age [section 1905(a)(24)(B)].

"LBHP" means a Licensed Behavioral Health Professional.

"MST" means the EBP Multi-Systemic Therapy.

"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.

"Objectives" means a specific statement of planned accomplishments or results that are specific, measurable, attainable, realistic, and time-limited.

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

"ODMHSAS contracted 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 Health Care Authority to provide Outpatient Behavioral Health Services.

"OHCA" means the Oklahoma Health Care Authority.

"OJA" means the Office of Juvenile Affairs.

"Provider Manual" means the OHCA BH Provider Billing Manual.

"RBMS" means Residential Behavioral Management Services within a group home or therapeutic foster home.

"Recovery" means an ongoing process of discovery and/or rediscovery that must be self defined, individualized and may contain some, if not all, of the ten fundamental components of recovery as outlined by SAMHSA.

"RSS" means Recovery Support Specialist.

"SAMHSA" means the Substance Abuse and Mental Health Services Administration.

"SED" means Severe Emotional Disturbance.

"SMI" means Severely Mentally Ill.

"Trauma informed" means the recognition and responsiveness to the presence of the effects of past and current traumatic experiences in the lives of members.

### **317:30-5-240.2. Provider participation standards**

(a) **Accreditation status.** Any agency may participate as an OPBH provider if the agency is qualified to render a covered

service and meets the OHCA requirements for provider participation.

(1) Private, Community-based Organizations must be accredited as a provider of outpatient behavioral health services from one of the accrediting bodies and be an incorporated organization governed by a board of directors;

(2) State-operated programs under the direction of ODMHSAS must be accredited by one of the accrediting bodies;

(3) Freestanding Psychiatric Hospitals must be licensed and certified by the State Survey Agency as meeting Medicare psychiatric hospital standards and JCAHO accreditation;

(4) General Medical Surgical Hospitals must be appropriately licensed and certified by the State Survey Agency as meeting Medicare standards, including a JCAHO or AOA accreditation;

(5) Federally Qualified Health Centers/Community Health Centers facilities that qualify under OAC 317:30-5-660;

(6) Indian Health Services/Tribal Clinics/Urban Tribal Clinics facilities that qualify under Federal regulation;

(7) Rural Health Clinics facilities that qualify under OAC 317:30-5-355;

(8) Public Health Clinics and County Health Departments;

(9) Public School Systems.

(b) **Certifications.** In addition to the accreditation in paragraph (a) above, provider specific certifications are required for the following:

(1) Substance Abuse agencies (OAC 450:18-1-1);

(2) Evidenced Based Best Practices but not limited to:  
(A) Assertive Community Treatment (OAC 450:55-1-1);

(B) Multi-Systemic Therapy (Office of Juvenile Affairs); and

(C) Peer Support/Community Recovery Support;

(3) Systems of Care (OAC 340:75-16-46);

(4) Mobile and Facility-based Crisis Intervention (OAC 450:23-1-1);

(5) Case Management (OAC 450:50-1-1);

(6) RBMS in group homes (OAC 377:10-7) or foster care settings (OAC 340:75-8-4);

(7) Day Treatment - CARF, JCAHO, and COA will be required as of December 31, 2009; and

(8) Partial Hospitalization/Intensive Outpatient CARF, JCAHO, and COA will be required as of December 31, 2009.

(c) **Provider enrollment and contracting.**

(1) Organizations who have JCAHO, CARF, COA or AOA accreditation will supply the documentation from the accrediting body, along with other information as required for contracting purposes to the OHCA. The contract must include copies of all required state licenses, accreditation and certifications.

(2) If the contract is approved, a separate provider identification number for each outpatient behavioral health service site will be assigned. Each site operated

by an outpatient behavioral health facility must have a separate provider contract and site-specific accreditation and/or certification as applicable. 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 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 member's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

(d) **Standards and criteria.** Eligible organizations must meet each of the following:

- (1) Have a well-developed plan for rehabilitation services designed to meet the recovery needs of the individuals served.
- (2) Have a multi-disciplinary, professional team. This team must include all of the following:
  - (A) One of the LBHPs;
  - (B) A BHRIS, if individual or group rehabilitative services for behavioral health disorders are provided;
  - (C) An AODTP, if treatment of alcohol and other drug disorders is provided;
  - (D) 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 Support service is provided;
  - (E) The member for whom the services will be provided, and parent/guardian for those under 18 years of age.
  - (F) A member treatment advocate if desired and signed off on by the member.
- (3) Demonstrate the ability to provide each of the following outpatient behavioral health treatment services as described in OAC 317:30-5-241 et seq., as applicable to their program. Providers must provide proper referral and linkage to providers of needed services if their agency does not have appropriate services.
  - (A) Assessments and Treatment Plans;
  - (B) Psychotherapies;
  - (C) Behavioral Health Rehabilitation services;
  - (D) Crisis Intervention services;
  - (E) Support Services; and
  - (F) Day Treatment/Intensive Outpatient.
- (4) Be available 24 hours a day, seven days a week, for Crisis Intervention services.
- (5) Provide or have a plan for referral to physician and other behavioral health services necessary for the treatment of the behavioral disorders of the population served.
- (6) Comply with all applicable Federal and State Regulations.
- (7) Have appropriate written policy and procedures regarding confidentiality and protection of information and records, member grievances, member rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously.

- (8) Demonstrate the ability to keep appropriate records and documentation of services performed.
- (9) Maintain and furnish, upon request, a current report of fire and safety inspections of facilities clear of any deficiencies.
- (10) Maintain and furnish, upon request, all required staff credentials including certified transcripts documenting required degrees.

**317:30-5-240.3. Staff Credentials**

(a) **Licensed Behavioral Health Professional (LBHPs).** LBHPs are defined as follows:

- (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 (F) of this paragraph. 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,
- (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.
- (4) A Physician Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

(b) **Alcohol and other Drug Treatment Professionals (AODTPs).** AODTPs are defined as follows:

- (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 AOD treatment certifying and/or licensing body; or
- (4) A Licensed Behavioral Health Professional 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

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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.

**(c) Behavioral Health Rehabilitation Specialists (BHRS).** BHRSs are defined as follows:

(1) Bachelor or master degree in a behavioral health related field including, psychology, social work, occupational therapy, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency, rehabilitative services, sociology, school guidance and counseling, education, criminal justice family studies, earned from a regionally accredited college or university recognized by the United States Department of Education; 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

(3) A current license as a registered nurse in the state where services are provided; or

(4) Certification as an Alcohol and Drug Counselor. They are allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSM-IV Axis I diagnosis; or

(5) Current certification as a Behavioral Health Case Manager from ODMHSAS as described in OAC 317:30-5-585(1).

**(d) Multi-Systemic Therapy (MST) Provider.** Masters level who work on a team established by OJA which may include Bachelor level staff.

**(e) Community Recovery Support Specialist (RSS).** The community/recovery support worker must meet the following criteria:

(1) High School diploma or GED;

(2) Minimum one year participation in local or national member advocacy or knowledge in the area of behavioral health recovery;

(3) current or former member of behavioral health services; and

(4) successful completion of the ODMHSAS Recovery Support Provider Training and Test.

**(f) Family Support and Training Provider (FSP).** FSPs are defined as follows:

(1) Have a high school diploma or equivalent;

(2) 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);

(3) successful completion of ODMHSAS Family Support Training;

(4) pass background checks; and

(5) treatment plans must be overseen and approved by a LBHP; and

(6) must function under the general direction of a LBHP or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

**(g) Behavioral Health Aide (BHA).** BHAs are defined as follows:

(1) Behavioral Health Aides must have completed 60 hours or equivalent of college credit; or

(2) may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs for up to two years of college experience; and

(3) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(4) must be supervised by a bachelor's level individual with a minimum of two years case management experience; and

(5) treatment plans must be overseen and approved by a LBHP; and

(6) must function under the general direction of a LBHP and/or systems of care team, with a LBHP available at all times to provide back up, support, and/or consultation.

### 317:30-5-241. Coverage for adults and children Covered Services

~~(a) Service descriptions and conditions.~~ Outpatient behavioral health services are covered for adults and children as set forth in this Section and following the requirements as defined in the OHCA BH Provider Billing Manual, unless specified otherwise, and when provided in accordance with a documented individualized service plan, developed to treat the identified mental behavioral 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 member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the 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 and will require prior authorization. For all outpatient behavioral health facilities, the OHCA, or its designated agent, will comply with established medical necessity criteria. Non prior authorized services will not be SoonerCare 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, and Adult Facility Based Crisis Stabilization. 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 unless authorized by the OHCA or its designated agent as medically necessary. Adults and children in Facility Based Crisis Intervention Services 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.**

All agencies must assess the medical necessity of each individual to determine the appropriate level of care. The assessment must contain but is not limited to the following:

- (A) Date, to include month, day and year of the assessment sessions(s), more than one session can be billed in multiple units;
- (B) Source of information;
- (C) Member's first name, middle initial and last name;
- (D) Gender;
- (E) Birth date;
- (F) Home address;
- (G) Telephone number;
- (H) Referral source;
- (I) Reason for referral;
- (J) Person to be notified in case of emergency;
- (K) Presenting reason for seeking services;
- (L) Psychiatric social information, which includes: personal history, including: family B social; educational; cultural and religious orientation; occupational B military; sexual; marital; domestic violence or sexual assault (including child abuse/neglect and child welfare involvement); recreation and leisure; financial; clinical treatment history including past and current medical and psychiatric diagnoses, symptoms, and treatment recommendations; legal or criminal record, including the identification of key contacts, i.e. attorneys, probation officers, etc. when appropriate; substance abuse and dependence, both current and historical; gambling abuse and dependence, both current and historical; and present life situation.
- (M) Mental status information, including questions regarding:
  - (i) physical presentation, such as general appearance, motor activity, attention and alertness, etc.;
  - (ii) affective process, such as mood, affect, manner and attitude, etc., and
  - (iii) cognitive process, such as intellectual ability, social adaptive behavior, thought processes, thought content, and memory, etc; and
  - (iv) Full Five Axes DSM diagnosis.
- (N) A section on health history and pharmaceutical information, with pharmaceutical information to include the following for both current and past medications:
  - (i) name of medication;
  - (ii) strength and dosage of medication;
  - (iii) length of time on the medication;

- (iv) benefit(s) and side effects of medication; and
- (v) level of functionality.

**(O) Identification of the member's strengths, needs, abilities, and preferences:**

- (i) LBHP's interpretation of findings;
- (ii) signature and credentials of LBHP.

**(P) The assessment includes all elements and tools required by the OHCA. For adults, it may include interviews or communications with family, caretakers, or other support persons as permitted by the member. For children under the age of 16, it includes 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 LBHP. The minimum face to face time spent in assessment session(s) with the 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 member who is seeking services for the first time from the contracted agency. This service is not compensable if the 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.**

**(2) Alcohol and Drug Assessment. All providers must assess the medical necessity of each individual to determine the appropriate level of care. The assessment contains but is not limited to the following:**

- (A) Date, to include month, day and year of the assessment sessions(s), more than one session can be billed in multiple units;
- (B) Source of information;
- (C) Member's first name, middle initial and last name;
- (D) Gender;
- (E) Birth date;
- (F) Home address;
- (G) Telephone number;
- (H) Referral source;
- (I) Reason for referral;
- (J) Person to be notified in case of emergency;
- (K) Presenting reason for seeking services; and
- (L) Psychiatric social information, which must include:
  - (i) personal history, including: family B social; educational; cultural and religious orientation; occupational B military; sexual; marital; domestic violence or sexual assault (including child abuse/neglect and child welfare involvement); recreation and leisure; and financial;
  - (ii) clinical treatment history including past and current medical and psychiatric diagnoses, symptoms, and treatment recommendations;

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- (iii) legal or criminal record, including the identification of key contacts, i.e. attorneys, probation officers, etc. when appropriate;
  - (iv) substance abuse and dependence, both current and historical;
  - (v) gambling abuse and dependence, both current and historical;
- (M) Present life situation;
- (N) Mental status information, including questions regarding:
- (i) physical presentation, such as general appearance, motor activity, attention and alertness, etc.;
  - (ii) affective process, such as mood, affect, manner and attitude, etc.; and
  - (iii) cognitive process, such as intellectual ability, social adaptive behavior, thought processes, thought content, and memory, etc.;
- (O) Full Five Axes DSM diagnosis;
- (P) A section on health history and pharmaceutical information, with pharmaceutical information to include the following for both current and past medications:
- (i) name of medication;
  - (ii) strength and dosage of medication;
  - (iii) length of time on the medication;
  - (iv) benefit(s) and side effects of medication; and
  - (v) level of functionality;
- (Q) Identification of the member's strengths, needs, abilities, and preferences:
- (i) AODTP OR LBHP's interpretation of findings; and
  - (ii) signature and credentials of AODTP OR LBHP;
- (R) The assessment includes all elements and tools required by the OHCA; and
- (S) For adults, it may include interviews and/or communication with family, caretakers or other support persons as permitted by the member. For children under the age of 16, it must include an interview with a parent or other adult caretaker. For children, the assessment also includes information on school performance and school based services. This service is performed by an AODTP or LBHP. The minimum face to face time spent in assessment with the 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 member who is seeking services for the first time from the contracted agency. The service is not compensable if the 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.

### (3) **Mental Health Services Plan Development by a Non-Physician (moderate complexity).**

(A) Mental Health Services Plan Development by a Non-Physician (moderate complexity) is performed by the practitioners and others who will comprise the treatment team. It is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of 16, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate.

(B) 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 member of all pertinent information. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited.

(C) For adults, it is 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 addresses school and educational concerns and assisting the family in caring for the child in the least restrictive level of care.

(D) Comprehensive and integrated service plan content addresses the following:

- (i) member strengths, needs, abilities, and preferences;
- (ii) identified presenting challenges, problems, needs, and diagnosis;
- (iii) specific goals for the member;
- (iv) objectives that are specific, measurable, attainable, realistic, and time limited (unless the individual is on a recovery maintenance/relapse prevention services plan, then objectives may be broad while the progress notes are detailed);
- (v) each type of service and estimated frequency to be received;
- (vi) each treatment methodology for individual, interactive, group and family psychotherapies the provider will utilize;
- (vii) the practitioner(s) name and credentials that will be providing and responsible for each service;
- (viii) any needed referrals for services;
- (ix) specific discharge criteria;
- (x) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;
- (xi) service plans are not valid until all signatures are present (signatures are required from the member, the parent/guardian when applicable, and the primary LBHP); and

(xii) changes in service plans can be documented in a service plan update (low complexity) or in the progress notes until time for the update (low complexity).

(E) One unit per SoonerCare member per provider is allowed without prior authorization. If determined by the 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).**

(A) 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 member and treatment progress assessed.

(B) Updates to goals, objectives, service provider, services, and service frequency, can be documented in a progress note until the six month review/update is due.

(C) Service plan updates must address the following:

- (i) progress, or lack of, on previous service plan goals and/or objectives;
- (ii) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;
- (iii) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;
- (iv) change in frequency and/or type of services provided;
- (v) change in treatment methodology(ies) for individual, interactive, group and family psychotherapies the provider will utilize;
- (vi) change in practitioner(s) who will be responsible for providing services on the plan;
- (vii) additional referrals for needed services;
- (viii) change in discharge criteria;
- (ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date; and
- (x) service plans are not valid until all signatures are present. The required signatures are: the member (if over age 14), the parent/guardian (if under age 16 or otherwise applicable), and the primary LBHP.

(D) Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member.

**(5) Alcohol and/or Substance Abuse Services, Treatment Plan Development (moderate complexity).**

(A) 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 or other required tool is to be utilized and followed.

(B) The service is performed with the direct active participation of the member and a member support person or advocate if requested by the member. In the case of children under the age of 16, 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 member. The service includes a discharge plan. The service is a process whereby an individualized rehabilitation plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited.

(C) For adults, it is 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 assist the family in caring for the child in the least restrictive level of care.

(D) Comprehensive and integrated service plan contents must address the following:

- (i) member strengths, needs, abilities, and preferences;
- (ii) identified presenting challenges and problems, needs, and diagnosis;
- (iii) specific goals for the member;
- (iv) objectives that are specific, measurable, attainable, realistic and time limited (unless the individual is on a recovery maintenance/relapse prevention services plan, then objectives may be broad while the progress notes are detailed);
- (v) each type of service and estimated frequency to be received;
- (vi) each treatment methodology for individual, interactive, group and family psychotherapies the provider will utilize;
- (vii) the practitioner(s) name and credentials who will be providing and responsible for each service;
- (viii) any needed referrals for services;
- (ix) specific discharge criteria;
- (x) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;
- (xi) service plans are not valid until all signatures are present. The required signatures are: the member (if over age 14), the parent/guardian (if under age 16 or otherwise applicable), and the primary LBHP; and
- (xii) changes in service plans can be documented in a Service Plan Update (low complexity) or in the progress notes until time for the Update (low complexity).

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### **(6) Alcohol and/or Substance Abuse Treatment Plan Development (low complexity).**

(A) 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 or other required tool is utilized in the development of the Plan. All elements of the plan are reviewed with the member and treatment progress assessed.

(B) Alcohol and/or Substance Abuse Treatment Plan Development (low complexity) are provided by the treatment team members.

(C) Service plan updates are to address the following:

- (i) progress, or lack of, on previous service plan goals and/or objectives;
- (ii) a statement documenting a review of the current service plan and an explanation if no changes are to be made to the service plan;
- (iii) change in goals and/or objectives (including target dates) based upon member's progress or identification of new need, challenges and problems;
- (iv) change in frequency and/or type of services provided;
- (v) change in treatment methodology(ies) for individual, interactive, group and family psychotherapies the provider will utilize;
- (vi) change in practitioner(s) who will be responsible for providing services on the plan;
- (vii) additional referrals for needed services;
- (viii) change in discharge criteria;
- (ix) description of the member's involvement in, and responses to, the treatment plan, and his/her signature and date;
- (x) service plans are not valid until all signatures are present. The required signatures are the:
  - (I) member (if over age 14);
  - (II) parent/guardian (if under age 16 or otherwise applicable), and
  - (III) primary LBHP.

(D) Updates to goals, objectives, service provider, services, and service frequency, can be documented in a progress note until the six month review/update is due.

(E) Service Plan updates are required every six months during which services are provided. Updates can be conducted whenever needed as determined by the provider and 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 individual psychotherapy that involves the use of play therapy equipment, physical aids/devices, language interpreter, or other mechanisms of nonverbal communication to overcome barriers to the therapeutic interaction between the clinician and the member who has not yet developed or who has lost the expressive language communication skills to explain his/her symptoms and response to treatment, requires the use of a mechanical device in order to progress in 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 language interpreter.

(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 member and the LBPH or AODTP should be present and the setting must protect and assure confidentiality. Ongoing assessment of the 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 member's developmental and cognitive abilities.(D) Individual/Interactive counseling must be provided by a LBHP 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 LBHP 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 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 LBHP 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. A maximum of three units per day per member are allowed. Individual or group breaks will be discounted from the overall time and are not required to be noted separately. The individual member's behavior, the size of the group, and the focus of the group must be included in each 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 LBHP 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 LBHP or an AODTP and the member's family, guardian, and/or support system. It is typically inclusive of the identified member, but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the SoonerCare member 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) A maximum of three units of Family Psychotherapy are allowed per day per member/family. Family Psychotherapy must be provided by a LBHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

**(10) Psychiatric Social Rehabilitation Services (group).**

(A) Psychiatric Social Rehabilitation Services (PSR) are behavioral health remedial services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of 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. PSR services must be reflected by documentation (daily or weekly summary notes) 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 primary rehabilitation clinician;
- (iv) credentials of the primary rehabilitation clinician;
- (v) specific goal(s) and/or objectives addressed (these must be identified on service plan);
- (vi) type of skills training provided;
- (vii) progress made toward goals and objectives;
- (viii) member's report of satisfaction with staff intervention; and
- (ix) any new needed supports identified during service.

(B) Compensable Psychiatric Rehabilitation 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 and objectives of the member's current service plan. A 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 member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time. The minimum staffing ratio is fourteen members for each PSRS, AODTP, or LBHP 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 or trauma informed methodology. In order to develop and improve the 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 PSRS, AODTP, or LBHP must be present and interacting, teaching, or supporting the defined learning objectives of the 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 members who receive this service, but do not have their own transportation or do not have

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other support persons able to provide or who are responsible for the transportation needs. 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 PSRS, AODTP, or LBHP may perform group psychiatric social rehabilitation services, using a treatment curriculum approved by a LBHP.~~

### ~~(11) Psychiatric Social Rehabilitation Services (individual).~~

~~(A) Psychiatric Social 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 member present, but may include the 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 PSRS, AODTP, or LBHP 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) Assessment/Evaluation testing.~~

~~(A) Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Mental Health, Substance Abuse, or Integrated Services plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.~~

~~(B) Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician or a psychologist or a LBHP. For assessment conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment.~~

### ~~(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 members regarding their alcohol and other drugs (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 member's current service plan. A~~

~~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 member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time. The minimum staffing ratio is fourteen members for each PSRS, LBHP, or AODTP for adults and eight to one for children under the age of eighteen. This service may be performed by an AODTP, LBHP, or a PSRS. In order to develop and improve the member's community and interpersonal functioning and self care abilities, services may take place in settings away from the agency site. When this occurs, the AODTP, LBHP, or PSRS must be present and interacting, teaching, or supporting the defined learning objectives of the 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 members 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 or LBHP.~~

### ~~(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 member present, but may include the member's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives.~~

~~(B) An AODTP, LBHP, or PSRS 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 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 member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization. Medication Training and Support may not be billed for SoonerCare member 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 SoonerCare members who reside in ICF/MR facilities, or who receive RBMS in a group home or Therapeutic Foster home, or members 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 member.

(B) Crisis Intervention Services must be provided by a LBHP.

**(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) are provided under the supervision of a physician aided by a licensed nurse, and also include LBHPs 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 SoonerCare member. The unit of service is per hour. Providers of this service must meet the requirements delineated in the Oklahoma Administrative Code. Children's facility based stabilization (0-18 years of age) requires prior authorization.

**(18) Program of Assertive Community Treatment (PACT) Services.**

(A) The reimbursement for PACT services will end effective June 30, 2008.

(B) Program of Assertive Community Treatment (PACT) Services are provided through the Oklahoma Department of Mental Health and Substance Abuse Services and 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 uses 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.

(C) 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. SoonerCare members 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

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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 or may substitute one year of relevant employment and/or responsibility in the care of children with complex emotional needs 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 supervised by a bachelor's level individual with a minimum of two years case management experience. Treatment plans must be overseen and approved by a LBHP; 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 SoonerCare eligible child experiencing a serious emotional disturbance who is in an ODMHSAS contracted systems of care community based treatment program, are diagnosed with a pervasive developmental disorder, or are under OKDHS or OJA custody residing within a RBMS level of care 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 LBHP. A LBHP 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 members in articulating personal goals for recovery; and
  - (IV) assist members 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, and 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 USPPRA credential of Certified Psychiatric Rehabilitation Practitioner (CPRP).

~~(b) Prior authorization and review of services requirements.~~

~~(1) **General requirement.** All SoonerCare providers who provide outpatient behavioral health services are required to have the services they provide prior authorized by the OHCA or its designated agent. Services that do not require prior authorization are as follows:~~

- ~~(A) Mental Health Assessment by a Non-Physician;~~
- ~~(B) the initial four individual or family sessions before finalization of the service plan;~~
- ~~(C) Mental Health Service Plan Development by a Non-Physician (moderate complexity);~~
- ~~(D) Crisis Intervention Services; and~~
- ~~(E) Adult Facility Based Crisis Intervention.~~

~~(2) **Prior authorization and review of services.** The OHCA or its designated agent 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.~~

~~(3) **Prior authorization process.**~~

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(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 or its designated agent to approve services.
- (ii) **"Authorization Number"** means the number that is assigned per member and per provider that authorizes payment after services are rendered.
- (iii) **"Initial Request for Treatment"** means a request to authorize treatment for a member that has not received outpatient treatment in the last six months.
- (iv) **"Extension Request"** means a request to authorize treatment for a member 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 member is receiving.
- (vi) **"Correction Request"** means a request to change a prior authorization error made by the OHCA or its designated agent.
- (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 or its designated agent 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 member and two providers when a member 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 or its designated agent, prior to rendering the initial services or any additional array of services, with the exception of Mental Health Assessment by a Non-Physician; the first four sessions prior to completion of the service plan; Mental Health Service Plan Development by a Non-Physician (moderate complexity); and Crisis Intervention Services; and Adult Facility Based Crisis Intervention.

- (i) These request forms must be fully completed including the following:
  - (1) pertinent demographic and identifying information;

- (II) complete and current CAR or ASI unless another appropriate assessment tool is authorized by the OHCA or its designated agent;
- (III) complete multi-axial, DSM diagnosis using the most current edition;
- (IV) psychiatric and treatment history;
- (V) service plan with goals, objectives, treatment duration; and
- (VI) services requested.

(ii) The OHCA or its designated agent 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 OHCA or its designated agent using independent medical judgment to perform the review of prior authorization requests to determine whether the request meets medical necessity criteria. If services are authorized, a treatment course of one to six months will be authorized. The authorization of services is based upon seven levels of care for children and six levels of care for adults. The numerically based levels of care are designed to reflect the member's acuity as each level of care, in ascending order. Additional levels of care are known as Exceptional Case, 0-36 months, ICF/MR, Recovery Maintenance/Relapse Prevention, and RBMS.

(ii) If the provider requests services beyond the initial prior authorization period, additional documentation is required in the Extension Request.

(b) All services are to be for the goal of improvement of functioning, independence, or well being of the member. The services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.

(c) All outpatient BH services will require prior authorization through OHCA, or its designated agent, following established medical necessity criteria. Providers are required to follow these criteria and guidelines under the OHCA BH Provider Billing Manual. The OHCA or its designated agent 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.

(d) Non prior authorized services will not be SoonerCare compensable with the exception of the initial 1-4 sessions (to be used prior to completion of the Service Plan), Assessment

Service Plan (moderate complexity), Crisis Intervention, and Adult Facility Based Crisis Stabilization.

**317:30-5-241.1. Screening, assessment and service plan**

All providers must comply with the requirements as set forth in the OHCA BH Provider Billing Manual.

(1) **Screening.**

(A) **Definition.** Screening is for the purpose of determining whether the member meets basic medical necessity and need for further BH assessment and possible treatment services.

(B) **Qualified professional.** Screenings can be performed by any credentialed staff members as listed under OAC 317:30-5-240.3.

(C) **Target population.** This service is compensable only on behalf of a member who is under a PACT program.

(2) **Assessment.**

(A) **Definition.** Gathering and assessment of historical and current information which includes face-to-face contact with the person and/or the person's family or other informants, or group of persons resulting in a written summary report and recommendations. All agencies must assess the medical necessity of each individual to determine the appropriate level of care.

(B) **Qualified professional.** This service is performed by an LBHP or AODTP for AOD.

(C) **Time requirements.** The minimum face-to-face time spent in assessment session(s) with the member and others as identified previously in paragraph (1) of this subsection for a low complexity Behavioral Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more.

(D) **Target population and limitations.** This service is compensable on behalf of a member who is seeking services for the first time from the contracted agency. This service is not compensable if the member has previously received or is currently receiving services from the agency, unless there has been a gap in service of more than six months and it has been more than one year since the previous assessment.

(3) **Behavioral Health Services Plan Development.**

(A) **Definition.** The Behavioral Health Service Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the member. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited, and defines the services to be performed by the practitioners and others who comprise the treatment team. BH Service Plan Development is performed with the direct active participation of the member and a member support person or advocate

if requested by the member. In the case of children under the age of 16, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate, and must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. For adults, it is focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training.

(B) **Qualified professional.** This service is performed by an LBHP or AODTP for AOD.

(C) **Time requirements.** Service Plan updates are required every six months during active treatment. Updates can be conducted whenever needed as determined by the provider and member.

(4) **Assessment/Evaluation testing.**

(A) **Definition.** Assessment/Evaluation testing is provided by a clinician utilizing tests selected from currently accepted assessment test batteries. Test results must be reflected in the Service Plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) **Qualified professionals.** Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment.

**317:30-5-241.2. Psychotherapy**

(a) **Individual/Interactive Psychotherapy.**

(1) **Definition.** 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.

(2) **Definition.** Interactive Psychotherapy is individual psychotherapy that involves the use of play therapy equipment, physical aids/devices, language interpreter, or other mechanisms of nonverbal communication to overcome barriers to the therapeutic interaction between the clinician and the member who has not yet developed or who has lost the expressive language communication skills to explain his/her symptoms and response to treatment, requires the use of a mechanical device in order to progress in 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 language interpreter.

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- (3) **Qualified professionals.** With the exception of a qualified interpreter if needed, only the member and the LBPH or AODTP should be present and the setting must protect and assure confidentiality. Ongoing assessment of the 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 member's developmental and cognitive abilities. Individual/Interactive counseling must be provided by a LBHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.
- (4) **Limitations.** A maximum of 6 units per day per member is compensable.
- (b) **Group Psychotherapy.**
- (1) **Definition.** Group psychotherapy is a method of treating behavioral disorders using the interaction between the LBHP 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 member's current service plan. This service does not include social or daily living skills development as described under Psychiatric-social Rehabilitation Services.
- (2) **Group sizes.** Group Psychotherapy is limited to a total of eight adult (18 and over) 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.
- (3) **Multi-family and conjoint family therapy.** Sessions are limited to a maximum of eight families/units. Billing is allowed once per family unit, though units may be divided amongst family members.
- (4) **Qualified professionals.** Group psychotherapy will be provided by a LBHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder. Group Psychotherapy must take place in a confidential setting limited to the LBHP or the AODTP conducting the service, an assistant or co-therapist, if desired, and the group psychotherapy participants.
- (5) **Limitations.** A maximum of 12 units per day per member is compensable.
- (c) **Family Psychotherapy.**
- (1) **Definition.** Family Psychotherapy is a face-to-face psychotherapeutic interaction between a LBHP or an AODTP and the member's family, guardian, and/or support system. It is typically inclusive of the identified member, but may be performed if indicated without the member's presence. When the member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the SoonerCare member 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.
- (2) **Qualified professionals.** Family Psychotherapy must be provided by a LBHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.
- (3) **Limitations.** A maximum of 12 units per day per member/family unit is compensable.
- (d) **Multi-Systemic Therapy (MST).**
- (1) **Definition.** MST intensive outpatient program services are limited to children within an OJA MST treatment program which provides an intensive, family and community-based treatment targeting specific BH disorders in children with SED who exhibit chronic, aggressive, anti-social, and/or substance abusing behaviors, and are at risk for out of home placement. Case loads are kept low due to the intensity of the services provided.
- (2) **Qualified professionals.** Masters level professionals who work with a team that may include bachelor level staff.
- 317:30-5-241.3. Behavioral Health Rehabilitation (BHR) services**
- (a) **Definition.** BHRS are behavioral health remedial services which are necessary to improve the member's ability to function in the community. They are performed to improve the skills and abilities of 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.
- (1) **Clinical restrictions.**
- (A) **Individual.** Only the BHRS and member are present for the session.
- (B) **Group.** 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.
- (2) **Qualified providers.** A BHRS, AODTP, or LBHP may perform BHR, following a treatment curriculum approved by a LBHP or AODTP for AOD. Staff must be appropriately trained in a recognized behavioral/management intervention program such as MANDT or CAPE or trauma informed methodology.
- (3) **Group sizes.** The minimum staffing ratio is fourteen members for each BHRS, AODTP, or LBHP for adults and eight to one for children under the age of eighteen.
- (4) **Limitations.**
- (A) **Transportation.** Travel time to and from BHR treatment is not compensable.
- (B) **Time.** Breaks, lunchtime and times when the member is unable or unwilling to participate are not compensable and must be deducted from the overall billed time.
- (C) **Location.** In order to develop and improve the 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 LBHP must be present and interacting, teaching, or supporting the defined learning objectives of the member for the entire claimed time.

**(D) Billing.** 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.

(i) **Group.** The maximum is 24 units per day for adults and 16 units per day for children.

(ii) **Individual.** The maximum is six units per day. Children under an ODMHSAS Systems of Care program may be prior authorized additional units as part of an intensive transition period.

**(b) Medication training and support.**

(1) **Definition.** Medication Training and Support is a documented review and educational session by a registered nurse, or physician assistant focusing on a 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 member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization.

(2) **Limitations.**

(A) Medication Training and Support may not be billed for SoonerCare members who reside in ICF/MR facilities.

(B) One unit is allowed per month per patient without prior authorization.

(3) **Qualified professionals.** Must be provided by a licensed registered nurse, or a physician assistant as a direct service under the supervision of a physician.

**317:30-5-241.4. Crisis Intervention**

**(a) Onsite and Mobile Crisis Intervention Services (CIS).**

(1) **Definition.** Crisis Intervention Services are for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal severe psychiatric distress, and/or danger of AOD relapse. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented.

(2) **Limitations.** Crisis Intervention Services are not compensable for SoonerCare members who reside in ICF/MR facilities, or who receive RBMS in a group home or Therapeutic Foster Home. CIS is also not compensable for members who experience acute behavioral or emotional dysfunction while in attendance for other behavioral health services, unless there is a documented

attempt of placement in a higher level of care. The maximum is 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 member.

(3) **Qualified professionals.** Services must be provided by a LBHP.

**(b) Facility Based Crisis Stabilization (FBCS).** FBCS services are emergency psychiatric and substance abuse services aimed at resolving crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment.

(1) **Qualified professionals.** FBCS services are provided under the supervision of a physician aided by a licensed nurse, and also include LBHPs 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.

(2) **Limitations.** The unit of service is per hour. Providers of this service must meet the requirements delineated in the OAC 450:23.

**317:30-5-241.5. Support services**

**(a) Program of Assertive Community Treatment (PACT) Services.**

(1) **Definition.** PACT is provided by an interdisciplinary team that ensures service availability 24 hours a day, seven days a week and is prepared to carry out a full range of treatment functions wherever and whenever needed. An individual is referred to the PACT team service when it has been determined that his/her needs are so pervasive and/or unpredictable that it is unlikely that they can be met effectively by other combinations of available community services, or in circumstances where other levels of outpatient care have not been successful to sustain stability in the community.

(2) **Target population.** Individuals 18 years of age or older with serious and persistent mental illness and co-occurring disorders.

(3) **Qualified professionals.** Providers of PACT services are specific teams within an established organization and must be operated by or contracted with and certified by the ODMHSAS in accordance with 43A O.S. 319 and OAC 450:55.

(4) **Limitations.** A maximum of 105 hours per member per year in the aggregate. SoonerCare members who are enrolled in this service may not receive other outpatient behavioral health services except for FBCS and CM.

**(b) Behavioral Health Aide Services.**

(1) **Definition.** 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.

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Training is generally focused on behavioral, interpersonal, communication, self help, safety and daily living skills.

(2) **Target population.** 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.

(3) **Qualified professionals.** Behavioral Health Aides must be certified through ODMHSAS.

(4) **Limitations.** The Behavioral Health Aide cannot bill for more than one individual during the same time period.

(c) **Family Support and Training.**

(1) **Definition.** 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. 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.

(2) **Target population.** Family Support and Training is designed to benefit the SoonerCare eligible child experiencing a serious emotional disturbance who is in an ODMHSAS contracted systems of care community based treatment program, are diagnosed with a pervasive developmental disorder, or are under OKDHS or OJA custody residing within a RBMS level of care and who without these services would require psychiatric hospitalization.

(3) **Qualified professionals.** Family Support Providers (FSP) must be certified through ODMHSAS.

(4) **Limitations.** The FSP cannot bill for more than one individual during the same time period.

(d) **Community Recovery Support.**

(1) **Definition.** CRS (or Peer Recovery Support) services are an EBP model of care which consists of a qualified peer support provider (RSS) who assists individuals with their recovery from behavioral health disorders.

(2) **Target population.** Adults 18 and over with SMI and/or AOD disorder(s).

(3) **Qualified professionals.** Recovery Support Specialist (RSS) who is certified through ODMHSAS.

(4) **Limitations.** The RSS cannot bill for more than one individual during the same time period.

## 317:30-5-244. Individuals eligible for Part B of Medicare

Outpatient Behavioral Health services provided to Medicare eligible recipients ~~members~~ should be filed directly with the fiscal agent.

## 317:30-5-248. Documentation of records

All outpatient behavioral health services must be reflected by documentation in the ~~member~~ member's records.

(1) For ~~Mental~~ Behavioral Health and Alcohol and Drug Assessments (see OAC 317:30-5-241), no progress ~~note~~ notes are required.

(2) For ~~Mental~~ Behavioral Health Services Plan and Alcohol and/or Substance Abuse Services, Treatment Plan (see OAC 317:30-5-241), no progress ~~note~~ notes are required.

(3) Treatment Services must be documented by progress notes.

(A) Progress notes shall chronologically describe the services provided, the member's response to the services provided and the member's progress, or lack ~~of~~, in treatment and must include the following:

(i) Date;

(ii) Person(s) to whom services were rendered, must be HIPAA compliant if other individuals in session are mentioned;

~~(iii)~~ SoonerCare number for member;

~~(iv)~~ Start and stop time for each timed treatment session or service;

~~(v)~~ 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. Electronic signatures are acceptable following OAC 317:30-3-4.1 and 317:30-3-15;

~~(vi)~~ Credentials of therapist/service provider;

~~(vii)~~ Specific treatment plan problems(s), goals and/or objectives addressed;

~~(viii)~~ Services provided to address need(s), goals and/or objectives;

~~(ix)~~ Progress or barriers to progress made in treatment as it relates to the goals and/or objectives;

~~(x)~~ Member (and family, when applicable) response to the session or intervention; (what did the member do in session? What did the provider do in session?);

~~(xi)~~ Any new need(s), goals and/or objectives identified during the session or service.

(4) In addition to the items listed in (1) of this subsection:

(A) Crisis Intervention Service notes must also include a detailed description of the crisis and level of functioning assessment;

- (B) a list of participants for each Group rehabilitative or counseling session and facilitating ~~PSRS~~ BHRS, LBHP, or AODTP must be maintained; and
- (C) for medication training and support, vital signs must be recorded in the progress note, but are not required on the ~~mental behavioral~~ health services plan;
- (5) Progress notes for intensive outpatient ~~mental behavioral~~ health, substance abuse, or integrated BHR programs may be in the form of daily ~~summary~~ or weekly summary notes and must include the following:
  - (A) Curriculum sessions attended each day and/or dates attended during the week;
  - (B) Start and stop times for each day attended;
  - (C) Specific goal(s) and objectives addressed during the week;
  - (D) Type of Skills Training provided each day and/or during the week;
  - (E) Member satisfaction with staff intervention(s);
  - (F) Progress, or barriers to, made toward goals, objectives;
  - (G) New goal(s) or objective(s) identified;
  - (H) Signature of the lead ~~PSRS~~ BHRS; and
  - (I) Credentials of the lead ~~PSRS~~ BHRS.
- (6) Concurrent documentation between the clinician and member can be billed as part of the treatment session time, but must be documented clearly in the progress notes and signed by the member.

**317:30-5-249. Non-covered services**

In addition to the general program exclusions [OAC 317:30-5-2(a)(2)] the following are excluded from coverage.

Work and education services:

- (1) Talking about the past and current and future employment goals, going to various work sites to explore the world of work, and assisting client in identifying the pros and cons of working.
- (2) Development of an ongoing educational and employment rehabilitation plan to help each individual establish job specific skills and credentials necessary to achieve ongoing employment. Psycho-social skills training however would be covered.
- (3) Work/school-specific supportive services, such as assistance with securing of appropriate clothing, wake-up calls, addressing transportation issues, etc. These would be billed as Case Management following 317:30-5-285 through 317:30-5-285.
- (4) Job specific supports such as teaching/coaching a job task.

[OAR Docket #09-929; filed 5-14-09]

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

[OAR Docket #09-931]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 25. Psychologists  
317:30-5-276. [AMENDED]  
317:30-5-278.1 [AMENDED]  
(Reference APA WF # 08-53)

**AUTHORITY:**

The 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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**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Agency rules are revised in order to remove provider eligibility requirements for psychologists from the coverage section of the psychologist rules. Revisions also update terminology and bring rules in line with current OHCA practices.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 25. PSYCHOLOGISTS**

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### 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.

(1a) **Adults.** There is no coverage for adults for services by a psychologist.

(2b) **Children.** Coverage for children includes the following:

(A1) Psychiatric Diagnostic Interview Examination (PDIE). The interview and assessment is defined as a face-to-face interaction with the client member. 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. If there has been a break in service over a six month period, then an additional unit can be prior authorized by OHCA, or their designated agent.~~

(B2) 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 member if it is demonstrated that it is clinically beneficial, or if the client member 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.~~

(C3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or client member's 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 SoonerCare eligible child as a specifically identified component of an individual treatment plan.

(D4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in the psychologist's office, clinic, or other confidential setting. Group therapy is a face to face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) 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 SoonerCare 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.~~

(E5) Psychological, Developmental, Neuropsychological, Neurobehavioral Testing is clinically appropriate and allowable ~~utilized~~ when an accurate diagnosis and determination of treatment needs is needed ~~cannot be made otherwise~~. Four hours/units of testing per patient (over the age of two), per provider is allowed without prior authorization every 12 months ~~each calendar year~~. In circumstances where it is determined that further testing is medically necessary, ~~an~~ additional four hours/units may be prior authorized by the OHCA or designated agent based upon medical necessity and consultation review. In circumstances where there is a clinical need for specialty testing, then more hours/units 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/or reporting is was performed and supported by documentation.

(F6) Payment for therapy services provided by a psychologist to any one member is limited to ~~four~~ five sessions/units 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.~~ In circumstances where it is determined that further sessions/units are medically necessary, then more sessions/units can be prior authorized by the Oklahoma Health Care Authority or their designated agent. A maximum of ~~8 hours~~ 12 sessions/units 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.~~

(7) A child who is being treated in an acute inpatient setting can receive separate Psychological services as the inpatient per diem is for "non-physician" services only.

(8) 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 without prior authorization by the OHCA or its designated agent.

(3c) **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.

(4d) **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~~ will be reflected by documentation in the patient records.

- (1) All assessment, ~~testing~~, and treatment services/units billed must include the following:
  - (A) date;
  - (B) start and stop time for each ~~timed treatment~~ session/unit billed;
  - (C) signature of the provider;
  - (D) credentials of provider;
  - (E) specific 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 separate list of participants must be maintained.
- (3) Psychological testing will be documented ~~by report for each date of service performed~~ 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 #09-931; filed 5-14-09]

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

[OAR Docket #09-928]

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**RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 32. Soonerride Non-Emergency Transportation  
317:30-5-326. [AMENDED]  
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Subchapter 5. Individual Providers and Specialties  
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**ANALYSIS:**

The OHCA is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for NET under the SOonerRide program. Language in the current SoonerRide rule only addresses reimbursement under a capitated methodology and is silent as to reimbursement at a fee for service mileage rate for those members eligible for NET but not included in the NET capitation roster, as is outlined in the State Plan Amendment. This revision will bring OHCA rules in line with current OHCA practices and Oklahoma Title XIX State Plan requirements thereby avoiding a potential PERM error.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 32. SOONERRIDE NON-EMERGENCY TRANSPORTATION**

**317:30-5-326. Provider eligibility**

The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible SoonerCare members who are in need of SoonerCare medical services in accordance with 42 CFR 431.53. The agency contracts with a broker to provide statewide curb to curb coverage for non-emergency transportation under the SoonerRide program. The broker provides the most appropriate and least costly mode of transportation necessary to meet the individual needs of SoonerCare members. Payment for covered services to the broker is ~~reimbursed under capitated methodology based on per member per month~~ is made pursuant to the methodology described in the Oklahoma Title XIX State Plan. The agency contracts directly with ambulance

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and air providers for all other transportation needs for eligible members not approved by SoonerRide.

[OAR Docket #09-928; filed 5-14-09]

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

[OAR Docket #09-925]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. Individual Providers and Specialties

Part 41. Family Support Services

317:30-5-410. [AMENDED]

Part 43. Agency Companion, Specialized Foster Care, Daily Living Supports, Group Homes, and Community Transition Services

317:30-5-422. [AMENDED]

Part 101. Targeted Case Management Services for Persons with Mental Retardation and/or Related Conditions

317:30-5-1010. [AMENDED]

317:30-5-1010.1. [AMENDED]

(Reference APA WF # 08-46A)

### AUTHORITY:

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N/A

#### ANALYSIS:

Rules for the Home and Community-Based Services Waivers for persons with mental retardation or certain persons with related conditions are revised to: (1) provide clarification relating to service utilization, provisions, authorizations, limitations, and eligibility requirements; (2) specify provider requirements and related activities of targeted case management to meet federal requirements; (3) clarify provider responsibilities and limitations in the agency companion program; (4) specify devices and services allowable through assistive technology; (5) clarify physical plant expectations for services provided in center-based settings; and (6) amend policy to reflect appropriate terminology.

#### CONTACT PERSON:

Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 41. FAMILY SUPPORT SERVICES

#### 317:30-5-410. Home and Community-Based Services Waivers for persons with mental retardation or certain persons with related conditions

(a) The Oklahoma Health Care Authority (OHCA) administers Home and Community-Based Services (HCBS) Waivers for persons with mental retardation and certain persons with related conditions that are operated by the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD). Each waiver allows payment for family support services as defined in the waiver approved by the Centers for Medicare and Medicaid Services (CMS). Waiver services:

(1) when utilized with services normally covered by SoonerCare, other generic services, and natural supports provide for health and developmental needs of members who otherwise would not be able to live in a home or community setting;

(2) are provided with the goal of promoting independence through strengthening the member's capacity for self-care and self-sufficiency;

(3) are centered on the needs and preferences of the member and support the integration of the member within his/her community; and

(4) do not include room and board. The costs associated with room and board must be met by the member.

(b) The DDSD case manager develops the Individual Plan (IP) and Plan of Care (Plan) per OAC 340:100-5-53. The IP contains descriptions of the services provided, documentation of the amount, frequency and duration of the services, and types of service providers.

(1) Services:

(A) are authorized per OAC 340:100-3-33 and 100-3-33.1.

(B) provided prior to the development of the IP or not included in the IP are not compensable. The Plan may not be backdated;

(C) may be provided on an emergency basis when approved by the area manager or designee. The plan must be revised to reflect the additional services; and

(D) are provided by qualified provider entities contracted with the OHCA.

(2) Members have freedom of choice of providers and in the selection of HCBS or institutional services.

**PART 43. AGENCY COMPANION, SPECIALIZED FOSTER CARE, DAILY LIVING SUPPORTS, GROUP HOMES, AND COMMUNITY TRANSITION SERVICES**

**317:30-5-422. Description of services**

Residential supports include:

- (1) agency companion services (ACS) ~~provided in accordance with Part 1 of per~~ OAC 317:40-5;
- (2) specialized foster care (SFC) ~~provided in accordance with Part 5 of per~~ OAC 317:40-5;
- (3) daily living supports (DLS) ~~provided in:~~
  - (A) Community Waiver ~~in accordance with per~~ OAC 317:40-5-150; and
  - (B) Homeward Bound Waiver ~~in accordance with per~~ OAC 317:40-5-153;
- (4) group home services ~~provided in accordance with per~~ OAC 317:40-5-152; and
- (5) community transition services (CTS).

(A) Minimum qualifications. The provider must enter into contractual agreements with the Oklahoma Health Care Authority (OHCA) to provide ACS, habilitation training specialist (HTS) services, or DLS, in addition to a contract to provide CTS.

(B) Description of services. CTS is a one-time setup expense for members transitioning from an intermediate care facility for the mentally retarded (ICF/MR) or provider-operated residential setting to the member's own home or apartment. The cost per member of Community Transition Services cannot exceed limitations set forth by OHCA. The member's name must be on the lease, deed or rental agreement. CTS:

- (i) ~~is~~ are furnished only when the member is unable to meet such expense and must be ~~authorized~~ documented in the member's Individual Plan (IP);
- (ii) ~~includes~~ include security deposits, essential furnishings such as major appliances, dining table/chairs, bedroom set, sofa, chair, window coverings, kitchen pots/pans, dishes, eating utensils, bed/bath linens, kitchen dish towel/potholders, one month supply of laundry/cleaning products, setup fees or deposits for initiating utility ~~or~~ service ~~access,~~ including phone, electricity, gas, and water; CTS also includes moving expenses, ~~and services~~ services/items necessary for the member's health and safety such as pest eradication, allergen control, one-time cleaning prior to occupancy, flashlight, smoke detector, carbon monoxide detector, first aid kit, fire extinguisher, tempering valve or other anti-scald device when determined by the Team necessary to ensure the member's safety. ~~Utilities must be in the members's name;~~ and
- (iii) does not include:
  - (I) recreational items, such as television, cable ~~television access,~~ satellite, internet, video

cassette recorder (VCR), digital video disc (DVD) player, compact disc (CD) player, MP3 player, or computer used primarily as diversion or recreation; ~~and~~

(II) monthly rental or mortgage expense, ~~food, or regular utility charges. :~~

(III) food;

(IV) personal hygiene items;

(V) disposable items such as paper plates/napkins, plastic utensils, disposable food storage bags, aluminum foil, plastic wrap;

(VI) items that could be considered decorative such as rugs, pictures, bread box, canisters, or more than one basic clock;

(VII) any item not considered an essential basic one time expense; or

(VIII) regular ongoing utility charges.

(iv) prior approval for exceptions and/or questions regarding eligible items and/or expenditures are directed to the program manager for community transition services at OKDHS/DDSD state of-ice.

**PART 101. TARGETED CASE MANAGEMENT SERVICES FOR PERSONS WITH MENTAL RETARDATION AND/OR RELATED CONDITIONS**

**317:30-5-1010. Eligible providers**

(a) **Eligible providers.** Services are provided by Oklahoma Department of Human Services (~~DHS~~ OKDHS) Developmental Disabilities Services Division (DDSD) case managers.

(1) **Certification requirements.** ~~Medicaid~~ Soon-erCare Developmental Disabilities Services Division Targeted Case Management (DDSDTCM) services must be made available to all eligible ~~recipients~~ members and must be delivered on a statewide basis with procedures that assure 24 hour availability, the protection and safety of ~~recipients~~ members, continuity of services without duplication, and compliance with federal and State mandates and regulations related to servicing the targeted population are met in a uniform and consistent manner. A DDSDTCM case manager must:

- (A) be employed by the ~~DHS~~ OKDHS, DDSD.
- (B) possess knowledge of:
  - (i) case management methods, principles and techniques;
  - (ii) types of developmental disabilities represented within the caseload;
  - (iii) types of providers and services available for ~~consumers~~ members;
  - (iv) the behavioral sciences and allied disciplines involved in the evaluation, care and training of persons with developmental disabilities;
  - (v) interviewing principles and techniques;
  - (vi) counseling principles and techniques; and

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(vii) adaptive communication techniques and non-verbal communication.

(C) possess skill in:

- (i) managing a caseload;
- (ii) effectively intervening in crisis situations;
- (iii) working cooperatively and effectively with other professionals in a team situation;
- (iv) collecting and analyzing information;
- (v) making decisions relating to services provided to ~~consumers~~ members;
- (vi) developing a logical and practical plan of treatment for ~~consumers~~ members with developmental disabilities;
- (vii) evaluating the progress of ~~consumers~~ members and the quality of their habilitation programs;
- (viii) communicating effectively; and
- (ix) mediating with providers and agencies to resolve problems.

(b) **Provider agreement.** A Provider Agreement between the Oklahoma Health Care Authority and the provider for DDS/DCM services must be in effect before reimbursement can be made for compensable services.

(c) **Provider selection.** ~~Provision of case management services must not restrict an individual's free choice of providers. Eligible recipients retain the right to free choice of qualified providers of targeted case management services identified by the State. Target group consists of eligible members with developmental disabilities. Providers are limited to providers of case management services capable of ensuring that members with developmental disabilities receive needed services.~~

## 317:30-5-1010.1. Scope of service

(a) **Description of targeted case management services.**

(1) ~~Targeted case~~ Case management services are activities that services furnished to assist the target population members, eligible under the Medicaid State Plan, in gaining access to needed medical, social, educational and other services and supports. These supports and services include those not provided under the Oklahoma Home and Community-Based Services waiver as well as those covered under the waiver. Services include Case management includes the following assistance:

(A) ~~assessment; of a member to determine the need for medical, educational, social, or other services. Assessment activities include:~~

- (i) taking member history;
- (ii) identifying the member's needs and completing related documentation; and
- (iii) gathering information from other sources such as family members, medical providers, social workers, and educators to form a complete assessment of the member.

(B) ~~support/service planning; development of an individual plan and a specific plan of care that:~~

- (i) are based on the information collected through the assessment;

(ii) specify the goals and actions to address medical, social, educational, and other services needed by the member;

(iii) include activities such as ensuring the active participation of the eligible member; and work with the member or member's authorized health care decision maker, and others to develop the goals; and

(iv) identify a course of action to respond to the assessed needs of the eligible member.

(C) ~~monitoring and coordination; and referral and related activities to help an eligible member obtain needed services including activities that help link a member with:~~

(i) medical, social, educational providers; or

(ii) other programs and services capable of providing needed services, such as making referrals to providers for needed services and scheduling appointments for the member.

(D) ~~reassessment; monitoring and follow-up activities include activities and contact necessary to ensure the individual plan and the plan of care are implemented and adequately address the member's needs. Activities and contact may be with the member, his or her family members, providers, other entities or individuals, and may be conducted as frequently as necessary including at least one annual monitoring to assure the following conditions are met:~~

(i) services are being furnished in accordance with the member's plan of care;

(ii) services in the plan of care are adequate; and

(iii) if there are changes in the needs or status of the member, necessary adjustments are made to the plan of care, and to service arrangements with providers.

(2) ~~Targeted case management is designed to assist individuals in accessing services. The client has the right to refuse targeted case management and cannot be restricted from services because of a refusal for targeted case management services. Case management may include contact with individuals who are directly related to identifying the needs and supports for helping the eligible member to access services.~~

(3) ~~Targeted case management does not include:~~

(A) ~~physically escorting or transporting a client to scheduled appointment or staying with the client during an appointment;~~

(B) ~~monitoring financial goals;~~

(C) ~~providing specific services such as shopping or paying bills; or~~

(D) ~~delivering bus tickets, food stamps, money, etc.~~

(b) **Targeted Case Management Service Requirements.** DDSD assures that:

(1) case management services are provided in a manner consistent with the best interest of members and are not used to restrict a member's access to other services under the plan;

(2) members are not compelled to receive case management services, condition receipt of case management services on the receipt of other SoonerCare services, or condition receipt of other SoonerCare services on receipt of case management services;

(3) case management conducts activities to ensure the health and welfare of HCBS waiver members. For members who refuse case management services, these activities are completed as follows:

(A) the member develops an Individual Plan (IP) per OAC 340:100-5-50 through 340:100-5-58.

(B) the member develops a plan of care requesting authorization for services and submits it with the IP to the Developmental Disabilities Services Division (DDSD) plan of care reviewer for review and approval per OAC 340:100-3-33 and OAC 340:100-3-33.1.

(C) monthly progress reports, incident reports, OKDHS form 06HM005E, OKDHS form 06HM006E, and other documentation required to be submitted to case management are submitted to the DDSD state office program manager for case management for monitoring and follow-up per OAC 340:100-3-27.

(D) monitoring visits required by OAC 340:100-3-27 are conducted by DDSD Quality Assurance staff.

(E) the DDSD state office program manager assigns staff responsibility for maintaining the record in Client Contact Manager (CCM), obtaining necessary documents from the member and others for continuing service eligibility, providing information regarding available HCBS Waiver providers, making referrals to other programs and identifying training available to assist the member in completing the required tasks.

(4) providers of case management services do not exercise the agency's authority to authorize or deny the provision of other services under the plan.

(b)c) **Non-Duplication of services.** To the extent any eligible recipients members in the identified target population are receiving case management services from another provider agency as a result of being members of other covered target groups, the provider assures that case management activities are coordinated to avoid unnecessary duplication of service.

*[OAR Docket #09-925; filed 5-14-09]*

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

*[OAR Docket #09-927]*

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PERMANENT final adoption

**RULES:**  
Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals  
317:30-5-42.14. [AMENDED]  
Part 63. Ambulatory Surgical Centers (ASC)  
317:30-5-565. through 317:30-5-567. [AMENDED]  
**(Reference APA WF # 08-47)**

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317:30-5-42.14. [AMENDED]  
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N/A

**ANALYSIS:**

Agency rules are revised to reflect upcoming changes to the reimbursement methodology for outpatient surgery services. Currently, OHCA does not use the same methodology to process Ambulatory Surgical Center/Ambulatory Payment Classification (ASC/APC) claims as Medicare. OHCA currently pays for outpatient surgery under a "hierarchical" methodology that does not align with any other payer. This current methodology creates an administrative burden for facilities submitting claims and makes it difficult for OHCA to coordinate benefits with other payers. Beginning January 1, 2009, OHCA will no longer process outpatient surgery claims under a "hierarchical" payment methodology. This change in payment methodology will more closely align OHCA's payment methodology with Medicare's, thereby relieving the administrative burden on contracted SoonerCare outpatient surgery providers and facilitating the coordination of benefits between OHCA and other third party payers.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

# Permanent Final Adoptions

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 3. HOSPITALS

#### 317:30-5-42.14. Surgery and diagnostic services

(a) **Reimbursement.** Reimbursement is made for selected surgeries performed in an outpatient hospital. When an ambulatory surgery is performed in the inpatient hospital setting, the physician must provide exception rationale justifying the need for an inpatient setting to OHCA medical staff for review.

(b) **Ambulatory Surgery Center Groups.** The Medicare definition of covered Ambulatory Surgery Center (ASC) facility services includes services furnished on a outpatient basis in connection with a covered surgical procedure. This is a bundled payment that includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use to patients scheduled for surgical procedures. It includes all services and procedures in connection with covered procedures provided by facility personnel and others involved in patient care. These services do not include physician services, or other health services for which payment can be made under other OHCA medical program provisions (e.g., services of an independent laboratory located on the same site as the ASC, prosthetic devices other than intra ocular lenses (IOLs), anesthetist services, DME). (See OAC 317:30-5-565 for items separately billable.)

(e) **Ambulatory Patient Classification (APC) Groups.** Certain surgical services filed with revenue code series 36X and 49X and that do not fall within an Ambulatory Patient Classification (ASC) group will pay a SoonerCare rate based on Medicare's APC groups. This is not a bundled rate. Other lines on the claim may pay. All outpatient hospital services paid under the Medicare Outpatient Prospective Payment System (OPPS) are classified into groups called Ambulatory Payment Classifications or APCs. Group services identified by Health Care Procedure Coding System (HCPCS) codes and descriptors within APC groups are the basis for setting payment rates under OPPS. Services in each APC are similar clinically and in terms of the resources they require. The payment rate calculated for an APC applies to all of the services assigned to the APC. Depending on the services provided, a hospital may receive a number of APC payments for the services furnished to a member on a single day.

(b) **Reimbursement.** Reimbursement is made for selected services performed in an outpatient hospital. Hospital outpatient services are paid on a rate-per-service basis that varies according to the Ambulatory Payment Classification (APC) group to which the services are assigned.

(d) **Multiple Surgeries.** Multiple surgeries refers to more than one surgical procedure done on the same person on the same day. The multiple surgery rule provides that under certain circumstances the second and subsequent surgeries may be discounted. Multiple procedures furnished during the same visit are discounted. The full amount is paid for the procedure with the highest payment group. Fifty percent is paid for any other surgical procedure(s) performed at the same time if the

procedure is subject to discounting based on the status indicator established by Medicare.

(d) **Status indicators.** Status indicators identify whether the service described by a HCPCS code is paid under the OPPS and if so, whether payment is made separately or packaged and if payment is subject to discounting. SoonerCare follows Medicare's guidelines for packaged/bundled service costs.

(e) **Minor procedures.** Minor procedures that are normally performed in a physician's office are not covered in the outpatient hospital unless medically necessary.

(f) **Ambulatory Surgery.** When an ambulatory surgery is performed in the inpatient hospital setting, the physician must provide exception rationale justifying the need for an inpatient setting to OHCA medical staff for review.

(g) **Dental Procedures.** Dental services are routinely rendered in the dental office, unless the situation requires that the dental service be performed in the outpatient hospital setting. However, services are not covered in the outpatient hospital setting for the convenience of the dentist or member. Dental procedures are not covered as Medicare ASC procedures. Routine dental procedures that are normally performed in a dentist's office are not covered in an outpatient hospital setting unless medically necessary as determined by OHCA. For OHCA payment purposes, the ASC APC list has been expanded to cover these dental services for adults in an ICF/MR and all children.

(1) Non-emergency routine dental that is provided in an outpatient hospital setting is covered under the following circumstances:

(A) The child has a medical history of uncontrolled bleeding or other medical condition which renders in-office treatment impossible.

(B) The child has uncontrollable behavior in the dental office even with premedication.

(C) The child needs extensive dental procedures or oral surgery procedures.

(2) Non-emergency routine dental that is provided in an outpatient hospital setting is covered for children and/or adults who are residents in ICFs/MR only under the following circumstances for children or adults who are residents in ICFs/MR:

(1) A concurrent hazardous medical condition exists;

(2) The nature of the procedure requires hospitalization or;

(3) Other factors (e.g. behavioral problems due to mental impairment) necessitate hospitalization.

(g) **Special Procedures.** Certain procedures rendered in a designated area of a licensed hospital dedicated to specific procedures (i.e. Cardiac Catheterization Lab, etc.) are covered and are not paid at a bundled rate. When multiple APC procedures are performed in the same visit, payment will be the rate of the procedure in the highest payment group.

### PART 63. AMBULATORY SURGICAL CENTERS (ASC)

**317:30-5-565. Eligible providers**

All eligible ambulatory surgical center providers must be certified by Medicare and have a current contract with the Oklahoma Health Care Authority.

~~(1) **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. All eligible ambulatory surgical center providers must be certified by Medicare and have a current contract with the Oklahoma Health Care Authority. 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:~~

- ~~(A) elect to do so, and continue to be so covered unless HCFA determines there is good cause to do otherwise;~~
- ~~(B) be a separately identifiable entity, physically, administratively, and financially independent and distinct from other operations of the hospital; and~~
- ~~(C) meet all the requirements with regard to health and safety, and agree to the assignment, coverage and reimbursement rules applied to independent ASC's.~~

~~(2) **Federal requirements.** 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.~~

**317:30-5-566. Outpatient surgery Ambulatory Surgery Center services**

~~(a) The covered facility services are defined as those services furnished by an Ambulatory Surgical Center (ASC) or Outpatient Hospital Facility (OHF) in connection with a covered surgical procedure. **Reimbursement.** Reimbursement is made for selected services based on the Medicare approved list of covered services that can be performed at an ASC. Ambulatory surgery center services are paid on a rate-per-service basis that varies according to the Health Care Procedure Coding System (HCPCS) codes. Separate payments may be made to the ASC for covered ancillary services. To be considered a covered ancillary service for which separate payment is made, the items and services must be provided integral to covered surgical procedures, that is, immediately before, during, or immediately after the covered surgical procedure.~~

~~(1) **Services included in the facility reimbursement rates 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 member 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 member 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 member 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. In cases of patients with congenital or acquired blood disorders, additional payment can be made within the scope of the Authority's Medical Programs.~~

~~(G) Materials for anesthesia. These include the anesthetic and any materials necessary for its administration.~~

~~(2) **Services not included in facility reimbursement rates are:**~~

~~(A) Physicians' services. This category includes most services performed in the facility which are not considered facility services. The term physicians' services includes any pre/post operative services, such as office visits, consultations, diagnostic tests, removal of stitches, changing of dressings, or other services which the individual physician usually includes in a set global fee for a given surgical procedure.~~

~~(B) The sale, lease or rental of durable medical equipment (DME) to members for use in their homes. If the facility furnishes items of DME to members it should be treated as a DME supplier and this requires~~

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a separate contract and separate claim form. Coverage of DME is limited to the scope of the Authority's Medical Programs.

(C) ~~Prosthetic devices. Non implantable 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 intra ocular 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, the second and subsequent surgeries may be discounted. Reimbursement will be made at a state wide payment rate based on Medicare's established groups as adapted for SoonerCare.~~

(b) Multiple surgeries. Multiple procedures furnished during the same visit are discounted. The full amount is paid for the procedure with the highest payment rate. Fifty percent is paid for any other procedure(s) performed at the same time if the procedure is subject to discounting based on the discount indicator established by Medicare.

(c) Payment indicators. Payment indicators identify whether the service described by a HCPCS code is paid under the ASC methodology and if so, whether payment is made separately or packaged. SoonerCare follows Medicare's guidelines for packaged/bundled service costs.

(d) Minor procedures. Minor procedures that are normally performed in a physician's office are not covered in an ambulatory surgery center unless medically necessary and they are on the Medicare list for procedures approved to be performed in an ASC.

(e) Dental Procedures. For OHCA payment purposes, the ASC list has been expanded to cover dental services for adults in an ICF/MR and all children.

(1) Non-emergency routine dental that is provided in an ambulatory surgery center is covered for children under the following circumstances:

(A) The child has a medical history of uncontrolled bleeding or other medical condition renders in-office treatment impossible.

(B) The child has uncontrollable behavior in the dental office even with premedication.

(C) The child needs extensive dental procedures or oral surgery procedures.

(2) Non-emergency routine dental that is provided in an ambulatory surgical center is covered for children and/or adults who are residents in ICFs/MR only under the following circumstances:

(A) A concurrent hazardous medical condition exists;

(B) The nature of the procedure requires hospitalization or;

(C) Other factors (e.g. behavioral problems due to mental impairment) necessitate hospitalization.

### 317:30-5-567. Coverage by category

Payment is made for ambulatory surgical center services as set forth in this Section.

(1) Children. Payment is made for children for medically necessary surgical procedures which are included on the Medicare's List of Covered Surgical Procedures list of covered ASC surgical procedures and dental procedures in certain circumstances.

(A) Services, deemed medically necessary and allowable under federal regulations, may be covered by the EPSDT/OHCA Child Health program even though those services may not be part of the OHCA SoonerCare program. Such services must be prior authorized.

(B) Federal 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.

(2) Adults. Payment is made for adults for medically necessary surgical procedures which are included on Medicare's the List of Covered Surgical Procedures list of covered ASC surgical procedures.

(3) Individuals eligible For Part B of Medicare. Payment is made utilizing the OHCA allowable for comparable services.

*[OAR Docket #09-927; filed 5-14-09]*

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

*[OAR Docket #09-913]*

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Subchapter 5. Individual Providers and Specialties

Part 79. Dentists

317:30-5-695. [AMENDED]

(Reference APA WF# 08-04)

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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.100

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N/A

**ANALYSIS:**

SoonerCare Dentist rules are revised to add the American Dental Association's version of current dental terminology (CDTA) in order to communicate information related to codes and procedures for administration. Definitions, nomenclature, and descriptors as listed in the CDT will apply with the exception of more specific definitions or limitations as listed in rules.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES**

**PART 79. DENTISTS**

**317:30-5-695. Eligible dental providers and definitions**

(a) Eligible dental providers in Oklahoma's SoonerCare program are:

- (1) 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) individuals issued permits as dental interns under 59 Oklahoma Statute § 328.26;
- (3) individuals who are third and fourth year dental students at an accredited Oklahoma dental college; and
- (4) any 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 SoonerCare.

(c) Eligible providers must document and sign records of services rendered in accordance with guidelines found at OAC 317:30-3-15.

(d) The American Dental Association's version of Current Dental Terminology (CDT) is used by the OHCA to communicate information related to codes, and procedures for administration. Definitions, nomenclature, and descriptors as listed in the CDT will apply, with the exception of more specific definitions or limitations set forth.

(1) "Decay" means carious lesions in a tooth; decomposition and/or dissolution of the calcified and organic components of the tooth structure.

(2) "Palliative Treatment" means action that relieves pain but is not curative. Palliative Treatment is an all inclusive service. No other codes are billable on the same date of service.

(3) "Radiographic Caries" means dissolution of the calcified and organic components of tooth tissue that has penetrated the enamel and is approaching the dentinoenamel junction.

(4) "Upcoding" means reporting a more complex and/or higher cost procedure than actually performed.

(5) "Unbinding" means billing separately for several individual procedures that are included within one Current Dental Terminology or Current Procedural Terminology (CPT) code.

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**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY  
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317:30-5-698. through 317:30-5-699. [AMENDED]

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January 2, 2009

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## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

Dental rules are revised to: (1) require a clinical examination preceding any radiographs, and consideration of patient history, prior radiographs, caries risk assessment and dental and general health needs of the patient; (2) allow, with prior authorization, panoramic x-rays more than once every 36 months for the detection and treatment of oral disease; (3) limit reimbursement for the application of ceramic based and case metal based crowns to natural teeth only; and (4) add clarification that payment for crowns includes all related follow up service for a two year period. Rules are also revised to allow the OHCA Dental Director to prior authorize the correction of poorly rendered or insufficient treatment of restorative procedures by a different provider than the original provider of sub-standard treatment.

### CONTACT PERSON:

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 79. DENTISTS

## 317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

### (1) Adults.

(A) Dental coverage for adults is limited to:

- (i) emergency extractions;
- (ii) Smoking and Tobacco Use Cessation Counseling; and
- (iii) 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.

(B) Payment 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 individuals under age 21.

(C) Pregnant women are covered under a limited dental benefit plan (Refer to (a)(4) of this Section).

(2) **Home and community based waiver services (HCBWS) for the mentally retarded (HCBWS).** All providers participating in the HCBWS must have a separate contract with the OHCA to provide services under the HCBWS. Dental services are defined in each waiver and must be prior authorized.

(3) **Children.** The OHCA Dental Program provides the basic medically necessary treatment. The services listed below are compensable for members under 21 years of age without prior authorization. ALL OTHER DENTAL SERVICES MUST BE PRIOR AUTHORIZED. Anesthesia services are covered for children in the same manner as adults.

(A) **Comprehensive oral evaluation.** ~~Comprehensive oral evaluation~~ 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) **Periodic oral evaluation.** This procedure may be provided for a ~~client member~~ member of record if she or he has not been seen for more than six months.

(C) **Emergency examination/limited oral evaluation.** This procedure is not compensable within two months of a periodic oral examination or if the member is involved in active treatment unless trauma or acute infection is the presenting complaint.

~~(D) Emergency extractions. This procedure is only for the relief of pain or treatment of acute infection.~~

~~(E) Oral hygiene instructions. This service is limited to once every 12 months. The dentist or designated qualified dental staff shall instruct in-structs the member or the responsible adult, (if the child is under five years of age), in proper tooth brushing and flossing by actual demonstration. Verbal and provides proper verbal and/or written proper diet information should be discussed. This service also includes dispensing a new tooth brush, and may~~

~~include~~ 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 E)~~ **Radiographs (x-rays).** To be SoonerCare compensable, x-rays must be ~~determined as of diagnostic quality and medically necessary by the dentist, of diagnostic quality and taken within the allowable limits of the program. A clinical examination must precede any radiographs, and chart documentation must include patient history, prior radiographs, caries risk assessment and both dental and general health needs of the patient.~~ The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral, if that provider chooses to expose and submit for reimbursement prior to referral. Panoramic films are allowable once in a three year period and must be of diagnostic quality. Panoramic films are only compensable when chart documentation clearly indicates the test is being performed to rule out or evaluate non-caries related pathology. Prior authorization and a detailed medical need narrative are required for additional panoramic films taken within three years of the original set.

~~(G F)~~ **Dental sealants.** Tooth numbers 2, 3, 14, 15, 18, 19, 30 and 31 must be caries free on all surfaces to be eligible for this service. This service is available through ~~18~~ 18.0 years of age and is compensable only once per lifetime. Replacement of ~~lost~~ sealants ~~will be at no cost to the OHCA is not a covered service under the SoonerCare program.~~

~~(H G)~~ **Dental prophylaxis.** This procedure is provided once every 184 days including topical application of fluoride.

~~(I H)~~ **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 I)~~ **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 J)~~ **Stainless steel crowns.** The use of stainless steel crowns is allowed as follows:

- (i) Stainless steel crowns are allowed if:
  - (I) the child is five years of age or under;
  - (II) 70 percent or more of the root structure remains; or
  - (III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) Stainless steel crowns are treatment of choice for:

- (I) primary teeth with pulpotomies or pulpectomies, if the above conditions exist; ~~and for~~
- (II) primary teeth where three surfaces of extensive decay exist; or
- (III) primary teeth 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 of extensive decay exist or where 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.

(v) Placement of a stainless steel crown includes all related follow up service for a period of two years. No other prosthetic procedure on that tooth is compensable during that period of time. A stainless steel crown is not a temporizing treatment to be used while a permanent crown is being fabricated.

~~(L K)~~ **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 L)~~ **Anterior root canals.** Payment is made for the services provided in accordance with the following:

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- (i) This procedure is done for permanent teeth when there are ~~not~~ no other missing anterior teeth in the same arch requiring replacement.
  - (ii) Acceptable ADA filling materials must be used.
  - (iii) Preauthorization is required if the member'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.
  - (ix) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.
- (~~N~~M) **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 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~~ This service is for an anterior permanent tooth replacement or if the member is missing three or more posterior teeth to age 16.0 years of age.
- (~~O~~N) **Analgesia.** Use of nitrous oxide is compensable for four occurrences per year.
- (~~P~~O) **Pulp caps (direct).** ADA accepted CAOHC containing material must be used.
- (~~Q~~P) **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 the need for root canal therapy. This restoration, when properly used, is intended to relieve pain and may include a direct or indirect pulp cap. The combination of a pulp cap and sedative fill is the only restorative procedure allowed per tooth per day. Subsequent restoration of the tooth is allowed after a minimum of 30 days.
- (~~R~~Q) **History and physical.** Payment is made for services for the purpose of admitting a patient to a hospital for dental treatment.
- (~~S~~R) **Local anesthesia.** This procedure is included in the fee for all services.
- (~~T~~S) **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 plans 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 physicians, physician assistants, nurse practitioners, nurse midwives, and Oklahoma State Health Department and FQHC nursing staff 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) **Pregnant Women.** Dental coverage for this special population is provided regardless of age.
    - (A) Proof of pregnancy is required (Refer to OAC 317:35-5-6).
    - (B) Coverage is limited to a time period beginning at the diagnosis of pregnancy and ending upon 60 days post partum.

(C) In addition to dental services for adults, other services available include:

- (i) Comprehensive oral evaluation must be performed and recorded for each new client, or established client not seen for more than 24 months;
- (ii) Periodic oral evaluation as defined in OAC 317:30-5-696(a)(3)(B);
- (iii) Emergency examinations/limited oral evaluation. This procedure is not allowed within two months of an oral examination by the same provider for the same patient, or if the patient is under active treatment;
- (iv) Oral hygiene instructions as defined in OAC 317:30-5-696(a)(3)(E);
- (v) Radiographs as defined in OAC 317:30-5-696(a)(3)(F);
- (vi) Dental prophylaxis as defined in OAC 317:30-5-696(a)(3)(H);
- (vii) Composite restorations:
  - (I) Any permanent tooth that has an opened lesion that is a food trap will be deemed medically necessary for this program and will be allowed for all anterior teeth.
  - (II) Class I posterior composite resin restorations are allowed in posterior teeth that qualify;
- (viii) Amalgam. Any permanent tooth that has an opened lesion that is a food trap will be deemed as medically necessary and will be allowed; and
- (ix) Analgesia. Use of nitrous oxide is compensable for four occurrences.

(D) Services requiring prior authorization (Refer to OAC 317:30-5-698).

(E) Periodontal scaling and root planing. Required that 50% or more of six point measurements be 4 millimeters or greater. This procedure is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism and requires anesthesia and some soft tissue removal.

(5) **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 based on the member's coinsurance and deductibles.~~

(B) Services which have been denied by Medicare as noncompensable should be filed directly with ~~this Authority~~ the OHCA with a copy of the Medicare EOB ~~attached~~ indicating the reason for denial.

**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 member from pain due to an acute infection, swelling, trismus or trauma. Requests for dental services requiring prior authorization must be accompanied by sufficient documentation.

Study models (where indicated), 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.

(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 members who have become ineligible mid-treatment are covered if the member was eligible for SoonerCare on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for members 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 member. 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 member name, date, recipient member ID number, provider name, and provider number. X-rays must be placed together in an envelope and stapled to the submission form. If radiographs are not taken, provider must include in narrative sufficient information to confirm diagnosis and treatment plan.

(1) **Endodontics.** Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics. A permanent restoration is not billable to the OHCA when performing pulpotomy or pulpal debridement on a permanent tooth.

(A) **Anterior root canals.** This procedure is for members 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~~ no 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.

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(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.

(vii) If there are three or more missing teeth in the arch that requires replacement, root therapy will not be allowed.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider ~~should document~~ documents that the ~~client~~ member has improved oral hygiene and flossing ability in this member'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) the member has multiple teeth 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.

(x) a single failing root canal is determined not medically necessary for re-treatment.

(2) **Cast metal crowns or ceramic-based crowns.** ~~This procedure is~~ These procedures are compensable for restoration of natural teeth for members who are 16 years of age or older and adults residing in private Intermediate Care Facilities for the Mentally Retarded (~~ICF/MR~~) (ICF/MR) and who have been approved for

~~ICF/MR~~ (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~~ 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)~~ (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~~ cleanable margins, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast dowel 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 members 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 members 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) **Occlusal guard.** Narrative of clinical findings must be sent with prior authorization request.

(~~5~~) **Fixed cast non-precious metal or porcelain/metal bridges.** Only members 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). Members must have excellent oral hygiene documented in the requesting provider's records.

(~~6~~) **Periodontal scaling and root planing.** This procedure requires that 50% or more of the six point

measurements be four millimeters or greater and must involve two or more teeth per quadrant for consideration. This procedure is allowed on members 12 to 20 years of age 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.~~ The procedure is not allowed in conjunction with any other periodontal surgery. Allowance may be made for submission of required authorization data post treatment if the member has a medical or emotional problem that requires sedation.

(7) **Additional prophylaxis.** The OHCA recognizes that certain physical conditions require more than two prophylaxes. The following conditions may qualify a member for one additional prophylaxis per year:

- (A) dilantin hyperplasia;
- (B) cerebral palsy;
- (C) mental retardation;
- (D) juvenile periodontitis.

**317:30-5-699. Restorations**

(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. If it is determined by the Dental Director that a member has received poorly rendered or insufficient treatment from a provider, the Dental Director may prior authorize corrective procedures by a second provider.

(c) **Coverage for dental restorations.** Services for dental restorations are covered as follows:

- (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.
- (2) If any two separate surfaces on a posterior tooth are restored at the same appointment, it is a two surface restoration.
- (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.

(8) When four or more separate surfaces on a posterior tooth are restored at the same appointment it is a four surface restoration.

(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 surface or at least one half the surface of one of the buccal cusps. The same logic applies for the lingual surface.

(d) **Sedative restorations.** Sedative restorations include removal of decay, if present, and direct or indirect pulp cap, if needed. 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.

(e) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted materials, not a cavity liner. Utilization of these codes are verified on a post payment review.

*[OAR Docket #09-918; filed 5-14-09]*

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

*[OAR Docket #09-915]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Individual Providers and Specialties  
Part 95. Agency Personal Care Services  
317:30-5-953. [AMENDED]  
(Reference APA WF # 08-29A)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

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**Comment period:**

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# Permanent Final Adoptions

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**SUPERSEDED EMERGENCY ACTIONS:****Superseded rules:**

Subchapter 5. Individual Providers and Specialties  
Part 95. Agency Personal Care Services  
317:30-5-953. [AMENDED]  
(Reference APA WF # 08-29A)

**Gubernatorial approval:**

January 2, 2009

**Register publication:**

26 Ok Reg 543

**Docket number:**

09-70

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Rules are revised to require the use of the new Interactive Voice Response Authentication (IVRA) system to document time and attendance for all Personal Care and certain in-home ADvantage services provided to SoonerCare members. Currently, claims for Personal Care and associated in-home ADvantage services represent the highest volume of claim records processed through the Medicaid Management Information System. In-home services are necessarily provided in the individual homes of persons with physical and cognitive disabilities. The verification of service delivery is typically a paper time sheet signed by the member receiving services with a high potential for errors. Additionally, a paper based time and attendance system which requires transcription of time units from paper to computer is both inefficient and affords many opportunities for inadvertent errors.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

### PART 95. AGENCY PERSONAL CARE SERVICES

#### 317:30-5-953. Billing

A billing unit of service for ~~personal care~~ Personal Care skilled nursing service equals a visit. A billing unit of service for ~~personal care~~ Personal Care services provided by a PC service agency is 15 minutes of PC services delivery. Billing procedures for Personal Care services are contained in the OKMMIS Billing and Procedure Manual. Service time for Personal Care and Nursing is documented solely through the Interactive Voice Response Authentication (IVRA) system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA

backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.

[OAR Docket #09-915; filed 5-14-09]

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

[OAR Docket #09-924]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Eligibility and Countable Income  
Part 3. Non-Medical Eligibility Requirements  
317:35-5-25. [AMENDED]  
(Reference APA WF # 08-44)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Public Law 109-163; Public Law 110-181; Public Law 110-161

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Subchapter 5. Eligibility and Countable Income  
Part 3. Non-Medical Eligibility Requirements  
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26 Ok Reg 545

**Docket number:**

09-67

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

SoonerCare eligibility rules regarding citizenship are revised to allow the use of tribal membership cards, Certificate of Degree of Indian Blood cards, and Oklahoma Voter Registration cards to verify citizenship and/or identity. Section 6036 of the Deficit Reduction Act of 2005 required states to obtain satisfactory documentary evidence of citizenship and identity in order to receive federal matching funds. Some SoonerCare members who are United States citizens by virtue of being born in the United States have lost eligibility for benefits and others have been denied benefits as they were unable to furnish

a copy of their birth certificate or other documentation as outlined in existing rules. Eligibility rules are revised to include these other types of documents which may be more easily obtainable by the SoonerCare applicant than a birth certificate, particularly if the individual was born in a state other than Oklahoma. Additional revisions clarify that individuals who are classified as permanent non-immigrants includes persons from the Marshall Islands, the Republic of Palau and the Federated States of Micronesia. Citizenship rules are further revised to include Iraqis and Afghans with special immigrant status as qualified aliens. Iraqi and Afghan Special Immigrants are a relatively new category of special immigrants, created by Public Law 109-163. Each Federal fiscal year, a certain number of Iraqis and Afghans and their families who were employed by the U.S. military as translators and meet other requirements, may be granted Iraqi or Afghan Special Immigrant Status under section 101(a)(27) of the Immigration and Nationality Act (INA). Public Law 110-161 allows six months of eligibility for Afghan special immigrants and Public Law 110-181 allows eight months of eligibility for Iraqi special immigrants. All other eligibility requirements must be met in order to qualify for SoonerCare services during this time-limited period. After this time-limited period of eligibility, Iraqi and Afghan special immigrants will lose eligibility for SoonerCare services until they meet the 5-year bar or otherwise meet the citizenship or alien eligibility criteria.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME**

**PART 3. NON-MEDICAL ELIGIBILITY REQUIREMENTS**

**317:35-5-25. Citizenship/alien status and identity verification requirements**

(a) Citizenship/alien status and identity verification requirements. Verification of citizenship/alien status and identity are required for all adults and children approved for Medicaid.

(1) The types of acceptable evidence that verify identity and citizenship include:

- (A) United States (U.S.) Passport;
- (B) Certificate of Naturalization issued by U.S. Citizenship & Immigration Services (USCIS) (Form N-550 or N-570);
- (C) Certificate of Citizenship issued by USCIS (Form N-560 or N-561); ~~or~~
- (D) Copy of the Medicare card or printout of a BENDEX or SDX screen showing receipt of Medicare benefits, Supplemental Security Income or disability benefits from the Social Security Administration; or
- (E) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, with a photograph of the individual.

(2) The types of acceptable evidence that verify citizenship but require additional steps to obtain satisfactory evidence of identity are listed in subparagraphs (A) and (B). Subparagraph (A) lists the most reliable forms of

verification and is to be used before using items listed in (B). Subparagraph (B) lists those verifications that are less reliable forms of verification and are used only when the items in (A) are not attainable.

(A) Most reliable forms of citizenship verification are:

- (i) A U.S. public Birth Certificate showing birth in one of the 50 states, the District of Columbia, Puerto Rico (on or after 1/13/1941), Guam (on or after 4/10/1899), the U.S. Virgin Islands (on or after 1/17/1917), American Samoa, Swain's Island, or the Northern Mariana Islands after 11/4/1986;
- (ii) A Report of Birth Abroad of a U.S. citizen issued by the Department of Homeland Security or a Certification of birth issued by the State Department (Form FS-240, FS-545 or DS-1350);
- (iii) A U.S. Citizen ID Card (Form I-179 or I-197);
- (iv) A Northern Mariana Identification Card (Form I-873) (Issued by the INS to a collectively naturalized citizen of the U.S. who was born in the Northern Mariana Islands before 11/3/1986);
- (v) An American Indian Card issued by the Department of Homeland Security with the classification code "KIC" (Form I-872);
- (vi) A Final Adoption Decree showing the child's name and U.S. place of birth;
- (vii) Evidence of U.S. Civil Service employment before 6/1/1976; ~~or~~
- (viii) An Official U.S. Military Record of Service showing a U.S. place of birth (for example a DD-214);
- (ix) Tribal membership card or Certificate of Degree of Indian Blood (CDIB) card, without a photograph of the individual, for Native Americans;
- (x) Oklahoma Voter Registration Card; or
- (xi) Other acceptable documentation as approved by OHCA.

(B) Other less reliable forms of citizenship verification are:

- (i) An extract of a hospital record on hospital letterhead established at the time of the person's birth that was created five years before the initial application date and that indicates a U.S. place of birth. For children under 16 the evidence must have been created near the time of birth or five years before the date of application;
- (ii) Life, health, or other insurance record showing a U.S. place of birth that was created at least five years before the initial application date and that indicates a U.S. place of birth;
- (iii) Federal or State census record showing U.S. citizenship or a U.S. place of birth (generally for persons born 1900 through 1950). The census record must also show the applicant's/member's age; or

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- (iv) One of the following items that show a U.S. place of birth and was created at least five years before the application for Medicaid. This evidence must be one of the following and show a U.S. place of birth:
- (I) Seneca Indian tribal census record;
  - (II) Bureau of Indian Affairs tribal census records of the Navajo Indians;
  - (III) U.S. State Vital Statistics official notification of birth registration;
  - (IV) An amended U.S. public birth record that is amended more than five years after the person's birth; or
  - (V) Statement signed by the physician or midwife who was in attendance at the time of birth.
- (3) Acceptable evidence of identity that must accompany citizenship evidence listed in (A) and (B) of paragraph (2) of this subsection includes:
- (A) A driver's license issued by a U.S. state or territory with either a photograph of the individual or other identifying information such as name, age, sex, race, height, weight, or eye color;
  - (B) A school identification card with a photograph of the individual;
  - (C) An identification card issued by Federal, state, or local government with the same information included on driver's licenses;
  - (D) A U.S. military card or draft record;
  - (E) A U.S. military dependent's identification card;
  - (F) A Native American Tribal document including Certificate of Degree of Indian Blood, or other U.S. American Indian/Alaska Native Tribal document with a photograph of the individual or other personal identifying information;
  - (G) A U.S. Coast Guard Merchant Mariner card;
  - (H) A state court order placing a child in custody as reported by the OKDHS;
  - (I) For children under 16, school records may include nursery or daycare records;
  - (J) If none of the verification items on the list are available, an affidavit may be used for children under 16. An affidavit is only acceptable if it is signed under penalty of perjury by a parent or guardian stating the date and place of the birth of the child and **cannot be used if an affidavit for citizenship was provided.**
- (b) **Centralized Verification Unit.**
- (1) When the applicant/member is unable to obtain citizenship verification, a reasonable opportunity is afforded the applicant/member to obtain the evidence as well as assistance in doing so. A reasonable opportunity is afforded the applicant/member before taking action affecting the individual's eligibility for Medicaid. The reasonable opportunity time frame usually consists of 60 days. In rare instances, the CVU may extend the time frame to a period not to exceed an additional 60 days.
- (2) Additional methods of verification are available to the CVU. These methods are the least reliable forms of verification and should only be used as a last resort:
- (A) Institutional admission papers from a nursing facility, skilled care facility or other institution. Admission papers generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth;
  - (B) Medical (clinic, doctor, or hospital) record created at least five years before the initial application date that indicates a U.S. place of birth. For children under 16, the document must have been created near the time of birth. Medical records generally show biographical information for the person including place of birth; the record can be used to establish U.S. citizenship when it shows a U.S. place of birth. An immunization record is not considered a medical record for purposes of establishing U.S. citizenship;
  - (C) Written affidavit. Affidavits are only used in rare circumstances. If the verification requirements need to be met through affidavits, the following rules apply:
    - (i) There must be at least two affidavits by two individuals who have personal knowledge of the event(s) establishing the applicant's/member's claim of citizenship;
    - (ii) At least one of the individuals making the affidavit cannot be related to the applicant/member;
    - (iii) In order for the affidavit to be acceptable the persons making them must be able to provide proof of their own citizenship and identity;
    - (iv) If the individual(s) making the affidavit has information which explains why evidence establishing the applicant's/member's claim or citizenship does not exist or cannot be readily obtained, the affidavit must contain this information as well;
    - (v) The State must obtain a separate affidavit from the applicant/member or other knowledgeable individual (guardian or representative) explaining why the evidence does not exist or cannot be obtained; and
    - (vi) The affidavits must be signed under penalty of perjury.
- (c) **Alienage verification requirements.** Medicaid services are provided as listed to the defined groups as indicated in this subsection if they meet all other factors of eligibility.
- (1) **Eligible aliens (qualified aliens).** The groups listed in the following subparagraphs are eligible for the full range of Medicaid services. A qualified alien is:
- (A) an alien who was admitted to the United States and has resided in the United States for a period greater than five years from the date of entry and who was:
    - (i) lawfully admitted for permanent residence under the Immigration and Nationality Act;

- (ii) paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;
  - (iii) granted conditional entry pursuant to Section 203(a)(7) of such Act as in effect prior to April 1, 1980; or
  - (iv) a battered spouse, battered child, or parent or child of a battered person with a petition under 204(a)(1)(A) or (B) or 244(a)(3) of the Immigration and Naturalization Act.
- (B) an alien who was admitted to the United States and who was:
- (i) granted asylum under Section 208 of such Act regardless of the date asylum is granted;
  - (ii) a refugee admitted to the United States under Section 207 of such Act regardless of the date admitted;
  - (iii) an alien with deportation withheld under Section 243(h) of such Act regardless of the date deportation was withheld;
  - (iv) a Cuban or Haitian entrant as defined in Section 501(e) of the Refugee Education Assistance Act of 1980, regardless of the date of entry;
  - (v) an alien who is a veteran as defined in 38 U.S.C. § 101, with a discharge characterized as an honorable discharge and not on the grounds of alienage;
  - (vi) an alien who is on active duty, other than active duty for training, in the Armed Forces of the United States;
  - (vii) the spouse or unmarried dependent child of an individual described in (C) of this paragraph.
  - (viii) a victim of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000; or
  - (ix) admitted as an Amerasian immigrant.
- (C) permanent residents who first entered the country under (B) of this paragraph and who later converted to lawful permanent residence status.
- (2) **Other aliens lawfully admitted for permanent residence (non-qualified aliens).** Non-qualified aliens are those individuals who were admitted to the United States and who do not meet any of the definitions in paragraph (1) of this subsection. Non-qualified aliens are ineligible for Medicaid for five years from the date of entry except that non-qualified aliens are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.
- (3) **Afghan Special Immigrants.** Afghan special immigrants, as defined in Public Law 110-161, who have

special immigration status after December 26, 2007, are exempt from the five year period of ineligibility for SoonerCare services for a time-limited period. The time-limited exemption period for Afghan special immigrants is six months from the date of entry into the United States as a special immigrant or the date of conversion to special immigrant status. All other eligibility requirements must be met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Once the six month exemption period ends, Afghan special immigrants are no longer exempt from the five year bar for SoonerCare services and are only eligible for services described in (2) of this subsection until the five year period ends. Afghan special immigrants are considered lawful permanent residents.

(4) **Iraqi Special Immigrants.** Iraqi special immigrants, as defined in Public Law 110-181, who have special immigration status after January 28, 2008, are exempt from the five year period of ineligibility for SoonerCare services for a time-limited period. The time-limited exemption period for Iraqi special immigrants is eight months from the date of entry into the United States as a special immigrant or the date of conversion to special immigrant status. All other eligibility requirements must be met to qualify for SoonerCare services. If these individuals do not meet one of the categorical relationships, they may apply and be determined eligible for Refugee Medical Assistance. Once the eight month exemption period ends, Iraqi special immigrants are no longer exempt from the five year bar for SoonerCare services and are only eligible for services described in (2) of this subsection until the five year period ends. Iraqi special immigrants are considered lawful permanent residents.

(35) **Undocumented aliens.** Undocumented aliens who do not meet any of the definitions in (1)-(2) of this subsection are eligible for emergency services only when the individual has a medical condition (including emergency labor and delivery) with acute symptoms which may result in placing his/her health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of body organ or part without immediate medical attention. The only exception is when a pregnant woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(46) **Ineligible aliens.**

(A) Ineligible aliens who do not fall into the categories in (1) and (2) of this subsection, yet have been lawfully admitted for temporary or specified periods of time include, but are not limited to: foreign students, visitors, foreign government representatives, crewmen, members of foreign media and temporary workers including agricultural contract workers. This group is ineligible for Medicaid, including emergency services, because of the temporary nature of their admission status. The only exception is when a pregnant

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woman qualifies under the pregnancy related benefits covered under the Title XXI program because the newborn child will meet the citizenship requirement at birth.

(B) These individuals are generally issued Form I-94, Arrival-Departure Record, on which an expiration date is entered. This form is not the same Form I-94 that is issued to persons who have been paroled into the United States. Parolees carry a Form I-94 that is titled "Arrival-Departure Record - Parole Edition". Two other forms that do not give the individual "Immigrant" status are Form I-186, Nonresident Alien Mexican Border Crossing Card, and Form SW-434, Mexican Border Visitors Permit.

(5) **Preauthorization.** Preauthorization is required for payment of emergency medical services rendered to non-qualified and undocumented aliens. Persons determined as having lawful alien status must have the status verified through Systematic Alien Verification for Entitlements (SAVE).

(d) **Alienage.** A decision regarding eligibility cannot be made until the eligibility condition of citizenship and alienage is determined.

(1) **Immigrants.** Aliens lawfully admitted for permanent residence in the United States are classified as immigrants by the BCIS. These are individuals who entered this country with the express intention of residing here permanently.

(2) **Parolees.** Under Section 212(d)(5) of the Immigration and Nationality Act, individuals can be paroled into the United States for an indefinite or temporary period at the discretion of the United States Attorney General. Individuals admitted as Parolees are considered to meet the "citizenship and alienage" requirement.

(3) **Refugees and Western Hemisphere aliens.** Under Section 203(a)(7) of the Immigration and Nationality Act, Refugees and Western Hemisphere aliens may be lawfully admitted to the United States if, because of persecution or fear of prosecution due to race, religion, or political opinion, they have fled from a Communist or Communist-dominated country or from the area of the Middle East; or if they are refugees from natural catastrophes. These entries meet the citizenship and alienage requirement. Western Hemisphere aliens will meet the citizenship requirement for Medicaid if they can provide either of the documents in subparagraphs (A) and (B) of this paragraph as proof of their alien status.

(A) Form I-94 endorsed "Voluntary Departure Granted-Employment Authorized", or

(B) The following court-ordered notice sent by BCIS to each of those individuals permitted to remain in the United States: "Due to a Court Order in *Silva vs. Levi*, 76 C4268 entered by District Judge John F. Grady in the District Court for the Northern District of Illinois, we are taking no action on your case. This means that you are permitted to remain in the United States without threat of deportation or expulsion until

further notice. Your employment in the United States is authorized".

(4) **Special provisions relating to Kickapoo Indians.** Kickapoo Indians migrating between Mexico and the United States carry Form I-94, Arrival-Departure Record (Parole Edition). If Form I-94 carries the statement that the Kickapoo is "paroled pursuant to Section 212(d)(5) of the Immigration and Nationality Act" or that the "Kickapoo status is pending clarification of status by Congress" regardless of whether such statements are preprinted or handwritten and regardless of a specific mention of the "treaty", they meet the "citizenship and alienage" requirement. All Kickapoo Indians paroled in the United States must renew their paroled status each year at any local Immigration Office. There are other Kickapoo Indians who have entered the United States from Mexico who carry Form I-151 or Form I-551, Alien Registration Receipt Cards. These individuals have the same status as other individuals who have been issued Form I-151 or Form I-551 and therefore, meet the citizenship and alienage requirements. Still other Kickapoo Indians are classified as Mexican Nationals by the BCIS. They carry Form I-94, Arrival-Departure Record, which has been issued as a visiting visa and does not make mention of the treaty. Such form does not meet the "citizenship and alienage" requirements but provides only the ineligible alien status described in (c)(4)(b) of this Section.

(5) **American Indians born in Canada.** An American Indian born in Canada, who has maintained residence in the United States since entry, is considered to be lawfully admitted for permanent residence if he/she is of at least one-half American Indian blood. This does not include the non-citizen whose membership in an Indian tribe or family is created by adoption, unless such person is of at least 50 percent or more Indian blood. The methods of documentation are birth or baptismal certificate issued on a reservation, tribal records, letter from the Canadian Department of Indian Affairs, or school records.

(6) **Marshall Islanders Permanent non-immigrants.** Marshall Islanders and individuals from the Republic of Palau and the Federated States of Micronesia are classified as permanent non-immigrants by BCIS. They are eligible for emergency services only.

[OAR Docket #09-924; filed 5-14-09]

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

[OAR Docket #09-912]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 5. Eligibility and Countable Income

Part 5. Countable Income and Resources

317:35-5-41.8. through 317:35-5-41.10. [AMENDED]

Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals  
Part 7. Determination of Financial Eligibility  
317:35-9-65. [AMENDED]  
(Reference APA WF # 08-23)

**AUTHORITY:**

The 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 15, 2009 through February 14, 2009

**Public hearing:**

February 19, 2009

**Adoption:**

March 12, 2009

**Submitted to Governor:**

March 12, 2009

**Submitted to House:**

March 12, 2009

**Submitted to Senate:**

March 12, 2009

**Gubernatorial approval:**

April 13, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 7, 2009

**Final adoption:**

May 7, 2009

**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Medical Assistance for Adults and Children rules are being revised to: (1)remove an incorrect procedure for legal action that was added to long term care resource policy for individuals categorically related to age, blind, and disability (ABD) effective August 2007; (2) clarify how loans and transfers of property can possibly affect the member's eligibility for long term care; (3) clarify Workers' Compensation Medicare Set Aside Arrangements are not considered resources; (4) clarify transfer or disposal of capital resources for ABD individuals are not applicable unless the individual enters a nursing home or receives waiver services; and (5) remove incorrect language that references AFDC and spend down. Without the rule changes members may possibly be denied service options based on an obsolete or ambiguous language.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME**

**PART 5. COUNTABLE INCOME AND RESOURCES**

**317:35-5-41.8. Eligibility regarding long-term care services**

(a) **Home Property.** In determining eligibility for long-term care services for applications filed on or after

January 1, 2006, home property is excluded from resources unless the individual's equity interest in his or her home exceeds \$500,000.

(1) Long-term care services include nursing facility services and other long-term care services. For purposes of this Section, other long-term care services include services detailed in (A) through (B) of this paragraph.

(A) A level of care in any institution equivalent to nursing facility services; and

(B) Home and community-based services furnished under a waiver.

(2) An individual whose equity interest exceeds \$500,000 is not eligible for long-term care services unless one of the following circumstances applies:

(A) The individual has a spouse who is lawfully residing in the individual's home;

(B) The individual has a child under the age of twenty-one who is lawfully residing in the individual's home;

(C) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home; or

(D) The denial would result in undue hardship. Undue hardship exists when denial of SoonerCare long-term care services based on an individual's home equity exceeding \$500,000 would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life. ~~If the undue hardship exists because the applicant was exploited, legal action must be pursued before a hardship waiver will be granted. Pursuing legal action means an APS referral has been made to the district attorney's office or a lawsuit has been filed and is being pursued against the perpetrator.~~

(3) Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within 12 months from the time he/she entered the facility. The OKDHS Form 08MA010E, Acknowledgment of Temporary Absence/Home Property Policy, is completed at the time of application for nursing facility care when the applicant has home property. After explanation of temporary absence, the member, guardian or responsible person indicates whether there is or is not intent to return to the home and signs the form.

(A) If at the time of application the applicant states he/she does not have plans to return to the home, the home property is considered a countable resource. For members in nursing facilities, a lien may be filed in accordance with OAC 317:35-9-15 and OAC 317:35-19-4 on any real property owned by the member when it has been determined, after notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return home. However, a lien is not filed on the

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home property of the member while any of the persons described in OAC 317:35-9-15(b)(1) and OAC 317:35-19-4(b)(1) are lawfully residing in the home:

(B) If the individual intends to return home, he/she is advised that:

(i) the 12 months of home exemption begins effective with the date of entry into the nursing home regardless of when application is made for SoonerCare benefits, and

(ii) after 12 months of nursing care, it is assumed there is no reasonable expectation the member will be discharged from the facility and return home and a lien may be filed against real property owned by the member for the cost of medical services received.

(C) "Intent" in regard to absence from the home is defined as a clear statement of plans in addition to other evidence and/or corroborative statements of others.

(D) At the end of the 12-month period the home property becomes a countable resource unless medical evidence is provided to support the feasibility of the member to return to the home within a reasonable period of time (90 days). This 90-day period is allowed only if sufficient medical evidence is presented with an actual date for return to the home.

(E) A member who leaves the nursing facility must remain in the home at least three months for the home exemption to apply if he/she has to re-enter the facility.

(F) However, if the spouse, minor child(ren) under 18, or relative who is aged, blind or disabled or a recipient of TANF resides in the home during the individual's absence, the home continues to be exempt as a resource so long as the spouse or relative lives there (regardless of whether the absence is temporary).

(G) For purpose of this reference a relative is defined as: son, daughter, grandson, granddaughter, stepson, stepdaughter, in-laws, mother, father, stepmother, stepfather, half-sister, half-brother, niece, nephew, grandmother, grandfather, aunt, uncle, sister, brother, stepbrother, or stepsister.

(H) Once a lien has been filed against the property of an NF resident, the property is no longer considered as a countable resource.

(b) **Promissory notes, loans, or mortgages.** The rules regarding the treatment of funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are found in (1) through (2) of this subsection.

(1) Funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are treated as assets transferred for less than fair market value in the amount of the outstanding balance due on the note, loan, or mortgage as of the date of the individual's application for medical assistance unless the note, loan, or mortgage meets all of the conditions in paragraphs (A) through (C) of this paragraph.

(A) The note, loan, or mortgage has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration).

(B) The note, loan, or mortgage provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made.

(C) The note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

(2) Funds used to purchase a promissory note, loan, or mortgage for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The note, loan, or mortgage was purchased before February 8, 2006; or

(B) The note, loan, or mortgage was purchased on or after February 8, 2006, and the conditions described in paragraph (1) of this subsection were met.

(c) **Annuities.** Treatment of annuities purchased on or after February 8, 2006.

(1) The entire amount used to purchase an annuity on or after February 8, 2006, is treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in (A) through (C) of this paragraph.

(A) The annuity is an annuity described in subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986.

(B) The annuity is purchased with proceeds from:

(i) An account or trust described in subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;

(ii) A simplified employee pension as defined in Section 408(k) of the United States Internal Revenue Code of 1986;

(iii) A Roth IRA described in Section 408A of the United States Internal Revenue Code of 1986.

(C) The annuity:

(i) is irrevocable and nonassignable;

(ii) is actuarially sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration; and

(iii) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(2) In addition, the entire amount used to purchase an annuity on or after February 8, 2006, is treated as a transfer of assets unless the Oklahoma Health Care Authority is named as the remainder beneficiary either:

(A) in the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or

(B) in the second position after the community spouse, child under 21 years of age, or disabled child

and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.

(d) **Life Estates.** This subsection pertains to the purchase of a life estate in another individual's home.

(1) The entire amount used to purchase a life estate in another individual's home on or after February 8, 2006, is treated as assets transferred for less than fair market value, unless the purchaser resides in the home for at least one year after the date of the purchase.

(2) Funds used to purchase a life estate in another individual's home for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The life estate was purchased before February 8, 2006; or

(B) The life estate was purchased on or after February, 8, 2006, and the purchaser resided in the home for one year after the date of purchase.

**317:35-5-41.9. Resource disregards**

In determining need, the following are not considered as resources:

(1) The coupon allotment under the Food Stamp Act of 1977;

(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(3) Education grants (excluding Work Study) scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;

(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:

(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Loan Verification form, is completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Loan Verification form are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide;

(C) Proceeds of a loan secured by an exempt asset are ~~not an asset~~; considered in relation to the maximum reserve.

(5) Indian payments or items purchased from Indian payments (including ~~judgement~~-judgment funds or funds held in trust) distributed per capita by the Secretary of

the Interior (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. Also, any interest or investment income accrued on such funds while held in trust or any purchases made with ~~judgement~~ judgment funds, trust funds, interest or investment income accrued on such funds. Any income from mineral leases, from tribal business investments, etc., as long as the payments are paid per capita. For purposes of this Subchapter, per capita is defined as each tribal member receiving an equal amount. However, any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) Special allowance for school expenses made available upon petitions (in writing) from funds held in trust for the student;

(7) Benefits from State and Community Programs on Aging (Title III) are disregarded. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. Both Title III and Title V are under the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;

(8) Payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Services Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);

(9) Payment to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(10) The value of supplemental food assistance received under the Child Nutrition Act or the special food services program for children under the National School Lunch Act;

(11) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;

(12) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;

(13) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

(14) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;

(15) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;

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- (16) Interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or the restricted lands are considered as income;
- (17) Resources set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of resources excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;
- (18) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);
- (19) A migratory farm worker's out-of-state homestead is disregarded if the farm worker's intent is to return to the homestead after the temporary absence;
- (20) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;
- (21) Dedicated bank accounts established by representative payees to receive and maintain retroactive SSI benefits for disabled/blind children up to the legal age of 18. The dedicated bank account must be in a financial institution, the sole purpose of which is to receive and maintain SSI underpayments which are required or allowed to be deposited into such an account. The account must be set up and verification provided to SSA before the underpayment can be released;
- (22) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. Payments are not considered as income or resources. A penalty cannot be assessed against the individual if he/she disposes of part or all of the payment. The rules at OAC 317:35-5-41.6 regarding the availability of a trust do not apply if an individual establishes a trust using the settlement payment;
- (23) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);
- (24) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);
- (25) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419); ~~and~~
- (26) For individuals with an Oklahoma Long-Term Care Partnership Program approved policy, resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer are disregarded at the time of application for long-term care services provided by SoonerCare. The Oklahoma Insurance Department approves policies as Long-term Care Partnership Program policies; and
- (27) Workers' Compensation Medicare Set Aside Arrangements (WCMSAs), which allocate a portion of the

workers' compensation settlement for future medical expenses.

### 317:35-5-41.10. Changes in capital resources

- (a) **Capital resources of an applicant or member currently receiving assistance.** If the resource(s) of an applicant is in a form which is not available for immediate use, such as real estate, mineral rights, or one of many other forms, and the applicant is trying to make the resource available, the applicant may be certified and given a reasonable amount of time to make this available. If a member who is currently receiving medical assistance acquires resources which increase his/her available resources at an amount above the maximum resource standard, he/she is given a reasonable amount of time to make the resources available. A reasonable amount of time would normally not exceed 90 days. The member is notified in writing that a period of time not to exceed 90 days will be given to make the resource available. Any extension beyond the initial 90 day period is justified only after interviewing the member, determining that a good faith effort is still being made and that failure to make the resource available is due to circumstances beyond the control of the member.
- (b) **Money borrowed on member's resources.** Money borrowed on any of the member's resources, except the home, merely changes his/her resource from one form to another. Money borrowed on the home is evaluated in relation to the maximum ~~resource~~ reserve standard.
- (c) **Transfer of resources.** Rules on transfer or disposal of capital resources are not applicable ~~if~~ unless the individual enters a nursing home or receives Home and Community Based Waiver Services, HCBWS/MR or ADvantage waiver services. [See OAC 317:35-9, OAC 317:35-17, and OAC 317:35-19]

## SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

### PART 7. DETERMINATION OF FINANCIAL ELIGIBILITY

#### 317:35-9-65. General financial eligibility requirements for ICF/MR, HCBW/MR, and individuals age 65 or older in mental health hospitals

Financial eligibility for these types of long-term medical care is determined using the rules on income and resources according to ~~the category to which the individual is related. (See OAC 317:35-10 for individuals categorically related to AFDC, and OAC 317:35-7-36, for those categorically related to ABD.)~~

- (1) Income, resources and expenses are evaluated on a monthly basis for all individuals requesting payment for long-term medical care.
- (2) To be eligible for long-term care in an ICF/MR (private and public), HCBW/MR services and for persons 65 years or older in mental health hospitals, the individual

must be determined categorically needy, ~~according to the standards appropriate to the categorical relationship.~~

(3) If the individual's gross income exceeds the categorically needy standard as shown on OKDHS Appendix ~~C-1 Form 08AX001E~~, Schedule VIII. B. 1., refer to OAC 317:35-5-41.6(a)(6)(B) for rules on establishing a Medicaid Income Pension Trust.

(4) When eligibility for long-term care has been determined, the vendor payment amount, if applicable, is determined based on type of care, ~~categorical relationship~~, community spouse, etc. Individuals determined eligible for HCBW/MR services will not have a vendor payment.

(5) The ~~spenddown~~ vendor payment is applied to the vendor payment on the first claim(s) received on behalf of the individual.

(6) For an individual eligible for long-term care in an ICF/MR (private and public) or for an individual 65 years or older in a mental health hospital, the ~~individual's share of the~~ vendor payment is not prorated over the month. As SoonerCare is the payer of last resort, the full amount of the ~~member's share of the~~ vendor payment must first be applied to the facility's charges before SoonerCare reimbursement begins.

[OAR Docket #09-912; filed 5-14-09]

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

[OAR Docket #09-930]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Eligibility and Countable Income  
Part 5. Countable Income and Resources  
317:35-5-43. [AMENDED]  
(Reference APA WF # 08-51)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 43 Okla. Stat. 118F

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N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Agency rules are revised to allow the Oklahoma Health Care Authority to accept cash medical support payments by non-custodial parents if there is no access to health insurance for their child at a reasonable cost (5% or less of the non-custodial parent's income). The administration and collection of the payments will be handled by the Oklahoma Department of Human Services, Child Support Enforcement Division.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME**

**PART 5. COUNTABLE INCOME AND RESOURCES**

**317:35-5-43. Third party resources; insurance, workers' compensation and Medicare**

Federal Regulations require that all reasonable measures to ascertain legal liability of third parties to pay for care and services be taken. In instances where such liability is found to exist after Title XIX has been made available, reimbursement to the extent of such legal liability must be sought. If the applicant or recipient has already received payments from a third party, ~~OKDHS Form Adm-50 08AD050E~~, Third Party Liability Resources, is completed by ~~DHS-OKDHS~~ staff and submitted to OHCA, Third Party Liability Unit. Certification or payment in behalf of an eligible individual may not be withheld because of the liability of a third party when such liability or the amount cannot be currently established or is not currently available to pay the individual's medical expense. The rules in this Section also apply when an individual categorically related to pregnancy-related services plans to put the child up for adoption. Any agreement with an adoption agency or attorneys for payment of medical care must be determined as possible third party liability, regardless of whether agreement is made during prenatal, delivery or postpartum periods.

(1) **Insurance.**

(A) **Private insurance.** An individual requesting ~~Title XIX services~~ SoonerCare is responsible for identifying and providing information on any private medical insurance. He/she is also responsible for reporting subsequent changes in insurance coverage. The worker must explain the necessity for applying benefits from private insurance to the cost of medical care.

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(B) **Government benefits.** When an individual requesting ~~Title XIX~~ SoonerCare is eligible for Civilian Health and Medical Programs for Uniformed Services (CHAMPUS), payment is not made from ~~Title XIX~~ SoonerCare funds until the worker receives confirmation that other benefits are not available from this source. Payments from ~~Champus~~ CHAMPUS for medical care are not considered as income in determining eligibility. They are, however, considered as third party liability sources.

(2) **Workers' Compensation.** When an applicant for SoonerCare or ~~recipient of Title XIX~~ a SoonerCare member requires medical care because of work injury or occupational disease, the worker immediately ascertains the facts related to the injury or disease (such as date, details of the accident, etc.) and sends OKDHS Form Adm-50 08AD050E to OHCA/TPL to be referred to the ~~DHS~~ OKDHS Audit Unit of OIG. The ~~DHS~~ OKDHS Legal Division clears periodically with the Industrial Court all cases under its jurisdiction. When any information regarding an applicant for SoonerCare or ~~recipient of Title XIX~~ a SoonerCare member is obtained, the ~~DHS~~ OKDHS Legal Division sends a memo to OHCA asking for an itemization of claims paid.

(3) **Third party liability (accident or injury).** When medical services are required for an applicant of SoonerCare or a ~~recipient of Title XIX~~ SoonerCare member as the result of an accident or injury known to the worker, the worker is responsible for determining the persons involved in the accident, date and details of the accident and possible insurance benefits which might be made available. If an automobile accident involves more than one car it is necessary to ~~clear~~ report liability insurance on all cars involved.

(A) The worker completes OKDHS Form Adm-50 08AD050E and submits it with any additional information available to the appropriate ~~DHS~~ OKDHS State Office Division where it is referred to ~~DHS~~ the OKDHS Audit and Review Division for determination of liability for medical care. A copy of this referral is sent to OHCA, Third Party Liability.

(B) If such report has not been received from the county but the OHCA receives a claim for payment from ~~Title XIX~~ SoonerCare funds and the diagnosis indicates the possibility the need for services resulted from an accident or injury involving third party liability, OHCA sends this information to ~~DHS~~ the OKDHS Office of Inspector General. The local office may be requested by the ~~DHS~~ OKDHS Audit and Review Division to submit OKDHS Form Adm-50 08AD050E. The worker completes this form and submits it to the ~~DHS~~ OKDHS State Office, where the ~~DHS~~ OKDHS Office of Inspector General will make any necessary follow-up and take the appropriate action.

(4) **Medicare eligibility.** If it appears the applicant may be eligible for Medicare but does not have a Medicare

card or other verification, the worker clears with the Social Security Office and enters the findings and the date of the verification in the case record. If the applicant did not enroll for Part A or Part B at the time he/she became eligible for Medicare and is now subject to pay an escalated premium for Medicare enrollment, he/she is not required to do so. Payment can be made for services within the scope of ~~Title XIX~~ SoonerCare.

(5) **Absent parent.**

(A) Applicants are required to cooperate with the Oklahoma Department of Human Services in the assignment of child/spousal support rights. The families involved are those with a minor child(ren) in the home. The child(ren) must be related to AFDC, AB or AD and have a parent(s) absent from the home. Any support collected on behalf of these families will be paid to them as if they were receiving non-public assistance child support services, with one exception. The exception is regarding child support collected for foster care child(ren) in OKDHS temporary custody. This support is paid to OKDHS DCFS. The child support income continues to be counted in determining SoonerCare eligibility. The rules in OAC 317:10 are used, with the following exceptions:

(i) In the event the family already has an existing Child Support Enforcement case, the only action required is a memo to the appropriate Child Support Enforcement district office notifying them of the certification.

(ii) Child/spousal support is always counted as income less any applicable income disregard. This income inclusion applies whether it is redirected to the CSED or retained by the member.

(iii) Children who are in custody of OKDHS may be exempt from referral to CSED. Should the pursuit of the CSED services be determined to be detrimental to the OKDHS DCFS service plan, an exemption may be approved.

(B) Cash medical support may be ordered to be paid to the OHCA by the non-custodial parent if there is no access to health insurance at a reasonable cost or if the health insurance is determined not accessible to the child according to OKDHS Rules. Reasonable is deemed to be 5% or less of the non-custodial parent's gross income. The administration and collection of cash medical support will be determined by OKDHS CSED and will be based on the income guidelines and rules that are applicable at the time. However, at no time will the non-custodial parent be required to pay more than 5% of his/her gross income for cash medical support unless payment in excess of 5% is ordered by the Court. The disbursement and hierarchy of payments will be determined pursuant to OKDHS-CSED guidelines.

[OAR Docket #09-930; filed 5-14-09]

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

[OAR Docket #09-926]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals

Part 1. Services

317:35-9-5. [AMENDED]

(Reference APA WF # 08-46B)

AUTHORITY:

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

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N/A

INCORPORATIONS BY REFERENCE:

N/A

ANALYSIS:

Rules for the Home and Community-Based Services Waivers for persons with mental retardation or certain persons with related conditions are revised to: (1) provide clarification relating to service utilization, provisions, authorizations, limitations, and eligibility requirements; (2) specify provider requirements and related activities of targeted case management to meet federal requirements; (3) clarify provider responsibilities and limitations in the agency companion program; (4) specify devices and services allowable through assistive technology; (5) clarify physical plant expectations for services provided in center-based settings; and (6) amend policy to reflect appropriate terminology.

CONTACT PERSON:

Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

PART 1. SERVICES

317:35-9-5.

Home and Community - Based Waiver Services for the Mentally Retarded persons with mental retardation or certain persons with related conditions

(a) Services provided through Home and Community - Based Waiver Services (HCBS) Waivers for the Mentally Retarded (HCBW/MR) are services which are outside the normal scope of the Medicaid SoonerCare services. HCBS Waivers are operated by the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD). Oklahoma's Medicaid agency, the Oklahoma Health Care Authority (OHCA), provides oversight of waiver administration. The Medicaid waiver HCBS Waivers allows allow the OHCA to offer certain home and community based services to categorically needy individuals members who, without such services, would be eligible for care in a facility for the mentally retarded persons with mental retardation.

(b) Individuals with mental retardation are eligible for Medicaid SoonerCare as categorically needy under the HCBW/MR Program HCBS Waiver program when the following medical and financial eligibility conditions in (1) through (5) are met:

- (1) The individual is categorically needy as his/her income and resources are within the standards as listed on the appropriate schedule of DHS Appendix C-1, Schedule VIII, B, and D, determined financially eligible per OAC 317:35-9-68;
(2) The individual meets the Social Security Administration (SSA) test for definition of disability disabled;
(3) The individual requires a level of care provided in a public or private intermediate care facility for the mentally retarded persons with mental retardation (ICF/MR) and has an IQ score of 75 or below a diagnosis of mental retardation as defined in the Diagnostic Manual-Intellectual Disability: A Textbook of Diagnosis of Mental Disorders in Persons with Intellectual Disability;
(4) It is appropriate to provide care outside the ICF/MR; and
(5) The average cost of providing care outside the ICF/MR does not exceed the cost of providing institutional care.

[OAR Docket #09-926; filed 5-14-09]

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

[OAR Docket #09-917]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals

Part 3. Application Procedures

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317:35-9-26. [AMENDED]  
Subchapter 19. Nursing Facility Services  
317:35-19-6. [AMENDED]  
(Reference APA WF # 08-33)

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The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 435.902; 42 CFR 435.930

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### Superseded rules:

Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals

Part 3. Application Procedures

317:35-9-26. [AMENDED]

Subchapter 19. Nursing Facility Services

317:35-19-6. [AMENDED]

(Reference APA WF # 08-33)

### Gubernatorial approval:

December 11, 2008

### Register publication:

26 Ok Reg 408

### Docket number:

08-1503

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

Agency rules are revised to allow individuals to apply for SoonerCare compensable nursing home and ICF/MR services at the OKDHS human services center of their choice. Current eligibility rules require individuals to apply at the local office in the county where the individual lives. Federal regulation 42 CFR 435.902 requires eligibility to be determined in a manner that is consistent with simplicity of administration and the best interests of the applicant. Additionally, 42 CFR 435.930 requires agencies to furnish Medicaid promptly to members without delay caused by the agency's administrative procedures. Allowing individuals to apply at the OKDHS human services center of their choice will help eliminate a barrier and serve the best interests of the individuals desiring to apply for and who qualify for SoonerCare services.

### CONTACT PERSON:

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 9. ICF/MR, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS

### PART 3. APPLICATION PROCEDURES

#### 317:35-9-26. Application procedures for private ICF/MR

~~A request for payment for private ICF/MR is made to the local office in the county where the applicant lives. Individuals may apply for private ICF/MR at the OKDHS human services center (HSC) of their choice. A written application is not required for an individual who has an active Medicaid Sooner-Care case. The DHS OKDHS Notification Regarding Patient in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice form (ABCDM-83) 08MA083E, when received in the county office HSC, also constitutes an application request and is handled the same as an oral request. The local county office HSC will send the ICF/MR DHS OKDHS form ABCDM-37D 08MA038E, Notice to Nursing Care Facility or LTCA, within three working days of receipt of DHS OKDHS forms ABCDM-83-08MA083E and ABCDM-96 08MA084E, Management of Recipient's Funds, indicating actions that are needed or have been taken regarding the client member.~~

## SUBCHAPTER 19. NURSING FACILITY SERVICES

#### 317:35-19-6. Application procedures for NF

~~A request for payment for NF is made to the local office in the county where the applicant lives. Individuals may apply for nursing home care at the OKDHS human services center (HSC) of their choice. A written application is not required for an individual who has an active Medicaid SoonerCare case. For NF, DHS OKDHS Form ABCDM-83 08MA083E, Notification Regarding Patient in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice form, when received in the county office HSC, also constitutes an application request and is handled the same as an oral request.~~

[OAR Docket #09-917; filed 5-14-09]

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

[OAR Docket #09-921]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 15. Personal Care Services

317:35-15-1. through 317:35-15-10. [AMENDED]

317:35-15-11. [AMENDED]

317:35-15-15. [AMENDED]  
(Reference APA WF # 08-22)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

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Subchapter 15. Personal Care Services  
317:35-15-1. through 317:35-15-10. [AMENDED]  
317:35-15-11. [AMENDED]  
317:35-15-15. [AMENDED]  
(Reference APA WF # 08-22)

**Gubernatorial approval:**

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26 Ok Reg 549

**Docket number:**

09-71

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Personal Care rules are revised to transfer the responsibilities for the authorization of service units and monitoring of service provisions from the OKDHS nurses to Personal Care agency nurses. Personal Care services are provided to SoonerCare members to help them carry out activities of daily living, such as bathing, grooming, meal preparation, and laundry. Medical need for Personal Care services is determined by the OKDHS nurse using the Uniform Comprehensive Assessment Tool (UCAT) criteria and professional judgment. Due in part to the current nurse shortage, the OKDHS Aging Division has requested these revisions to remove the current duplication of responsibilities by their nurses and Personal Care agency nurses. The OKDHS nurses will still determine the level of care and maintain oversight of the units of Personal Care services authorized for all SoonerCare members. Also, they will have more time to attend to their other responsibilities including mandatory visits to nursing facilities in order to determine medical need for long term care for SoonerCare applicants. Other revisions update terminology, forms, and procedures.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 15. PERSONAL CARE SERVICES**

**317:35-15-1. Overview of long-term medical care services; relationship to QMB QMBP, SLMB and other Medicaid service SoonerCare services and eligibility and spenddown calculation**

Long-term medical care for the categorically needy includes care in a nursing facility (refer to OAC 317:35-19), public and private intermediate care facility for the mentally retarded (refer to OAC 317:35-9), persons age 65 years or older in mental health hospitals (refer to OAC 317:35-9), Home and Community Based Waiver Services for the Mentally Retarded (refer to OAC 317:35-9), Home and Community Based Waiver Services for the ADvantage program (refer to OAC 317:35-17), and Personal Care services (refer to this subchapter). Personal Care provides services in the member's own home. Any time an individual is certified as eligible for Medicaid SoonerCare coverage of long-term care, the individual is also eligible for other Medicaid SoonerCare services. Another application or spenddown computation is not required. Spenddown is applied to the first long term care claim filed. Any time an aged, blind or disabled individual is determined eligible for long-term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary (QMB) or Specified Low-Income Medicare Beneficiary (SLMB) are met. Another application for QMB or SLMB benefits is not required. ~~Any spenddown computed for long term care is not applicable to QMB coverage.~~

**317:35-15-2. Personal Care services**

- (a) Personal Care is assistance to an individual in carrying out activities of daily living, such as bathing, grooming and toileting, or in carrying out instrumental activities of daily living, such as preparing meals and doing laundry or errands directly related to the member's personal care needs, to assure personal health and safety of the individual or to prevent or minimize physical health regression or deterioration. The Personal Care service requires a skilled nursing assessment of need, development of a care plan to meet identified personal care needs, care plan oversight and periodic re-assessment and updating, if necessary, of the care plan. Personal Care services do not include technical services such as, tracheal suctioning, bladder catheterization, colostomy irrigation, and operation of equipment of a technical nature.
- (b) Personal Care services support informal care being provided in the member's home. A rented apartment, room or shelter shared with others is considered "the member's home". A facility which meets the definition of a nursing facility, room and board, licensed residential care facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-899.1 et seq., and Section 1-1902 et seq., and/or in any other typed of settings prohibited under applicable federal or state statutes, rules, regulations, or other written instruments that have the effect of law is not considered the "the member's home" for delivery of SoonerCare Personal Care Program services.
- (c) Personal Care services may be provided by an individual employed by the member referred to as a Personal Care Assistant (PCA) or by a qualified employee of a home care agency

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that is certified to provide ~~PC~~ Personal Care services and contracted with the OHCA to provide ~~PC~~ Personal Care services. OKDHS must determine a PCA to be qualified to provide ~~PC~~ Personal Care services before they can provide services.

### 317:35-15-3. Application for Personal Care, ~~forms~~

(a) **Requests for Personal Care.** A request for Personal Care is made to the local ~~DHS~~ OKDHS office. A written financial application is not required for an individual who has an active ~~Medicaid~~ SoonerCare case. A financial application for Personal Care consists of the Medical Assistance Application form. The form is signed by the ~~client~~ applicant, parent, spouse, guardian or someone else acting on the ~~client's~~ applicant's behalf. All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes eligibility, the information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

#### (b) **Date of application.**

(1) The date of application is:

(A) the date the applicant or someone acting on his/her behalf signs the application in the county office;

(B) the date the application is stamped into the county office when the application is initiated outside the county office; or,

(C) the date when the request for ~~Medicaid~~ SoonerCare is made orally and the financial application form is signed later.

(2) An exception to paragraph (1) of this subsection would occur when ~~DHS~~ OKDHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contract provider forwards the application and documentation to the ~~DHS~~ OKDHS county office of the ~~client's~~ applicant's county of residence for ~~Medicaid~~ SoonerCare eligibility determination. The application date is the date the ~~client~~ applicant signed the application form for the provider.

(c) **Eligibility status.** Financial and medical eligibility must be established before services can be initiated.

### 317:35-15-4. Determination of medical eligibility for Personal Care

(a) **Eligibility.** The OKDHS area nurse, or designee, utilizes the UCAT criteria and professional judgment in determining medical eligibility and level of care. To be eligible for Personal Care services, the individual must:

(1) have adequate informal supports that contribute to care, or decision making ability as documented on the UCAT, to remain in his/her home without risk to his/her health, safety, and well-being:

(A) the individual must have the decision making ability to respond appropriately to situations that

jeopardize his/her health and safety or available supports that compensate for his/her lack of ability as documented on the UCAT, or

(B) the individual who has his/her decision making ability, but lacks the physical capacity to respond appropriately to situations that jeopardize health and safety and has been informed by the ~~LTC~~ OKDHS nurse of potential risks and consequences may be eligible;

(2) require a ~~care~~ plan of care involving the planning and administration of services delivered under the supervision of professional personnel;

(3) have a physical impairment or combination of physical and mental impairments. An individual who poses a threat to self or others as supported by professional documentation may not be approved for Personal Care services;

(4) not have members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the ~~client~~ individual or other household visitors;

(5) lack the ability to meet personal care needs without additional supervision or assistance, or to communicate needs to others; and

(6) require assistance, not of a technical nature, to prevent or minimize physical health regression and deterioration.

(b) **Definitions.** The following words and terms when used in this subsection, ~~shall~~ have the following meaning, unless the context clearly indicates otherwise:

(1) **"ADL"** means the activities of daily living. Activities of daily living are activities that reflect the ~~client's~~ member's ability to perform self-care tasks essential for sustaining health and safety such as:

(A) bathing,

(B) eating,

(C) dressing,

(D) grooming,

(E) transferring (includes getting in and out of a tub, bed to chair, etc.),

(F) mobility,

(G) toileting, and

(H) bowel/bladder control.

(2) **"ADLs score of three or greater"** means the ~~client~~ member cannot do one ADL at all or needs some help with two ADLs.

(3) **"ADLs score is two"** means the ~~client~~ member needs some help with one ADL.

(4) **"Client support very low need"** means the ~~client's~~ member's UCAT Client Support score is zero which indicates in the UCAT assessor's clinical judgment, formal and informal sources are sufficient for present level of ~~client~~ member need in most functional areas.

(5) **"Client support low need"** means the member's UCAT Client Support score is 5 which indicates in the UCAT assessor's clinical judgment, support from formal and informal sources are nearly sufficient for present level of ~~client~~ member need in most functional areas.

(6) "**Client support moderate need**" means the UCAT Client Support score is 15, which indicates in the UCAT assessor's clinical judgment formal and informal support is available, but overall, it is inadequate, changing, fragile or otherwise problematic.

(7) "**Client support high need**" means the client's member's UCAT Client Support score is 25 ~~and which indicates in the UCAT assessor's clinical judgment,~~ formal and informal supports are not sufficient as there is very little or no support available to meet a high degree of client member need.

(8) "**Community Services Worker**" means any person employed by or under contract with a community services provider who provides, for compensation or as a volunteer, health-related services, training, or supportive assistance to frail elderly, disabled person(s), or person(s) with developmental disabilities, and who is not a licensed health professional.

(9) "**Community Services Worker Registry**" means a registry established by the Oklahoma Department of Human Services, as required by Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes, to list community services workers against whom a final investigative finding of abuse, neglect, or exploitation, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes, involving a frail elderly, disabled person(s) or person(s) with developmental disabilities has been made by ~~DHS~~ OKDHS or an administrative law judge, amended in 2002 to include the listing of Medicaid SoonerCare personal care assistants providing personal care services.

(10) "**Instrumental activities of daily living**" means those activities that reflect the member's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

- (A) shopping,
- (B) cooking,
- (C) cleaning,
- (D) managing money,
- (E) using a telephone,
- (F) doing laundry,
- (G) taking medication, and
- (H) accessing transportation.

~~(11)~~ "**IADL**" means the instrumental activities of daily living.

~~(12)~~ "**IADLs score is at least six**" means the client member needs some help with at least three IADLs or cannot do two IADLs at all.

~~(13)~~ "**IADLs score of eight or greater**" means the client member needs some help with four IADLs or the client member cannot do two IADLs at all and needs some help with one other IADLs.

~~(13)~~ "**Instrumental activities of daily living**" means those activities that reflect the client's ability to perform household chores and tasks within the community essential for sustaining health and safety such as:

- (A) shopping,
- (B) cooking,
- (C) cleaning,

- ~~(D) managing money,~~
- ~~(E) using a telephone,~~
- ~~(F) doing laundry,~~
- ~~(G) taking medication, and~~
- ~~(H) accessing transportation.~~

(14) "**Medicaid SoonerCare personal care services provider**" means a program, corporation, or individual who provides services under the state's Medicaid SoonerCare personal care program or ADvantage Waiver to individuals who are elderly or who have a physical disability.

(15) "**MSQ**" means the mental status questionnaire.

(16) "**MSQ moderate risk range**" means a total weighted score of seven or more which indicates an orientation-memory-concentration impairment or a memory impairment.

(17) "**Nutrition moderate risk**" means the total weighted UCAT Nutrition score is 8 or more which indicates poor appetite or weight loss combined with special diet requirements, medications or difficulties in eating.

(18) "**Social resources score is eight or more**" means the client member lives alone or has no informal support when sick or needs assistance, or has little or no contact with others.

(c) "**Medical eligibility minimum criteria for Personal Care.**" The medical eligibility minimum criteria for Personal Care is the minimum UCAT score criteria which a client member must meet for medical eligibility for personal care and are:

- (1) functional ADLs score is a five or greater; or IADLs score of eight or greater; or Nutrition score is eight or greater; or the MSQ score is seven or greater; or the ADLs score is three and IADLs score is at least six, and
- (2) Client Support is moderate risk; or Client Support score is five ~~or more~~ and the Social Resources score is eight or more.

(d) "**Medical eligibility determination.**" Medical eligibility for Personal Care is determined by the Oklahoma Department of Human Services. The medical decision for Personal Care, ~~the care plan and service plan approval for Personal Care~~ is made by the ~~DHS~~ OKDHS area nurse, or designee, utilizing the Uniform Comprehensive Assessment Tool (UCAT).

(1) When Personal Care services are requested, the local office is responsible for completing the UCAT, Part III.

(2) Categorical relationship must be established for determination of eligibility for Personal Care. If categorical relationship to Aid to the Disabled has not already been established but there is an extremely emergent need for Personal Care and current medical information is not available, the local office authorizes a medical examination. When authorization is necessary, the county director issues the Authorization for Examination, ~~DHS~~ OKDHS form ~~ABCDM 16 08MA016E~~, and the Report of Physician's Examination, ~~DHS~~ OKDHS form ~~ABCDM 80 08MA02E~~, to a licensed medical or osteopathic physician (refer to OAC 317:30-5-1). The physician cannot be in a medical facility intern, residency, or fellowship program

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or in the full time employment of the Veterans Administration, Public Health Service or other agency. The OKDHS county social worker submits the information to the Level of Care Evaluation Unit (LOCEU) to request a determination of eligibility for categorical relationship. LOCEU renders a decision on categorical relationship using the same definition used by SSA. A follow-up is required by the DHS social OKDHS county worker with the Social Security Administration (SSA) to be sure that SSA's disability decision agrees with the decision of LOCEU.

(3) Approved contract agencies may complete the UCAT Part I for intake and screening and forward the form to the county office.

(4) When DHS the OKDHS county office does not receive a UCAT from the AA, a UCAT I is initiated by the DHS county staff upon receipt of the referral.

(5) The DHS Long Term Care (LTC) OKDHS nurse completes the UCAT III assessment visit within 10 working days of receipt of the referral for Personal Care from the social OKDHS county worker or receipt of the UCAT I and II (Intake and Screening) request for Personal Care for the client member who is Medicaid SoonerCare eligible at the time of the request. The LTC OKDHS nurse completes the assessment visit within 20 working days of the Medicaid SoonerCare application for the client applicant who has not been determined financially Medicaid SoonerCare eligible at the time of the request. The DHS social OKDHS county worker is responsible for contacting the individual applicant within three working days from the date of the receipt of the request for services to initiate the financial eligibility process. If the UCAT Part I or II indicates the request is from an individual who resides at home and an immediate response is required to ensure the health and safety of the client person (emergency situation) or to avoid institutional placement, the UCAT Part III assessment visit has top priority for scheduling.

(6) During the assessment visit, the LTC OKDHS nurse completes the UCAT III and reviews with the member rights to privacy, fair hearing and provider choice. The OKDHS nurse informs the client member of medical eligibility criteria and provides information about the different DHS OKDHS long-term care service options. The OKDHS nurse documents on the UCAT III whether the client member wants to be considered for nursing facility level of care services or if the client member is applying for a specific service program. If based upon the information obtained during the assessment, the OKDHS nurse determines that the client member may be at risk for health and safety, an immediate referral is made to Adult Protective Services (APS) staff are notified immediately. The referral is documented on the UCAT.

(A) The LTC nurse uses the Personal Care service plan form to develop an individual plan of care. The plan of care and service plan, including the amount and frequency of DHS Personal Care services, is based on the client's needs as determined by the UCAT III assessment.

~~(B) A~~ If the client's member's needs cannot be met by DHS Personal Care and Home Health services alone, the LTC OKDHS nurse informs the client member of the other DHS Long Term Care (LTC) community long term care service options. The LTC OKDHS nurse assists the client member in accessing service options selected by the client member in addition to, or in place of, Personal Care services.

~~(C) B~~ If multiple household members are applying for DHS SoonerCare Personal Care services, the UCAT assessment is done for all the client household members at the same time. Individual care plans and service plans are discussed and developed with the group of clients who appear eligible so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of service allocated to each individual is distributed between family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home.

~~(D)~~ If the length of time from the date the initial assessment information was obtained to the date the assessment is submitted to the area nurse, or designee, exceeds 60 days, the assessment must be updated as necessary including a new signature and date. A new UCAT and assessment visit is required if the length of time exceeds 90 days.

(C) The OKDHS nurse informs the member of the qualified agencies in their local area available to provide services and obtains the member's primary and secondary choice of agencies. If the member or family declines to choose a primary personal care service agency, the OKDHS nurse selects an agency from a list of all available agencies, using a round-robin system. The OKDHS nurse documents the name of the selected personal care service agency.

(7) The LTC OKDHS nurse scores completes the UCAT III. Within five within three working days of the assessment visit, the nurse forwards the UCAT and the completed Personal Care plan and service plan forms and sends it to the OKDHS area nurse, or designee, for medical eligibility determination. Personal care service eligibility is established as of the date that both medical eligibility is approved and financial eligibility is established. The client's Personal Care service plan and care plan include:

(A) goals and tasks; If the length of time from the date the initial assessment to the date of service eligibility determination exceeds 60 days, the assessment must be updated as necessary including a new signature and date. A new UCAT and assessment visit is required if the length of time exceeds 90 days.

(B) the number of authorized Personal Care units (hours) per month; Upon establishment of Personal Care service eligibility, the OKDHS nurse contacts the member's preferred personal care service agency, or if necessary, the secondary agency or the agency selected by the rotation system.

~~(C) frequency of service visits; Within one working day of agency acceptance, the OKDHS nurse forwards the referral to the personal care service agency for Service Authorization Model (SAM) packet development. [Refer to OAC 317:35-15-8(a)]. The date the referral is forwarded is the certification effective date.~~

~~(D) the effective date for services; and~~

~~(E) the certification period for the care plan and service plan.~~

(8) Following the development of the Service Authorization Model (SAM) packet by the personal care service agency, and within three working days of receipt of the packet from the agency, the OKDHS nurse reviews the packet to ensure agreement with the plan. Once agreement is established, the packet is forwarded to the OKDHS area nurse or designees for review.

~~(9) Within 10 working days of receiving the UCAT, care plan, and service plan Service Authorization Model (SAM) packet from the LTC OKDHS nurse, the OKDHS area nurse, or designee, determines medical eligibility for Personal Care services, certifies or denies the care plan and service plan Service Authorization Model (SAM) packet and enters the medical decision on MEDATS. If there is certification, the OKDHS area nurse enters into the system the units authorized. Denied service and care plans Service Authorization Model (SAM) packets that fail to meet authorization are returned to the LTC OKDHS nurse for revision or further justification by the personal care service agency. The LTC nurse revises and re-submits the denied service and care plans to the area nurse, or designee, within five working days of receipt of the returned documents.~~

~~(9) The OKDHS area nurse, or designee, determines the medical certification period for the plan of care and service plan which is the same as the certification period for the medical eligibility decision [see OAC 317:35-15-7(b)] assigns a medical certification period of not more than 36 months. The service plan certification period under the Service Authorization Model (SAM) is for a period of 12 month.~~

(11) Once the OKDHS nurse is notified of the service plan authorization, and within one working day, forwards copies of the certified Personal Care Service Plan [OKDHS form 02AG031E (AG-6)] to the agency.

(12) The OKDHS nurse notifies the OKDHS county worker in writing of the service and the number of authorized personal care service units including the start and end dates. The OKDHS county worker opens the service authorization. These steps are automated via ELDERS. Once the authorization is opened, five Service Authorization Model (SAM) visits by a skilled nurse are automatically authorized.

**317:35-15-5. General financial eligibility requirements for Personal Care**

Financial eligibility for Personal Care is determined using the rules on income and resources according to the category to

which the individual is related. (See OAC 317:35-10 for individuals categorically related to AFDC, and OAC 317:35-7-36 for those categorically related to ABD.)

~~(4) Income, and resources and expenses are evaluated on a monthly basis for all individuals requesting payment for Personal Care who are categorically related to ABD; maximum countable monthly income and resource standards for individuals related to ABD are found on OKDHS form 08AX001E (Appendix C-1), Schedule VI (QMBP program standards).~~

~~(2) The maintenance standards on the DHS Appendix C-1, Schedule H. A. are used to evaluate income and resources when an individual requests Personal Care with income and resources that exceed the categorically needy standards. Any vendor copayment for Personal Care is deducted from the claim prior to payment.~~

**317:35-15-6. Determining financial eligibility of categorically needy individuals**

Financial eligibility for Personal Care for categorically needy individuals is determined as follows:

~~(1) Financial eligibility/categorically related to AFDC. In determining income for the individual related to AFDC, all family income is considered. (See OAC 317:35-5-45 for Exceptions to AFDC rules.) The "family", for purposes of determining need, includes the following persons if living together (or if living apart but there has been no break in the family relationship):~~

~~(A) spouse; and~~

~~(B) parent(s) and minor children of their own.~~

~~(i) For adults, to be categorically needy, the net income must be less than the categorically needy standard as shown on the DHS OKDHS form 08AX001E (Appendix C-1), Schedule X.~~

~~(ii) For individuals under 19, to be categorically needy, the net income must be equal to or less than the categorically needy standard as shown on the DHS OKDHS form 08AX001E (Appendix C-1), Schedule I. A.~~

~~(2) Financial eligibility/categorically related to ABD. In determining income and resources for the individual related to ABD, the "family" includes the individual and spouse, if any. To be categorically needy, the countable income must be less than the categorically needy standard as shown on the DHS OKDHS form 08AX001E (Appendix C-1), Schedule VIII. A VI (QMBP standard). If an individual and spouse cease to live together for reasons other than institutionalization or receipt of the ADvantage waiver or HCBW/MR services, income and resources are considered available to each other through the month in which they are separated. Mutual consideration ceases with the month after the month in which the separation occurs. Any amounts which are actually contributed to the spouse after the mutual consideration has ended are considered.~~

~~(3) Determining financial eligibility for Personal Care. For individuals determined categorically needy for Personal Care, excess income is not applied to the~~

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member will not pay a vendor payment for Personal Care services.

### 317:35-15-7. Certification for Personal Care

(a) ~~Application date.~~ The first month of the Personal Care certification period must be the first month the client member was determined eligible for Personal Care, both financially and medically.

(1) As soon as eligibility or ineligibility for Personal Care is established, the local office updates the computer form and the appropriate notice is computer generated. Notice information is retained on the notice file for county use.

(2) An applicant approved for Personal Care under Medicaid SoonerCare as categorically needy is mailed a Medical Identification Card.

(b) ~~Certification period for Personal Care.~~ A medical certification period of not more than 36 months is assigned for an individual categorically related to ABD who is approved for Personal Care. The certification period for Personal Care is based on the UCAT evaluation and clinical judgement judgment of the OKDHS area nurse or designee. When the individual determined eligible for Personal Care is categorically related to AFDC, a medical certification period of not more than 36 months is assigned.

### 317:35-15-8. Agency Personal Care service management Service Authorization and Monitoring

(a) ~~At the time of assessment, the OKDHS nurse informs the member of the qualified agencies in their local area available to provide services and obtains the member's primary and secondary choice of agencies. If the member or family declines to choose a primary PC service agency, the OKDHS nurse selects an agency from a list of all local available agencies, using a round robin system. The OKDHS nurse documents the name of the selected PC service agency.~~

(b) ~~After medical and financial eligibility are established, OKDHS contacts the member's preferred PC service agency or, if necessary, the secondary agency or the agency selected by the rotation system. The OKDHS nurse forwards the referral to the PC services agency and establishes an initial PC skilled nursing service authorization for assessment and care plan development. Within one working day, OKDHS notifies the PC service agency and member of eligibility approval and also the authorization for PC skilled nursing for assessment and care plan development. The agency, prior to placing a PCA in the member's home, initiates an OSBI background check, checks the OKDHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes, and, as appropriate, checks the Certified Nurse Aid Registry.~~

(e~~a~~) Within ten working days of receipt of the member's PC eligibility approval, referral for Personal Care services, the PC services agency skilled nurse Personal Care Assessment/Service Planning Nurse completes an in-home assessment of a Service Authorization Model (SAM) visit in the home to

assess the member's PC Personal Care service needs, develops a care plan, completes a Service Authorization Model (SAM) packet based on the member's needs and submits the plan packet to the OKDHS nurse. The member's PC services care plan includes PC services goals and tasks, the number of authorized PC service units per month, frequency of PC service visits, the begin date for PC services, and the care plan end date which is no more than one year from the plan begin date. If more than one person in the household has been authorized to receive PC services, all household members' care plans are discussed and developed with the eligible members so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of PC service authorized for each individual is distributed between all eligible family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home. Service Authorization Model (SAM) packet includes:

(1) State Plan Personal Care Progress Notes (OKDHS form 02AG044E);

(2) Personal Care Planning Schedule [OKDHS form 02AG030E (AG-5)];

(3) Personal Care Plan [OKDHS form 02AG029E (AG-4)]; and

(4) Personal Care Service Plan [02AG031E (AG-6)].

(b) If more than one person in the household has been referred to receive Personal Care services, all household members' Service Authorization Model (SAM) packets are discussed and developed with the eligible members so service delivery can be coordinated to achieve the most efficient use of resources. The number of units of Personal Care service authorized for each individual is distributed between all eligible family members to assure that the absence of one family member does not adversely affect the family member(s) remaining in the home.

(d) Within three working days of receipt of the care plan from the PC services agency, the OKDHS nurse reviews and approves or denies the care plan and notifies the agency. The OKDHS nurse may also reduce the number of units requested by the PC services agency and then approve the care plan. When the OKDHS nurse denies a plan or approves a plan with fewer authorized units than the submitted plan, OKDHS consults with the PC services agency prior to denying the care plan or approving the care plan with reduced units.

(c) The Personal Care service agency receives a certified Service Plan [OKDHS form 02AG031E (AG-6)] from OKDHS as authorization to begin services. The agency delivers a copy of the care plan and service plan to the member upon initiating services.

(e~~d~~) Prior to placing a PC Personal Care attendant in the member's home or other service-delivery setting, an OSBI background check, OKDHS Community Service Worker Registry check in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes, and as appropriate, the Certified Nurse Aide Registry Check must be completed.

(f~~e~~) The PC service skilled nurse Personal Care Assessment/Service Planning Nurse monitors their member's care plan of care.

(1) The ~~PC Personal Care~~ service provider agency contacts the member within ~~5~~ five calendar days of receipt of the approved ~~care plan~~ Service Plan [OKDHS form 02AG031E (AG-6)] in order to make sure that services have been implemented and the needs of the member are being met.

(2) The ~~PC services agency nurse~~ Personal Care Assessment/Service Planning Nurse makes a Service Authorization Model (SAM) home visit at least every 180 days to assess the member's satisfaction with their care and to evaluate the ~~care plan~~ Service Authorization Model (SAM) packet for adequacy of goals and units authorized. Whenever a home visit is made, the ~~PC services agency nurse~~ Personal Care Assessment/Service Planning Nurse documents their findings in the ~~personal care services progress notes~~ State Plan Personal Care Progress Notes (OKDHS form 02AG044E). The personal care agency forwards a copy of the Progress Notes to the OKDHS nurse for review. The monitoring visit may be conducted by an LPN. If an LPN or social worker conducts the monitoring visit, an RN must co-sign the progress notes.

(3) Requests by the ~~PC Personal Care~~ service agency to change the number of units authorized in the ~~care plan~~ Service Authorization Model (SAM) packet are submitted to OKDHS and are approved or denied by the OKDHS area nurse, or designee prior to implementation of the changed number of units.

(4) Annually, or more frequently if the member's needs change, the ~~PC services agency nurse~~ Personal Care Assessment/Service Planning Nurse re-assesses member's need and develops a new ~~care plan~~ Service Authorization Model (SAM) eligibility packet to meet personal care needs. ~~If the member's need does not change, the agency nurse may re-authorize the member's existing plan.~~

(g) ~~When the PC services agency returns the member's care plan containing a service start date to OKDHS, the OKDHS nurse notifies the OKDHS county social worker in writing of the service and number of authorized PC service units and the start and end date of PC service authorization.~~

(5) ~~If the member is unstaffed, the Personal Care service agency communicates with the member and makes efforts to restaff. If the member is unstaffed for 30 calendar days, the agency notifies the OKDHS nurse on an OKDHS form 02AG032E (AG-7), Provider Communication Form. The OKDHS nurse contacts the member and if the member chooses, initiates a transfer of the member to another Personal Care service agency that can provide staff.~~

**317:35-15-8.1. Agency Personal Care services; billing, and issue problem resolution**

The ~~Administrative Agent~~ ADvantage Administration (AA) certifies qualified ~~PC Personal Care~~ service agencies and facilitates the execution of the agencies' SoonerCare contracts on behalf of OHCA. OHCA will check the list of providers that have been barred from ~~Medicare/Medicaid~~ Medicare/Sooner-Care participation to ensure that the ~~PC Personal Care~~ services agency is not listed.

(1) **Payment for Personal Care.** Payment for ~~PC Personal Care~~ services is generally made for care in the member's "own home". In addition to an owned or rented home, a rented apartment, room or shelter shared with others is considered to be the member's "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., and/or in any other type of settings prohibited under applicable federal or state statutes, rules, regulations, or other written instruments that have the effect of law is not a setting that qualifies as the member's "own home" for delivery of ~~PC Personal Care~~ services through Sooner-Care. With prior approval of the OKDHS area nurse, ~~PC Personal Care~~ services may be provided in an educational or employment setting to assist the member in achieving vocational goals identified on the care plan.

(A) **Use of Personal Care service agency.** To provide ~~PC Personal Care~~ services, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by OKDHS ~~or the AA~~, and possess a current SoonerCare contract.

(B) **Reimbursement.** Personal Care services payment on behalf of a member is made according to the type of service and number of units of ~~PC Personal Care~~ services authorized in the ~~care plan~~ Service Authorization Model (SAM) packet.

(i) The amount paid to ~~PC Personal Care~~ services providers for each unit of service is according to the established SoonerCare rates for the ~~PC Personal Care~~ services. Only authorized units contained ~~on~~ in each eligible member's individual ~~care plan~~ Service Authorization Model (SAM) packet are eligible for reimbursement. Providers serving more than one ~~PC Personal Care~~ service member residing in the same residence will assure that the members' ~~care plans~~ Service Authorization Model (SAM) packets combine units in the most efficient manner possible to meet the needs of all eligible persons in the residence.

(ii) Payment for ~~PC Personal Care~~ services is for tasks performed in accordance with OAC 317:30-5-951 only when listed on an authorized ~~care plan of care~~. Payment for ~~PC Personal Care~~ skilled nursing service is made on behalf of the member for assessment/evaluation and associated service planning per assessment/service planning visit by the ~~provider agency personal care skilled nurse~~ Personal Care Assessment/Service Planning Nurse.

(2) **Issue resolution.**

(A) If the member is dissatisfied with the ~~PC Personal Care~~ services provider agency or the assigned PCA, and has exhausted attempts to work with the ~~PC Personal Care~~ services agency's grievance process

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without resolution, the member may contact the OKDHS nurse to attempt to resolve the issues. The member has the right to appeal to the OHCA in accordance with OAC 317:2-1-2. For members receiving ADvantage services, the member or family should contact their case manager for the problem resolution. If the problem remains unresolved, the member or family should contact the Consumer Inquiry System (CIS). Providers are required to provide the CIS contact number to every member. The ADvantage Program member also has the right to appeal to the OHCA in accordance with OAC 317:2.

(B) When a problem with performance of the Personal Care attendant is identified, agency staff will conduct a counseling conference with the member and/or the attendant as appropriate. Agency staff will counsel the attendant regarding problems with his/her performance.

### 317:35-15-9. Redetermination of financial eligibility for Personal Care

~~(a)~~ The social OKDHS county worker must complete a redetermination of financial eligibility before the end of the certification period. A notice is generated only if there is a change which affects the client's financial responsibility eligibility.

~~(b)~~ The area nurse, or designee, must complete a redetermination of medical eligibility before the end of the long-term care medical certification period.

### 317:35-15-10. Redetermination of medical eligibility for Personal Care services

(a) **Medical eligibility redetermination.** The OKDHS area nurse, or designee, must complete a redetermination of medical eligibility before the end of the long-term care medical certification period.

(a**b**) **Recertification.** The OKDHS nurse re-assesses the PC Personal Care services member for medical re-certification based on the member's needs and level of caregiver support required, using the UCAT at least every 36 months. During this re-certification assessment, the OKDHS nurse informs the member of the state's other SoonerCare long-term care options. The OKDHS nurse submits the re-assessment, to the OKDHS area nurse, or designee, for re-certification. ~~Recertification documents are~~ Documentation is sent to the OKDHS area nurse, or designee, no later than the tenth day of the month in which the certification expires. When the OKDHS area nurse, or designee determines medical eligibility for PC Personal Care services, a re-certification review date is entered on the system.

(b**c**) **Change in service plan and care plan amount of units or tasks within Personal Care service for State Plan PC Personal Care service members.** Upon notification by the PC service agency of the member's need for a change in the amount of PC service required, the OKDHS nurse initiates the process to increase or decrease the approved units of service on the member's care plan. Based on the documentation provided

~~by the PC service agency to OKDHS, the area nurse or designee approves or denies the care plan changes within three working days of receipt of the request. A copy of the signed care plan is included in the case record. The social worker updates the service authorization system after they are notified of the increase or decrease. When the Personal Care services agency determines a need for a change in the amount of units or tasks within the Personal Care service, a new Personal Care Service Authorization Model (SAM) packet is completed and submitted to OKDHS. The change is approved or denied by the OKDHS area nurse, or designee prior to implementation.~~

~~(e**d**) **Voluntary closure of State Plan PC Personal Care services.** If a member decides Personal Care services are no longer needed to meet his/her needs, a medical decision is not needed. The member and the OKDHS nurse or social OKDHS county worker completes and signs OKDHS form 02AG038E, AG-17, Voluntary Action of Personal Care Case Closure form.~~

~~(e**e**) **Resuming State Plan PC Personal Care services.** If a member approved for Personal Care services has been without PC Personal Care services for less than 90 days but still has a current PC Personal Care services medical and SoonerCare financial eligibility approval, PC Personal Care services may be resumed using the member's previously approved care plan Service Authorization Model (SAM) packet. The PC Personal Care service agency submits a PC Personal Care services skilled nursing re-assessment of need within ten working days of the resumed plan start date using the State Plan Personal Care Progress Notes, OKDHS form 02AG044E. If the member's needs dictate, the PC Personal Care services agency may submit a request for a change in authorized PC Personal Care services units with the re-assessment for authorization review by a Service Authorization Model (SAM) packet to OKDHS.~~

~~(e**f**) **Financial ineligibility.** Anytime OKDHS determines a PC Personal Care services member does not meet the SoonerCare financial eligibility criteria, the local OKDHS office notifies the member, PC Personal Care service provider, and the OKDHS nurse of financial ineligibility.~~

~~(f**g**) **Closure due to medical ineligibility.** If the local OKDHS office is notified through the system that a member is no longer medically eligible for Personal Care, the social OKDHS county worker notifies the member of the decision. The OKDHS nurse notifies the PC Personal Care service agency.~~

~~(g**h**) **Termination of State Plan Personal Care Services.**~~

- (1) Personal Care services may be discontinued if:
  - (A) the member poses a threat to self or others as supported by professional documentation; or
  - (B) other members of the household or persons who routinely visit the household who, as supported by professional documentation, pose a threat of harm or injury to the member or other household visitors; or
  - (C) the member or family member fails to cooperate with Personal Care service delivery or to comply with OHCA or OKDHS rules as supported by professional documentation; or
  - (D) the member's health or safety is at risk as ~~documented on the UCAT~~ supported by professional documentation; or

(E) additional services, either "formal" (i.e., paid by Medicaid SoonerCare or some other funding source) or "informal" (i.e., unpaid) are provided in the home eliminating the need for SoonerCare Personal Care services.

(2) The member refuses to select and/or accept the services of a PC Personal Care service agency or PCA for 90 consecutive days as supported by professional documentation.

(3) For persons receiving State Plan PC Personal Care services, the PC Personal Care services agency submits documentation with the recommendation to discontinue services to OKDHS. The OKDHS nurse reviews the documentation and submits it to the OKDHS Area Nurse for determination. The OKDHS nurse notifies the member and the Personal Care service agency or PCA, and the local OKDHS county social worker of the decision to terminate services. ~~The social worker closes the authorization on the OKDHS system which sends~~ The member is sent an official closure notice to the member informing them of their appropriate member rights to appeal the decision to discontinue services.

**317:35-15-11. Case transfer between categories  
[REVOKED]**

~~If it becomes necessary to transfer a Medicaid Personal Care case from one category to another because of change of age, income, or marital status, a new application is not required. If someone other than the client or guardian signed the original application form and the transfer is to a money payment case, an application with the member's signature is required. The new case is certified retaining the original certification date and redetermination date, using the appropriate code for transfer from the old category and the appropriate effective date which coincides with the closure of the previous case category. Members and appropriate medical contractors are notified of the new case number and category by computer generated notice.~~

**317:35-15-15. Referral for social services**

In many situations, adults who are receiving medical services through Medicaid SoonerCare need social services. The ~~LTC~~ OKDHS nurse may make referrals for social services to the OKDHS worker in the local office. In addition to these referrals, a request for social services may be initiated by a client member or by another individual acting upon behalf of a client member.

(1) The OKDHS county worker is responsible for providing the indicated services or for referral to the appropriate resource outside the Department if the services are not available within the Department.

(2) Among the services provided by the OKDHS worker are:

(A) Services that will enable individuals to attain and/or maintain as good physical and mental health as possible;

(B) Services to assist patients who are receiving care outside their own homes in planning for and returning to their own homes or to other alternate care;

(C) Services to encourage the development and maintenance of family and community interest and ties;

(D) Services to promote maximum independence in the management of their own affairs;

(E) Protective services, including evaluation of need for and arranging for guardianship; and

(F) Appropriate family planning services, which include assisting the family in acquiring means to responsible parenthood. Services are offered in making the necessary referral and follow-up.

*[OAR Docket #09-921; filed 5-14-09]*

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

*[OAR Docket #09-916]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 15. Personal Care Services

317:35-15-14.[AMENDED]

Subchapter 17. ADvantage Waiver Services

317:35-17-22.[AMENDED]

(Reference APA WF # 08-29B)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 440.167

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**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 15. Personal Care Services

317:35-15-14.[AMENDED]

Subchapter 17. ADvantage Waiver Services

317:35-17-22.[AMENDED]

(Reference APA WF # 08-29B)

**Gubernatorial approval:**

January 2, 2009

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**Register publication:**

26 Ok Reg 558

**Docket number:**

09-69

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Rules are revised to require the use of the new Interactive Voice Response Authentication (IVRA) system to document time and attendance for all Personal Care and certain in-home ADvantage services provided to SoonerCare members. Currently, claims for Personal Care and associated in-home ADvantage services represent the highest volume of claim records processed through the Medicaid Management Information System. In-home services are necessarily provided in the individual homes of persons with physical and cognitive disabilities. The verification of service delivery is typically a paper time sheet signed by the member receiving services with a high potential for errors. Additionally, a paper based time and attendance system which requires transcription of time units from paper to computer is both inefficient and affords many opportunities for inadvertent errors.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 15. PERSONAL CARE SERVICES

### 317:35-15-14. Billing procedures for Personal Care

Billing procedures for Personal Care Services are contained in the OKMMIS Billing and Procedure Manual. Questions regarding billing procedures that cannot be resolved through a study of the manual are referred to the OHCA. Contractors for Personal Care bill on HCEA-1500 CMS-1500. The OKDHS county office ~~provide~~ provides instructions to an individual PCA for completion of the claim at the time of the contractor orientation. Each Personal Care contractor submits a claim for each client member. The contractor prepares claims for services provided and submits the claims to the fiscal agent who is responsible for assuring that the claims have been properly completed. All Personal Care contractors must have a unique provider number. New contractors will be mailed the provider number after they have been placed on the claims processing contractor's provider file. Service time of Personal Care and Nursing is documented solely through the Interactive Voice Response Authentication (IVRA) system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.

## SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

### 317:35-17-22. Billing procedures for ADvantage services

(a) Billing procedures for long-term care medical services are contained in the OKMMIS Billing and Procedure Manual. Questions regarding billing procedures which cannot be resolved through a study of the manual should be referred to the OHCA.

(b) The ~~AA~~ OKDHS/ASD approved ADvantage service plan is the basis for the MMIS service prior authorization, specifying:

- (1) service;
- (2) service provider;
- (3) units authorized; and
- (4) begin and end dates of service authorization.

(c) As part of ADvantage quality assurance, provider audits are used to evaluate whether paid claims are consistent with service plan authorizations and documentation of service provision. Evidence of paid claims that are not supported by service plan authorization and/or documentation of service provision will be turned over to SURS for follow-up investigation.

(d) Service time of Personal Care, Nursing, Advanced Supportive/Restorative Assistance, In-Home Respite, CD-PASS Personal Services Assistance and Advanced Personal Services Assistance is reimbursed solely through the Interactive Voice Response Authentication (IVRA) system. Providers are required to use the IVRA system after access to the system is made available by OKDHS. The IVRA system provides alternate backup solutions should the automated system be unavailable. In the event of IVRA backup system failure, the provider will document time in accordance with their agency backup plan. The agency's backup procedures are only permitted when the IVRA system is unavailable.

[OAR Docket #09-916; filed 5-14-09]

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

[OAR Docket #09-911]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 22. Pregnancy Related Benefits Covered Under Title ~~Xxi~~ XXI 317:35-22-9. through 317:35-22-11. [AMENDED]  
(Reference APA WF # 08-21)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 431.200 through 431.214

**DATES:**

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Effective: June 25, 2009
SUPERSEDED EMERGENCY ACTIONS: N/A
INCORPORATIONS BY REFERENCE: N/A
ANALYSIS: Eligibility rules for Pregnancy Related Benefits Covered Under Title XXI (Soon to be Sooners program) are revised to make a correction regarding computer generated notices. Currently, rules state that a notice is sent to both the applicant/member and the provider whenever the application is certified or denied, or an active case is closed. Rules are revised to state that the notice generated when an eligibility decision on an application is made or when an active case is closed, is sent to the applicant/member only; a notice is not sent to the provider.
CONTACT PERSON: Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

SUBCHAPTER 22. PREGNANCY RELATED BENEFITS COVERED UNDER TITLE XXI XXI

317:35-22-9. Notification of eligibility
When eligibility for the pregnancy benefits covered under Title XXI is established, the OKDHS county office updates the computer form and the appropriate notice is computer generated to the member and provider.

317:35-22-10. Denials
If denied the computer input form is updated and the appropriate notice is computer generated to the client and provider applicant.

317:35-22-11. Closures
Health benefit cases are closed by the OKDHS county office at any time during the certification period that the case becomes ineligible. A computer-generated notice is sent to the member and the provider.

[OAR Docket #09-911; filed 5-14-09]

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

[OAR Docket #09-923]

RULEMAKING ACTION: PERMANENT final adoption
RULES: Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Member Services
Part 1. Agency Companion Services
317:40-5-1. [REVOKED]
317:40-5-3. [AMENDED]
317:40-5-5. [AMENDED]
Part 9. Service Provisions
317:40-5-100. [AMENDED]
Subchapter 7. Employment Services Through Home and Community-Based Services Waivers
317:40-7-6. [AMENDED]
317:40-7-8. [AMENDED]
317:40-7-11. [AMENDED]
317:40-7-13. [AMENDED]
(Reference APA WF # 08-46C)

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

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SUPERSEDED EMERGENCY ACTIONS: Superseded rules:

Subchapter 5. Member Services
Part 1. Agency Companion Services
317:40-5-3. [AMENDED]
(Reference APA WF # 08-46C)

Gubernatorial approval: May 23, 2008

Register publication: 25 Ok Reg 2767

Docket number: 08-1204

INCORPORATIONS BY REFERENCE: N/A

ANALYSIS: Rules for the Home and Community-Based Services Waivers for persons with mental retardation or certain persons with related conditions are revised to: (1) provide clarification relating to service utilization, provisions, authorizations, limitations, and eligibility requirements; (2) specify provider requirements and related activities of targeted case management to meet federal requirements; (3) clarify provider responsibilities and limitations in

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the agency companion program; (4) specify devices and services allowable through assistive technology; (5) clarify physical plant expectations for services provided in center-based settings; and (6) amend policy to reflect appropriate terminology.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

**317:40-1-1. Home and Community-Based Services (HCBS) Waivers providing services for persons with certain developmental disabilities mental retardation or certain persons with related conditions**

(a) **Applicability.** The rules in this Section apply to services funded through Medicaid ~~Home and Community Based Services~~ (HCBS) Waivers as defined in Section 1915(c) of the Social Security Act and administered by the Oklahoma Department of Human Services (OKDHS), Developmental Disabilities Services Division (DDSD). The specific waivers are the In-Home Supports Waiver (IHSW) for Adults, the In-Home Supports Waiver (IHSW) for Children, the Community Waiver, and the Homeward Bound Waiver.

(b) **Program Administration.** Services funded through a ~~Home and Community Based Services~~ HCBS Waiver for persons with mental retardation or for certain persons with related conditions are administered by DDSD, under the oversight of the Oklahoma Health Care Authority (OHCA), the State Medicaid agency. The rules in this subsection ~~shall do not be construed as a limitation of~~ limit the rights of class members set forth in the ~~Consent Decree Second Amended Permanent Injunction~~ in Homeward Bound vs. The Hissom Memorial Center.

(1) HCBS Waiver services are subject to annual appropriations by the Oklahoma Legislature.

(2) DDSD must limit the utilization of the HCBS Waiver services based on:

(A) the federally-approved ~~recipient member~~ capacity for the individual HCBS Waivers;

(B) the cost-effectiveness of the individual HCBS Waivers as determined according to federal requirements; and

(C) State appropriations.

(3) DDSD must limit enrollment when utilization of services under the HCBS Waiver programs is projected to exceed the spending authority.

(c) **Program provisions.** Each individual requesting HCBS Waiver services and his or her family or guardian are responsible for:

(1) accessing, with the assistance of OKDHS staff, all benefits available under Oklahoma's Medicaid State Plan

or other payment sources prior to accessing funding for those same services under a HCBS Waiver program;

(2) cooperating in the determination of medical and financial eligibility, including prompt reporting of changes in income or resources; and

(3) choosing between HCBS Waiver services and institutional care.

(d) **Waiver Eligibility.** To be eligible for Waiver services, an applicant must meet the criteria established in paragraph (1) of this Subsection and the criteria for one of the Waivers established in Subparagraph (A), (B), or (C) of this Subsection.

(1) HCBS Waiver services are available to Oklahoma residents meeting ~~Medicaid~~ SoonerCare eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources. To be eligible for and receive services funded through any of the Waivers listed in subsection (a) of this Section, a person must first be determined financially eligible for ~~Medicaid~~ SoonerCare through the OKDHS Family Support Services Division per OAC 317:35-9-68. The ~~Medicaid~~ SoonerCare eligible individual may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, rehabilitation facility, mental health facility, nursing facility, residential care facility as described in Section 1-819 of Title 63 of Oklahoma Statutes, or ICF/MR Intermediate Care facility for persons with mental retardation (ICF/MR). The individual may ~~also~~ not be receiving DDSD state-funded services such as the Family Support Assistance Payment, sheltered workshop services, community integrated employment services, or assisted living without waiver supports ~~as described in~~ per OAC 340:100-5-22.2. The individual must also meet other Waiver-specific eligibility criteria.

(A) **In-Home Supports Waivers.** To be eligible for services funded through the In-Home Supports ~~Waivers~~ Waiver (IHSW), a person must:

(i) meet all criteria for HCBS Waiver services given in subsection (d) of this Section;

(ii) be determined to have a disability, with a diagnosis of mental retardation as defined in the Diagnostic Manual-Intellectual Disability: A Textbook of Diagnosis of Mental Disorders in Persons with Intellectual Disability, by:

(I) the Social Security Administration; or

(II) the ~~Oklahoma Health Care Authority~~ OHCA, Level of Care Evaluation Unit (LO-CEU);

(iii) be three years of age or older;

(iv) be determined by the ~~Oklahoma Health Care Authority, Level of Care Evaluation Unit, OHCA/LOCEU~~ to meet the ICF/MR Institutional Level of Care requirements ~~in accordance with~~ per OAC 317:30-5-122;

(v) reside in:

(I) the home of a family member or friend;

(II) his or her own home;

- (III) an OKDHS Children and Family Services Division (CFSD) foster home; or
  - (IV) a CFSD group home; and
  - (vi) have critical support needs that can be met through a combination of non-paid, non-Waiver, and State Plan resources available to the individual, and with HCBS Waiver resources that are within the annual per capita Waiver limit agreed between the State of Oklahoma and the Centers for Medicare and Medicaid Services (CMS).
- (B) **Community Waiver.** To be eligible for services funded through the Community Waiver, the person must:
- (i) meet all criteria given in subsection (d) of this Section;
  - (ii) be age three or older;
  - (iii) have critical support needs that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the DDS Division Director or designee;
  - (iv) be determined, in accordance with either subunit I or both subunits II and III of this unit:
    - (I) to have mental retardation as defined in the Diagnostic Manual-Intellectual Disability: A Textbook of Diagnosis of Mental Disorder in Persons with Intellectual Disability or a related condition by the ~~Mental Retardation Authority~~ DDS and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or
    - (II) to have a disability, with a diagnosis of mental retardation, by the Social Security Administration or the ~~Oklahoma Health Care Authority, Level of Care Evaluation Unit OHCA/LOCEU~~; and
    - (III) to meet the ICF/MR Institutional Level of Care requirements by the ~~Oklahoma Health Care Authority, Level of Care Evaluation Unit OHCA/LOCEU~~.
- (C) **Homeward Bound Waiver.** To be eligible for services funded through the Homeward Bound Waiver, the person must:
- (i) be certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound et al. v. The Hisson Memorial Center*, Case No. 85-C-437-E;
  - (ii) meet all criteria for HCBS Waiver services given in subsection (d) of this Section; and
  - (iii) be determined to:
    - (I) have mental retardation as defined in the Diagnostic Manual-Intellectual Disability: A Textbook of Diagnosis of Mental Disorders in Persons with Intellectual Disability or a related condition by the ~~Mental Retardation Authority~~ DDS and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or
    - (II) meet the ICF/MR Institutional Level of Care requirements by the ~~Oklahoma Health Care Authority, Level of Care Evaluation Unit OHCA/LOCEU~~.
- (2) The person desiring services through any of the Waivers listed in subsection (a) of this Section participates in diagnostic evaluations and provides information necessary to determine HCBS Waiver services eligibility, including:
- (A) a psychological evaluation, current within one year, that includes:
    - (i) a functional assessment; and
    - (ii) a statement of age of onset of the disability;
  - (B) a social service summary, current within one year, that includes a developmental history; and
  - (C) a medical evaluation current within 90 days.
- (3) The ~~Oklahoma Health Care Authority~~ OHCA reviews the diagnostic reports listed in paragraph (2) of this subsection and makes a determination of eligibility for DDS services and ICF/MR level of care for the services funded through an IHSW or the Community Waiver.
- (4) For individuals who are determined to have mental retardation or a related condition by the ~~Mental Retardation Authority~~ DDS in accordance with the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, DDS reviews the diagnostic reports listed in paragraph (2) of this subsection and, on behalf of the OHCA, makes a determination of eligibility for DDS services and ICF/MR level of care.
- (5) A determination of need for ICF/MR Institutional Level of Care does not limit the opportunities of the person receiving services to participate in community services. Individuals are assured of the opportunity to exercise informed choice in the selection of services.
- (e) **Waiting list.** When State DDS resources are unavailable for new persons to be added to services funded through a ~~Home and Community Based Services~~ HCBS Waiver, persons are placed on a statewide waiting list for services.
- (1) The waiting list is maintained in chronological order based on the date of receipt of a written request for services.
  - (2) The waiting list for persons requesting HCBS Waiver services is administered by DDS uniformly throughout the state.
  - (3) An individual is removed from the waiting list if the individual:
    - (A) is found to be ineligible for services;
    - (B) cannot be located by OKDHS;
    - (C) does not provide required information to OKDHS;
    - (D) is not a resident of the state of Oklahoma; or
    - (E) is offered Waiver services through either an ~~In-Home Supports Waiver~~ IHSW or the Community Waiver and declines services.

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(f) **Applications.** When resources are sufficient for initiation of HCBS Waiver services, DDS ensures action regarding a request for services occurs within 45 days. If action is not taken within the required 45 days, the applicant may seek resolution as described in OAC 340:2-5.

(1) Applicants are allowed 60 days to provide information requested by DDS to determine eligibility for services.

(2) If requested information is not provided within 60 days, the applicant is notified that the request has been denied, and the individual is removed from the waiting list.

(g) **Admission protocol.** Initiation of services funded through a ~~Home and Community Based Services~~ HCBS Waiver occurs in chronological order from the waiting list in accordance with subsection (e) of this Section based on the date of DDS receipt of a completed request for services, as a result of the informed choice of the person requesting services or his or her legal guardian, and upon determination of eligibility, in accordance with subsection (d) of this Section. Exceptions to the chronological requirement may be made when:

(1) an emergency situation exists in which the health or safety of the person needing services, or of others, is endangered, and there is no other resolution to the emergency. An emergency exists when:

(A) the person is unable to care for himself or herself and:

(i) the person's caretaker, as defined in Section 10-103 of Title 43A of the Oklahoma Statutes:

- (I) is hospitalized;
- (II) has moved into a nursing facility;
- (III) is permanently incapacitated; or
- (IV) has died; and

(ii) there is no caretaker to provide needed care to the individual; or

(iii) an eligible person is living at a homeless shelter or on the street;

(B) the OKDHS finds that the person needs protective services due to experiencing ongoing physical, sexual, or emotional abuse or neglect in his or her present living situation, resulting in serious jeopardy to the person's health or safety;

(C) the behavior or condition of the person needing services is such that others in the home are at risk of being seriously harmed by the person. For example, the person is routinely physically assaultive to the caretaker or others living in the home and sufficient supervision cannot be provided to ensure the safety of those in the home or community; or

(D) the person's medical, psychiatric, or behavioral challenges are such that the person is seriously injuring or harming himself or herself, or is in imminent danger of doing so.

(2) the Legislature has appropriated special funds with which to serve a specific group or a specific class of individuals under the provisions of a HCBS Waiver;

(3) Waiver services are required for people who transition to the community from a public ~~intermediate care~~

~~facility for persons with mental retardation (ICF/MR) or who are children in the State's custody receiving services from OKDHS; or~~ Under some circumstances Waiver services related to accessibility may be authorized in advance of transition, but may not be billed until the day the member leaves the ICF/MR and enters the Waiver;

(4) individuals residing in nursing facilities prior to January 1, 1989, who are determined by Preadmission Screening and Resident Review (PASRR) evaluation conducted pursuant to the provisions of 42 CFR 483.100 et seq to have mental retardation or a related condition, who are covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, choose to receive services funded through the Community Waiver.

(h) **Movement between DDS HCBS Waiver programs.** A person's movement from services funded through one ~~Home and Community Based Services~~ HCBS Waiver to services funded through another DDS-administered HCBS Waiver is explained in this subsection.

(1) When a ~~child~~ member receiving services funded through the IHSW for children becomes 18 years of age, services ~~under~~ through the IHSW for adults become effective.

(2) Change to services funded through the Community Waiver from services funded through the IHSW occurs only when:

(A) a ~~person~~ member has critical support needs that cannot be met by IHSW services, non-Waiver services, or other resources as determined by the DDS Director or designee; and

(B) funding is available in accordance with subsection (b) of this Section.

(3) Change to services funded through the IHSW from services funded through the Community Waiver may only occur when ~~an individual's~~ a member's history of annual service utilization has been within the per capita allowance of the IHSW.

(4) When ~~an individual~~ a member served through the Community Waiver has support needs that can be met within the per capita Waiver allowance of the applicable IHSW and through a combination of non-Waiver resources, the individual may choose to receive services through the IHSW.

(i) **Continued eligibility for HCBS Waiver services.** Eligibility for children receiving HCBS Waiver services is re-determined if a determination of disability due to mental retardation has not been made by the Social Security Administration when: the OHCA/LOCEU determines categorical relationship to the SoonerCare program according to Social Security Administration guidelines. OHCA/LOCEU also approves level of care per OAC 317:35-9-5. DDS may require a new diagnostic evaluation in accordance with paragraph (d)(2) of this subsection and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status determined under paragraph (d)(2) of this Section has been noted.

- ~~(1) a child who is receiving HCBS Waiver services prior to age six reaches age six. The child must be determined to continue to have a disability with a diagnosis of mental retardation. The determination must be made no later than the first Plan of Care review after the seventh birthday. A new diagnostic evaluation is required in accordance with paragraph (d)(2) of this subsection;~~
- ~~(2) a child who is receiving HCBS Waiver services reaches age 18. The service recipient must be determined to continue to have a disability with a diagnosis of mental retardation. The determination must be made at the first Plan of Care review after the nineteenth birthday. A new diagnostic evaluation is required in accordance with paragraph (d)(2) of this subsection; and~~
- ~~(3) required by DDS. DDS may require a new diagnostic evaluation in accordance with paragraph (d)(2) of this subsection and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status determined under paragraph (d)(2) of this Section has been noted.~~

(j) **HCBS Waiver services case closure.** HCBS Waiver services are terminated ~~when an individual receiving services:~~

- (1) when a member or the service recipient's member's legal guardian chooses to no longer receive Waiver services;
- (2) when a member is incarcerated;
- (3) when a member is financially ineligible to receive Waiver services;
- (4) when a member is determined by the Social Security Administration to no longer have a disability qualifying the individual for services under these Waivers;
- (5) when a member is determined by the Oklahoma Health Care Authority Level of Care Evaluation Unit OHCA/LOCEU to no longer be eligible;
- (6) when a member moves out of state, or the custodial parent or guardian of a member who is a minor moves out of state;
- (7) when a member is admitted to a nursing facility, ICF/MR, residential care facility, hospital, rehabilitation facility, or mental health facility for more than 30 consecutive days;
- (8) ~~or when~~ the guardian of a member who is a minor or adjudicated adult fails to cooperate during the annual review process as described in OAC 340:100-5-50 through 340:100-5-58;
- (9) ~~or when~~ the guardian of a member who is a minor or adjudicated adult fails to cooperate in the implementation of OKDHS policy or service delivery in a manner that places the health or welfare of the service recipient member at risk, after efforts to remedy the situation through Adult Protective Services or Child Protective Services have not been effective; or
- (10) when the member is determined to no longer be Medicaid SoonerCare eligible; ;
- (11) when there is sufficient evidence that the member or his/her legal representative has engaged in fraud or misrepresentation, failed to use resources as agreed on in the

Individual Plan, or knowingly misused public funds associated with these services;

(12) when the member or his/her legal representative either cannot be located, has not responded to, or has not allowed case management to complete plan development or monitoring activities as required by policy and the member or his/her legal representative:

- (A) does not respond to the notice of intent to terminate; or
- (B) the response prohibits case management (the case manager) from being able to complete plan development or monitoring activities as required by policy;

(13) when the member or his/her legal representative fails to cooperate with the case manager to implement a Fair Hearing decision;

(14) when it is determined that HCBS Waiver services are no longer necessary to meet the member's needs and professional documentation provides assurance that the member's health, safety, and welfare can be maintained without Waiver supports;

(15) when the member or his/her legal representative fails to cooperate with service delivery;

(16) when a family member, authorized representative, other individual in the member's household or persons who routinely visit, pose a threat of harm or injury to provider staff or official representatives of OKDHS; or

(17) when a member no longer receives a minimum of one Waiver service per month and DDS is unable to monitor member on a monthly basis.

(k) **Reinstatement of services.** Waiver services are reinstated when:

- (1) the situation resulting in case closure of a Hissom class member is resolved;
- (2) a ~~service recipient member~~ service recipient member is incarcerated for 90 days or less;
- (3) a ~~service recipient member~~ service recipient member is admitted to a nursing facility, ICF/MR, residential care facility, hospital, rehabilitation facility, or mental health facility for 90 days or less; or
- (4) a ~~service recipient's Medicaid member's~~ service recipient's Medicaid member's SoonerCare eligibility is re-established within 90 days of the date of ~~the DDS Notice of Action SoonerCare ineligibility.~~

**SUBCHAPTER 5. MEMBER SERVICES**

**PART 1. AGENCY COMPANION SERVICES**

**317:40-5-1. Purpose of Agency Companion Services [REVOKED]**

- ~~(a) The Agency Companion Services (ACS) program serves persons with developmental disabilities who are 18 years of age or older.~~
- ~~(b) Persons under the age of 18 years may be served with approval from the Developmental Disabilities Services Division (DDSD) director or designee.~~

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(e) Agency Companion services provides an individualized living arrangement with a companion eligible according to OAC 317:40-5-4, that offers up to 24-hour supervision, supportive assistance, and training in daily living skills.

## 317:40-5-3. ~~Scope of agency~~ Agency companion services

- (a) Agency companion services (ACS):
- (1) are provided by ~~private~~ agencies contracted with the Oklahoma Health Care Authority (OHCA);
  - (2) ~~are available to members who are eligible for services through the Community Waiver or Homeward Bound Waiver~~ provide a living arrangement developed to meet the specific needs of the member that includes a live-in companion providing supervision, supportive assistance, and training in daily living skills provided in a shared home owned or rented by the member, companion, or in a mutually rented or owned home;
  - (3) ~~are based on the member's need for support as described in the member's Individual Plan (IP), per OAC 340:100-5-50 through 340:100-5-58~~ are available to members 18 years of age or older who are eligible for services through Community or Homeward Bound Waivers. Persons under the age of 18 years may be served with approval from the DDS/D director or designee;
  - (4) ~~are provided in a nurturing environment in the member's home, the companion's home, or in a mutually rented or owned home; and are based on the member's need for residential services per OAC 340:100-5-22 and support as described in the member's Individual Plan (IP), per OAC 340:100-5-50 through 340:100-5-58.~~
  - (5) ~~support visitation desired by the member with his or her natural family and friends, and in accordance with the member's IP.~~
- (b) An agency companion:
- (1) must be employed by or contract with a provider agency approved by the Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD);
  - (2) ~~is limited to serving as may provide~~ companion services for one member; ~~exceptions~~ Exceptions to serve as ~~companion for two members~~ may be ~~granted only upon review approved~~ by the DDS/D director or designee; ~~Exceptions may be approved when members have an existing relationship and to separate them would be detrimental to their well being and the companion demonstrates the skill and ability required to serve as companion for two members;~~
  - (3) ~~household is limited to one individual companion provider. Exceptions for two individual companion providers in a household who each provide companion services to different members may be approved by the DDS/D director or designee;~~
  - (4) ~~may not provide companion services to more than two members at any time;~~
  - (5) ~~household may not serve more than three members through any combination of companion or respite services;~~

(3) ~~(b)~~ may not have employment, volunteer activities, or personal commitments that prevent the companion from fulfilling his or her responsibilities to the member per OAC 317:40-5-5 317:40-5.

(A) Employment as an agency companion is the companion's primary employment.

~~(B) The companion may have other employment when:~~

~~(i) serving members approved for intermittent or regular levels of support;~~

~~(ii) the Personal Support Team addresses all documented related concerns in the member's IP; and~~

~~(iii) the other employment is approved in advance by the DDS/D area manager or designee; and~~

(B) The companion may not have other employment when:

(i) the member(s) require enhanced or pervasive level of support;

(ii) approved to serve two members regardless of the levels of support required by the members.

(C) The companion may have other employment when:

(i) the member requires intermittent or close levels of support;

(ii) the personal support Team documents and addresses all related concerns in the member's IP; and

(iii) the other employment is approved in advance by the DDS/D area manager or designee;

(4) ~~(7)~~ approved for other employment may not be employed in another position that ~~required~~ requires on-call duties.

(A) If, after receiving approval for other employment, authorized DDS/D staff determines the other employment interferes with the care, training, or supervision needed by the member, the companion must terminate, within 30 days:

(i) the other employment; or

(ii) his or her employment as an agency companion.

(B) Homemaker, habilitation training specialist, and respite services are not provided in order for the companion to perform other employment.

(c) Each member may receive up to 60 days per year of therapeutic leave without reduction in the agency companion's salary.

(1) Therapeutic leave:

(A) is a ~~Medicaid~~ SoonerCare payment made to the contract provider to enable the member to retain services; and

(B) is claimed when:

(i) the member does not receive ACS for 24 consecutive hours due to:

(I) a visit with family or friends without the companion;

(II) vacation without the companion; or

- (III) hospitalization, regardless of whether the companion is present; or
- (ii) the companion uses authorized relief respite time;
- (C) is limited to no more than 14 consecutive days per event, not to exceed 60 days per Plan of Care year; and
- (D) cannot be accrued from one Plan of Care year to the next; .
- (2) The therapeutic leave daily rate is the same amount as the ACS per diem rate except for the pervasive rate which is paid at the enhanced agency companion per diem rate.
- (3) The provider agency pays the agency companion the salary that he or she earns when would earn if the member were not on therapeutic leave.
- (d) Levels of support for the member and corresponding payment are:
  - (1) determined by authorized DDS staff in accordance with levels described in (A) through ~~(C)~~ (D); and
  - (2) re-evaluated when the member has a change in agency companion providers which includes a change in agencies or individual companion providers.
  - (A) **Intermittent level of support.** Intermittent level of support is authorized when the member:
    - (i) requires minimal assistance with basic daily living skills, such as bathing, dressing, and eating;
    - (ii) communicates needs and wants;
    - (iii) is able to spend short periods of time unsupervised inside and outside the home;
    - (iv) requires assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, arranging transportation or other activities, ~~and arranging transportation~~; and
    - (v) has stable or no ongoing medical or behavioral difficulties.
  - (B) **Regular Close level of support.** Regular Close level of support is authorized when the member:
    - (i) requires regular, frequent and sometimes constant assistance and support or is totally dependent on others to complete daily living skills, such as bathing, dressing, eating, and toileting;
    - (ii) has difficulty or is unable to communicate basic needs and wants;
    - (iii) requires extensive assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, arranging transportation or other activities, ~~and arranging transportation~~; and
    - (iv) requires regular monitoring and assistance with health, medication, or behavior interventions, and may include the need for specialized training, equipment, and diet.
  - (C) **Enhanced level of support.** Enhanced level of support is authorized when the member:

- (i) is totally dependent on others for:
  - (I) completion of daily living skills, such as bathing, dressing, eating, and toileting; and
  - (II) medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments, and arranging transportation or other activities, ~~and arranging transportation~~;
- (ii) demonstrates ongoing complex medical or behavioral issues requiring specialized training courses per OAC 340:100-3-38.3; and
- (iii) has medical support needs that are rated at Level 4, 5, or 6 on the Physical Status Review (PSR), per OAC 340:100-5-26. In cases where complex medical needs are not adequately characterized by the PSR, exceptions may be granted only upon review by the DDS director or designee; or
- (iv) requires a ~~Protective Intervention Plan~~ protective intervention plan (PIP) with a restrictive or intrusive procedure as defined in OAC 340:100-1-2. The PIP must be:
  - (I) be approved by the Statewide Behavior Review Committee (SBRC), per OAC 340:100-3-14; ~~and~~
  - (II) be reviewed by the Human Rights Committee (HRC), per OAC 340:100-3-6, and
  - (III) have received expedited approval per OAC 340:100-5-57.
- (D) **Pervasive level of support.** Pervasive level of support is authorized when the member:
  - (i) requires additional professional level support to remain in an agency companion setting due to pervasive behavioral or emotional challenges. The support must be provided:
    - (I) by a licensed professional counselor (LPC) or professional with a minimum of Masters of Social Work (MSW) degree; and
    - (II) as ongoing support and training to the companion, offering best practice approaches in dealing with specific members; and
  - (ii) does not have an available personal support system. The need for this service level:
    - (I) must be identified by the grand staffing committee, per OAC 340:75-8-40; and
    - (II) requires the provider to market, recruit, screen, and train potential companions for the member identified.

**317:40-5-5. Agency Companion Services provider responsibilities**

- (a) Providers of Agency Companion Services (ACS) are required to meet all applicable standards outlined in this subchapter and competency-based training described in OAC 340:100-3-38. The provider agency ensures that all companions meet the criteria in this Section.
- (b) Failure to follow any rules or standards, failure to promote the independence of the ~~service recipient member~~, or

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failure to follow recommendation(s) of the personal support team (Team) results in problem resolution, as described in subsection (b) of OAC 340:100-3-27, for the companion, and, if warranted, revocation of approval of the companion.

(c) In addition to the criteria given in OAC 317:40-5-4, the companion:

(1) ensures no other adult or child is ~~serv~~ed cared for in the home on a regular or part-time basis including other Oklahoma Department of Human Services (OKDHS) placements, family members, and friends without prior written authorization from the ~~Oklahoma Department of Human Services'~~ OKDHS Developmental Disabilities Services Division (DDSD) area manager or designee;

(2) meets the requirements of OAC 317:40-5-103, Transportation. Neither the companion nor the provider agency may claim transportation reimbursement for vacation travel;

(3) transports or arranges transportation for the ~~service recipient member~~ service recipient member to and from school, employment programs, recreational activities, medical appointments, and therapy appointments;

(4) delivers services in a manner that contributes to the ~~service recipient's member's~~ service recipient's member's enhanced independence, self sufficiency, community inclusion, and well-being;

(5) participates as a member of the ~~service recipient's member's~~ service recipient's member's Team and assists in the development of the ~~service recipient's member's~~ service recipient's member's Individual Plan for service provision;

(6) with assistance from the DDSD case manager and the provider agency program coordination staff, develops, implements, evaluates, and revises the training strategies corresponding to the relevant outcomes for which the companion is responsible, as identified in the Individual Plan;

(A) The companion ~~develops and gives documents and provides~~ develops and gives documents and provides monthly data ~~collection~~ and health care summaries to the provider agency program coordination staff.

(B) The agency staff provides monthly reports to the DDSD case manager or nurse.

(7) delivers services at appropriate times as directed in the Individual Plan;

(8) does not deliver services that duplicate the services mandated to be provided by the public school district pursuant to the Individuals with Disabilities Education Act (IDEA);

(9) is sensitive to and assists the ~~service recipient member~~ service recipient member in participating in the ~~service recipient's member's~~ service recipient's member's chosen religious faith. No ~~service recipient member~~ service recipient member is expected to attend any religious service against his or her wishes;

(10) participates in and supports visitation and contact with the ~~service recipient's member's~~ service recipient's member's natural family, guardian, and friends, provided this visitation is desired by the ~~service recipient member~~ service recipient member;

(11) obtains permission from the ~~service recipient's member's~~ service recipient's member's legal guardian, if a guardian is assigned, and

notifies the family, the provider agency program coordination staff, and the case manager prior to:

(A) traveling out of state;

(B) overnight visits; or

(C) involvement of the ~~service recipient member~~ service recipient member in any publicity;

(12) serves as the ~~service recipient's member's~~ service recipient's member's health care coordinator in accordance with OAC 340:100-5-26;

(13) ensures the monthly room and board contribution received from the ~~service recipient member~~ service recipient member as reflected on OKDHS Form ~~DDS SAB-1~~ 06AC074E, Service Authorization Budget (SAB), is used toward the cost of operating the household;

(14) assists the ~~service recipient member to access in accessing~~ service recipient member to access in accessing entitlement programs for which the ~~service recipient member~~ service recipient member may be eligible and maintains records required for the ~~service recipient's member's~~ service recipient's member's ongoing eligibility;

(15) works closely with the provider agency program coordination staff and the DDSD case manager to ensure all aspects of the ~~service recipient's member's~~ service recipient's member's program are implemented to the satisfaction of the ~~service recipient member~~ service recipient member, the ~~service recipient's member's~~ service recipient's member's family or legal guardian, when appropriate, and the ~~service recipient's member's~~ service recipient's member's Team;

(16) assists the ~~service recipient member~~ service recipient member in achieving the ~~service recipient's member's~~ service recipient's member's maximum level of independence;

(17) submits, in a timely manner, to the provider agency program coordination staff all necessary information regarding the ~~service recipient member~~ service recipient member;

(18) ensures that the ~~service recipient's member's~~ service recipient's member's confidentiality is maintained in accordance with OAC 340:100-3-2;

(19) supports the ~~service recipient member~~ service recipient member in forming and maintaining friendships with neighbors, co-workers, and peers, including people who do not have disabilities;

(20) implements training and provides supports that enable the ~~service recipient member~~ service recipient member to actively join in community life;

(21) does not serve as representative payee for the ~~service recipient member~~ service recipient member without a written exception approval from the DDSD area manager or designee;

(A) The written approval is retained in the ~~service recipient's member's~~ service recipient's member's home record.

(B) When serving as payee, the companion complies with the requirements of OAC ~~340:100-3-4.1~~ 340:100-3-4.

(22) ensures the ~~service recipient's member's~~ service recipient's member's funds are properly safeguarded.

(23) must obtain prior approval from the provider agency when making a purchase of over \$50.00 with the ~~service recipient's member's~~ service recipient's member's funds;

(24) allows the provider agency staff and DDSD staff to make announced and unannounced visits to the home;

(25) develops an Evacuation Plan, OKDHS Form ~~DDS-20~~ 06AC020E, for the home and conducts training with the ~~service recipient member~~ service recipient member;

- (26) conducts fire and weather drills at least quarterly and maintains the Fire and Weather Drill Record, OKDHS Form ~~DDS-24-06AC021E~~, available for review;
- (27) develops and maintains a Personal Possession Inventory, OKDHS Form ~~DDS-22-06AC022E~~, documenting the ~~service recipient's~~ member's possessions and adaptive equipment;
- (28) supports the ~~service recipient's~~ member's employment program by:
  - (A) assisting the ~~service recipient~~ member to wear appropriate work attire; and
  - (B) contacting the ~~service recipient's~~ member's employer only as outlined by the Team and in the Individual Plan; and
- (29) follows all applicable rules promulgated by the Oklahoma Health Care Authority or DDS, including:
  - (A) OAC 340:100-3-40, ~~Community records system~~;
  - (B) OAC 340:100-5-50 through 100-5-58, ~~Individual planning~~;
  - (C) OAC 340:100-5-26, ~~Health services~~;
  - (D) OAC 340:100-5-34, ~~Incident reporting~~;
  - (E) OAC 340:100-5-32, ~~Medication administration~~;
  - (F) OAC 340:100-5-22.1, ~~Community residential supports~~;
  - (G) OAC 340:100-3-24, ~~Quality assurance~~; and
  - (H) OAC 340:100-3-38, ~~Staff training~~.

**PART 9. SERVICE PROVISIONS**

- 317:40-5-100. Assistive technology devices and services**
- (a) Applicability. The rules in this Section apply to assistive technology (AT) services and devices authorized by the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDS) through Home and Community Based Services (HCBS) Waivers.
- (a) General information. Assistive technology (AT) services, also called Adaptive Equipment Services:
- (1) ~~provide for evaluation~~; AT devices include the purchase, rental, customization, maintenance, and repair of specialized equipment for eligible persons, contingent on availability of resources; devices, controls, and appliances. AT devices include:
    - (A) visual alarms;
    - (B) telecommunication devices (TDDS);
    - (C) telephone amplifying devices;
    - (D) other devices for protection of health and safety of members who are deaf or hard of hearing;
    - (E) tape recorders;
    - (F) talking calculators;
    - (G) specialized lamps;
    - (H) magnifiers;
    - (I) braille writers;
    - (J) braille paper;
    - (K) talking computerized devices;

- (L) other devices for protection of health and safety of members who are blind or visually impaired;
- (M) augmentative and alternative communication devices including language board and electronic communication devices;
- (N) competence based cause and effect systems such as switches;
- (O) mobility and positioning devices including:
  - (i) wheelchairs;
  - (ii) travel chairs;
  - (iii) walkers;
  - (iv) positioning systems;
  - (v) ramps;
  - (vi) seating systems;
  - (vii) standers;
  - (viii) lifts;
  - (ix) bathing equipment;
  - (x) specialized beds;
  - (xi) specialized chairs; and
- (P) orthotic and prosthetic devices, including:
  - (i) braces;
  - (ii) prescribed modified shoes;
  - (iii) splints; and
- (Q) environmental controls or devices;
- (R) items necessary for life support and devices necessary for the proper functioning of such items, including durable and non-durable medical equipment not available through SoonerCare.
- ~~(2) enable persons receiving services to:~~
  - ~~(A) perform daily living skills;~~
  - ~~(B) socialize;~~
  - ~~(C) engage in work activities with reduced reliance upon others; or~~
  - ~~(D) promote or maintain health or safety;~~
- (2) AT services include:
  - (A) sign language interpreter services for members who are deaf;
  - (B) reader services;
  - (C) auxiliary aids;
  - (D) training the member and provider in the use and maintenance of equipment and auxiliary aids;
  - (E) repair of AT devices; and
  - (F) evaluation of the AT needs of a member.
- ~~(3) are supplied in any community setting as specified in the Individual Plan of the person receiving services;~~
- ~~(4) are justified by professional assessment in accordance with subsection (e) of this Section; AT devices and services must be included in the member's Individual Plan (IP) and arrangements for this HCBS service must be made through the member's case manager.~~
- (4) AT devices are provided by vendors with a Durable Medical Equipment (DME) contract with the Oklahoma Health Care Authority (OHCA).
- ~~(5) require prior authorization; and AT devices and services are authorized in accordance with requirements of The Oklahoma Central Purchasing Act, other applicable statutory provisions, OAC 580:15 and OKDHS approved purchasing procedures.~~

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(6) ~~provide only equipment that AT devices or services may be authorized when the device or service:~~

~~(A) has no utility apart from the needs of the person receiving services; DDSD state funds or funds through a Home and Community Based Waiver are not used to purchase equipment such as:~~

- ~~(i) trampolines;~~
- ~~(ii) hot tubs;~~
- ~~(iii) bean bag chairs;~~
- ~~(iv) recliners; and~~

~~(v) computers, except as adapted for individual needs and approved in accordance with this Section;~~

~~(B) is not otherwise available through Oklahoma's Title XIX State Plan SoonerCare, Department of Rehabilitative Services, or any other third party or known community resource; and~~

~~(C) has no less expensive equivalent that meets the person's member's needs; ;~~

~~(D) is not solely for family or staff convenience or preference;~~

~~(E) is based on the assessment and Personal Support Team (Team) consideration of the member's unique needs;~~

~~(F) is of direct medical or remedial benefit to the member;~~

~~(G) enables the member to maintain, increase, or improve functional capabilities;~~

~~(H) is supported by objective documentation included in a professional assessment except as specified per OAC 317:40-5-100;~~

~~(I) is within the scope of assistive technology per OAC 317:40-5-100; and~~

~~(J) is the most appropriate and cost effective bid if applicable.~~

~~(b) **Applicability.** The rules in this Section address only equipment that is authorized by the Department of Human Services for purchase, rental, lease, or lease/purchase through a DDSD Home and Community Based Waiver, or DDSD state funds. If the person receiving services, the family, or guardian desires to purchase assistive technology through other resources, these rules do not apply. The rules in this Section shall not be construed as a limitation of the rights of class members set forth in the Consent Decree in *Homeward Bound vs. The Hissom Memorial Center*.~~

~~(c) **Assessments.** Assessments for assistive technology AT devices or services are ~~conducted~~ performed by the prescribing a licensed professional service provider provider(s) and reviewed by other professional providers whose services may be affected by the type of device selected. A licensed professional must:~~

~~(1) Prior to recommending assistive technology devices or services, the prescribing professional completes a decision making review that provides justification for purchase, repair, rental, or fabrication of an assistive technology device.~~

~~(2) 1) The prescribing professional determines determine whether the person's identified outcome can be accomplished through the creative use of other resources such as:~~

- ~~(A) household items or toys;~~
- ~~(B) equipment loan programs;~~
- ~~(C) low-technology devices or other less intrusive options; or~~
- ~~(D) a similar, more cost-effective device.~~

~~(2) recommend the most appropriate AT based on the member's:~~

~~(A) present and future needs, especially for members with degenerative conditions;~~

~~(B) history of use of similar AT, and ability to use the device currently and for at least the foreseeable future (no less than 5 years); and~~

~~(C) outcomes.~~

~~(3) complete an assessment, including a decision making review and device trial that provides supporting documentation for purchase, rental, customization, or fabrication of an AT device. Supporting documentation must include:~~

~~(A) review of device considered;~~

~~(B) availability of device rental with discussion of advantages and disadvantages;~~

~~(C) how frequently and in what situations device will be used in daily activities and routines;~~

~~(D) how the member and caregiver(s) will be trained to use the AT device; and~~

~~(E) features and specifications of the device that are necessary for the member, including rationale for why other alternatives are not available to meet the member's needs.~~

~~(3) 4) Upon request by DDSD staff, the prescribing professional provides provide a current, unedited videotape or pictures of the person member using the device, including the time frames of the trials recorded, upon request by DDSD staff.~~

~~(d) **Authorization of repairs, or replacement of parts.** Repairs to AT devices, or replacement of device parts, do not require a professional assessment or recommendation. DDSD area office resource development staff with assistive technology experience may authorize repairs and replacement of parts for previously recommended assistive technology.~~

~~(e) **Retrieval of assistive technology devices.** When devices are no longer needed by a member, OKDHS/DDSD staff may retrieve the device.~~

~~(d) f) **Team decision-making process.** The individual's member's Personal Support Team considers the functional outcome to be achieved by the person's use of the proposed assistive technology service or equipment reviews the licensed professional's assessment and decision making review. The Team ensures the recommended AT:~~

~~(1) The Team considers AT services that:~~

~~(A) 1) are is needed by the person member to achieve a specific, identified functional outcome;~~

(i ~~A~~) A functional outcome, in this Section, means an activity that is meaningful to the person member, occurs on a frequent basis, and would require assistance from others, if the person member could not perform the activity independently, such as self-care, assistance with eating, or transfers.

(ii ~~B~~) Functional outcomes must be reasonable and necessary given a member's age appropriate, considering the person's developmental functioning diagnosis and abilities.

(B ~~2~~) improve allows the ability of the person member receiving services to:

(i ~~A~~) improve or maintain health and safety;

(ii ~~B~~) participate in community life;

(iii) ~~establish meaningful relationships;~~

(iv ~~C~~) express choices; or

(v ~~D~~) participate in vocational training or employment; or

(vi) ~~live with dignity;~~

(C ~~3~~) can will be used frequently or in a variety of situations; and

(D ~~4~~) ~~can will~~ fit easily into the person's life style member's lifestyle and work place. ;

(5) is specific to the member's unique needs; and

(6) is not authorized solely for family or staff convenience.

(2) ~~The Team recommends the most appropriate assistive technology based on the individual's:~~

(A) ~~current situation;~~

(B) ~~present needs;~~

(C) ~~ability to use the device; and~~

(D) ~~outcomes desired.~~

(3) ~~When the Team determines that existing equipment no longer meets the needs of the person receiving services, the Team considers a new AT device. In recommending a new AT device, the Team:~~

(A) ~~examines the history of other, similar equipment used by the person;~~

(B) ~~considers the advantages or disadvantages of renting the device; and~~

(C) ~~clearly defines functional outcomes anticipated with the use of the requested device(s).~~

(4) ~~The Team documents:~~

(A) ~~how the person and caregiver(s) are to be trained in the use of the assistive technology; and~~

(B) ~~time frames for Team evaluation after the receipt of assistive technology to determine if the identified outcomes are achieved.~~

(g) **Requirements and standards for AT devices and service providers.**

(1) Providers guarantee devices, work, and materials for one year, and supply necessary follow-up evaluation to ensure optimum usability.

(2) Providers ensure a licensed occupational therapist, physical therapist, speech therapist, or rehabilitation engineer evaluate the need for AT and individually customize AT devices as needed.

(h) **Services not covered through AT devices and services.** Assistive technology devices and services do not include:

(1) trampolines;

(2) hot tubs;

(3) bean bag chairs;

(4) recliners with lift capabilities;

(5) computers except as adapted for individual needs as a primary means of oral communication and approved per OAC 317:40-5-100;

(6) massage tables; and

(7) educational games and toys.

(e) **Approval or denial of assistive technology AT.** DDSD approval, conditional approval for pre-determined trial use, or denial of the purchase, rental, or lease/purchase of the device or equipment AT is determined in accordance with this subsection per OAC 317:40-5-100.

(1) ~~Standard Assistive Technology List.~~ Requests for assistive technology that are authorized by the case manager are explained in this paragraph.

(A) ~~The case manager may authorize requests for:~~

(i) ~~devices which are included on the Standard Assistive Technology List, DHS Appendix D-30;~~

or

(ii) ~~emergency repairs included on DHS Appendix D-30, up to \$350.00.~~

(B) ~~The case manager contacts the vendor for a price quote for the service or device.~~

(C) ~~The case manager provides a letter of authorization to the vendor or to the person receiving services for delivery to the vendor. The case manager keeps a copy of the letter of authorization and sends a copy to DDSD AT staff.~~

(D) ~~The letter of authorization includes:~~

(i) ~~the list of services or devices;~~

(ii) ~~a complete description of each service or device;~~

(iii) ~~the catalog number, if applicable;~~

(iv) ~~the name and provider number of the vendor;~~

(v) ~~the cost of the service(s) or device(s);~~

(vi) ~~the authorization (PB) number; and~~

(vii) ~~the case manager's signature.~~

(E) ~~The AT staff is available for consultation if problems are encountered.~~

(2) **Other requests under \$2,500.** Assistive technology devices not listed in DHS Appendix D-30 are requested in accordance with this paragraph.

(A) ~~The case manager sends requests for assistive technology devices or services to the DDSD AT staff for approval or denial if the request is not included in DHS Appendix D-30, but costs less than \$2,500.~~

(B) ~~The assistive technology request sent by the The DDSD case manager sends the AT request to designated DDSD Area Office area office resource development staff includes with AT experience. The request must include:~~

(i ~~A~~) ~~the licensed professional's assessment and professional prescription from the designated Team professional decision making review;~~

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- (~~ii~~ B) a copy of the Plan of Care;
  - (~~iii~~ C) documentation of current Team consensus, including consideration of issues ~~stated in subsection (d) of this Section per OAC 317:40-5-100;~~ and
  - (~~iv~~ D) all additional ~~justification documentation to support the need for securing the assistive technology device or service.~~
- (~~C~~ 2) The designated ~~Area Office area office resource development staff, with AT expertise experience,~~ approves or denies the AT ~~services request when there is no fixed rate for the device and the device has a cost less than \$2500 based on:~~
- (~~i~~ A) the criteria given in subsection (d) of this Section;
  - (~~ii~~ B) the scope of the program, as explained in subsection (a) of this Section; and
  - (~~iii~~ C) the cost effectiveness of the ~~device(s) or service(s) AT,~~ as explained in subsection (a) of this Section.
- (~~D~~ 3) Authorization for purchase or a written denial is provided within ~~10 ten~~ working days of receipt of a complete request.
- (~~i~~ A) If the ~~device(s) or service(s) AT is approved, a letter of authorization, as explained in subparagraph (e)(1)(D) of this Section, is issued.~~
  - (~~ii~~) The ~~prescribing professional supplies further information upon request of the designated Area Office staff.~~
  - (~~iii~~ B) If additional ~~information documentation is required in order for by the AT area office resource development staff with AT experience,~~ to authorize the ~~device(s) or service(s) cannot be readily obtained recommended AT,~~ the request packet is returned to the case manager for completion.
  - (C) If necessary, the case manager will contact the licensed professional to request the additional documentation and the licensed professional will supply further documentation upon request of the area office resource development staff with AT experience.
- (~~3~~ D) ~~Requests costing \$2,500 or more.~~ The authorization of ~~device(s) or service(s) costing AT that has no fixed rate and is \$2,500 or more is performed as in paragraph (2) of this subsection, except that the area office resource development staff with AT experience:~~
- (~~A~~ i) ~~the AT staff obtains solicits~~ three bids for the ~~service(s) or device(s) AT;~~
  - (~~B~~ ii) ~~the AT staff submits the AT request, the three bids, and other relevant information to the DDS State Office AT programs manager within 15 five working days of receipt of the complete request from the case manager required bids; and~~
  - (~~C~~ iii) the State Office AT programs manager or designee issues a letter of authorization, a written denial, or a request for additional information within five working days of receipt of all required documentation for AT.

(4j) **Approval of vehicle adaptations.** Vehicle adaptations are assessed and approved ~~in accordance with the requirements of this Section per OAC 317:40-5-100.~~ In addition, the requirements in this paragraph must be met.

(~~A~~ 1) The vehicle to be adapted must be owned or ~~leased in the process of being purchased by the person member receiving services or his or her family.~~

(~~B~~ 2) The AT request must include a certified mechanic's statement that the vehicle and adaptations is are mechanically sound.

(~~C~~ 3) ~~AT services~~ Vehicle adaptations are used to adapt limited to one vehicle in a ten year period per eligible individual member. Any additional adaptation request within Authorization for more than one vehicle adaptation in a 5-year 10-year period must be approved by the DDS Division Administrator division administrator or designee.

(~~5~~ k) **Denial.** Procedures for denial of ~~acquisition of equipment or service(s) an AT device or service~~ are described in this paragraph.

(~~A~~ 1) The person denying the AT request provides a written denial to the case manager explaining the rationale citing the reason for denial and suggesting alternatives per policy.

(~~B~~ 2) The case manager ~~provides a verbal explanation and sends the Notice of Action, DHS form DDS 4 OKDHS form 06MP004E,~~ to the individual member and his or her family or guardian.

(~~C~~ 3) Denial of assistive technology services may be appealed through the ~~DHS OKDHS hearing process described in per OAC 340:2-5.~~

(~~6~~ l) **Return of an AT device or equipment.** If, during a trial use period or rental of a device, the therapist or Team including the licensed professional if available, who recommended the AT, decides determines the device is not appropriate, the ~~prescribing licensed professional~~ sends a brief report describing the reason(s) for the change of equipment device recommendation to the DDS case manager. The case manager forwards the report to the designated ~~Area Office area office resource development staff,~~ who arranges for the return of the equipment to the vendor or manufacturer.

(~~f~~ m) **Rental of AT devices.** Assistive ~~technology AT~~ devices are rented when the ~~DDS area manager or designee licensed professional or area office resource development staff with AT experience~~ determines that the cost of rental is less than the purchase price rental of the device is more cost effective than purchase of the device or the licensed professional recommends a trial period to determine if the device meets the needs of the member.

(1) The rental period begins on the date the manufacturer or vendor delivers the equipment to the ~~person receiving service member,~~ unless otherwise stated in advance by the manufacturer or vendor.

(2) ~~Designated DDS Area Office office resource development staff with AT experience~~ monitor use of equipment during the rental agreement for:

- (A) cost effectiveness of the rental time frames;
- (B) conditions of renewal; and

(C) the Team's re-evaluation of the person's member's need for the device as described in subparagraph (d)(4)(B) of this Section per OAC 317:40-5-100.

(3) Rental costs are applied toward the purchase price of the device whenever such option is available from the manufacturer or vendor.

(4) If ~~equipment~~ a device is rented for a trial use period, the Team decides within 90 days whether:

(A) the equipment meets the ~~individual's~~ member's needs; and

(B) to purchase the equipment or return it.

~~(g)~~ **Assistive Technology Committee.** The ~~state-wide assistive technology (AT) committee~~ reviews equipment requests; ~~when asked to do so by DDS staff deemed necessary by the OKDHS/DDS state office assistive technology programs manager.~~

(1) The AT committee is comprised of:

(A) DDS professional staff members of the appropriate therapy;

(B) DDS AT state office programs manager;

(C) the DDS area manager or designee; and

(D) an AT expert not employed by ~~DHS~~ OKDHS.

(2) The AT committee performs a paper review, providing technical guidance, oversight, and consultation.

(3) The AT committee may endorse or recommend denial of a device or service, based on criteria given in this Section. Any endorsement or denial includes a written rationale for the decision and, if necessary, an alternative solution(s), directed to the ~~DDS Division Administrator or designee case manager~~ within 20 working days of receipt of the request. Requests reviewed by the AT committee result in suspension of time frames specified in OAC 317:40-5-100.

~~(4) A referral to the AT committee:~~

~~(A) is decided within 10 working days; and~~

~~(B) suspends the time frames given in paragraphs (e)(2) and (e)(3) of this Section.~~

~~(h) **Voluntarily donated equipment.** Equipment acquired in accordance with this Section is the sole property of the person receiving services.~~

~~(1) If the person for whom the equipment was purchased no longer needs the equipment and decides to donate it to another individual, DDS assists only:~~

~~(A) to identify a recipient; and~~

~~(B) to transfer the equipment from the donor to the recipient.~~

~~(2) The voluntarily donated equipment program is designed to match a donated piece of assistive technology with a person who can utilize and benefit from the equipment, according to the criteria given in subsection (d) of this Section.~~

~~(3) DDS maintains a written record of equipment that is available for donation.~~

**317:40-7-6. Center-Based Services**

(a) Center-Based Services are provided in segregated settings, where the majority of people served have a disability. Any employment service provided where a majority of the people at the site are persons with a disability is billed as Center-Based Services.

(b) Center-Based Services are pre-planned, documented activities that relate to the ~~service recipient's~~ member's identified employment outcomes.

(c) Examples of Center-Based Services are active participation in:

(1) paid contract work which occurs in a workshop or other center-based setting.

(2) Team-prescribed therapy programs such as speech, physical therapy, or switch activation which are implemented by employment provider staff in the workshop or other center-based setting.

(3) unpaid training or paid work experience which occurs in a setting without opportunities for regular daily interactions with co-workers without disabilities or the general public.

(4) computer classes, GED preparation, job club, interviewing skills, or other classes whose participants all have disabilities, even if the location is in the community.

(d) Paid contract work is usually subcontracted, and the persons receiving services earn commensurate wage according to Department of Labor regulations.

(e) For Medicaid SoonerCare reimbursement in Center-Based Services, a ~~service recipient's~~ member's pay cannot exceed 50% of minimum wage.

(f) Participation in Center-Based Services is limited to 15 hours per week for persons receiving services through the Homeward Bound Waiver, unless approved through the exception process explained in OAC 317:40-7-21.

(g) Agency must meet physical plant expectations of OAC 340:100-17-13.

(h) During periods in which no paid work is available for members, despite the documented good faith efforts of the provider to secure such work, the employment provider agency ensures that each member participates in training activities that are age appropriate, work related, and consistent with the IP. Such activities may include, but are not limited to:

(1) resume development and application writing;

(2) work attire selection;

(3) job interview training and practice;

(4) job safety and evacuation training;

(5) personal or social skills training; and

(6) stamina and wellness classes.

**317:40-7-8. Employment training specialist services**

Employment training specialist (ETS) services include evaluation, training, and supportive assistance that allow the member to obtain and engage in remunerative employment. ETS services are:

(1) provided by a certified job coach;

(2) not available when subcontracting;

(3) used to help a member with a new job in a generic employment setting.

**SUBCHAPTER 7. EMPLOYMENT SERVICES THROUGH HOME AND COMMUNITY-BASED SERVICES WAIVERS**

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- (A) ETS services are:
  - (i) not available if the member held the same job for the same employer in the past;
  - (ii) available when the member requires 100% on-site intervention for up to the number of hours the member works per week for six weeks per Plan of Care year; and
  - (iii) used in training members employed in individual placements on new jobs when the:
    - (I) member receives at least minimum wage; and
    - (II) employer is not the employment services provider.
- (B) If the member does not use all of the training units on the first job placement in the Plan of Care year, the balance of training units may be used on a subsequent job placement with the current provider, or with a new provider;
- (4) used in assessment and outcome development for members residing in the community who are new to the provider agency, when determined necessary by the Personal Support Team (Team). The provider:
  - (A) may claim a documented maximum of 20 hours per member for initial assessment. The projected units for the assessment and outcome development must:
    - (i) be approved in advance by the Team; and
    - (ii) relate to the member's desired outcomes; and
  - (B) cannot claim the same period of time for more than one type of service;
- (5) used in Team meetings, when the case manager has requested participation of direct service employment staff in accordance with OAC 340:100-5-52, up to 20 hours per Plan of Care year;
- (6) used in job development for a member on an individual job site upon the member's completion of three consecutive months on the job.
  - (A) Up to 40 hours may be used during a Plan of Care year after documentation of job development activities is submitted to the case manager.
  - (B) The job must:
    - (i) pay at least minimum wage;
    - (ii) employ each member at least 15 hours per week; and
    - (iii) be provided by an employer who is not the member's contract provider;
- (7) used in development of a Plan for Achieving Self-Support (PASS) up to 40 hours per Plan of Care year after documentation of PASS development, if not developed by ~~an Oklahoma Benefit Specialist a Community Work Incentives Coordinator~~ or the Department of Rehabilitation Services, and implementation of an approved PASS after documentation has been submitted to the case manager;
- (8) used in development of an Impairment Related Work Expense (IRWE) up to 20 hours per Plan of Care

year after documentation of IRWE development, if not developed by ~~an Oklahoma Benefit Specialist a Community Work Incentives Coordinator~~ or Oklahoma Department of Rehabilitation, and implementation of an approved IRWE after documentation is submitted to the case manager; and

(9) used in interviewing for a job that is eligible for ETS services.

(10) If the member needs job coach services after expiration of Stabilization Services, Employment Training Specialist Services may be authorized for the hours necessary to provide direct support to the member or consultation to the employer as described in outcomes and methods in the Individual Plan. The plan should include the process for fading as the member's independence increases and progress documented on OKDHS form 06WP066E.

### 317:40-7-11. Stabilization Services

Stabilization Services are ongoing support services needed to maintain ~~one or two service recipients a member~~ in an integrated competitive employment site. Stabilization Services are provided for up to two years per job. Stabilization Services continue until the next Plan of Care following the end of two years of Stabilization Services. ~~If the service recipient needs job coach services after the expiration of Stabilization Services, Job Coach Services may be authorized for the hours necessary to provide direct support to the service recipient or consultation to the employer as described in outcomes and methods in the Individual Plan.~~

(1) Stabilization Services are provided when the job coach intervention time required at the job site is 20% or less of the ~~service recipient's~~ member's total work hours for four consecutive weeks or when the ~~service recipient~~ member moved from Department of Rehabilitation Services (DRS) services.

(A) If, after the ~~service recipient~~ member moves to Stabilization, the Team determines that support is needed above 20% for longer than two weeks, the Team may revise the ~~service recipient's~~ member's Plan of Care to reflect the need for Job Coaching Services.

(B) A ~~person~~ member receiving services from DRS moves to services funded by DDS upon completion of the Job Stabilization milestone. The employment provider agency submits the request for transfer of funding during the Job Stabilization milestone as described in the DRS Supported Employment contract.

(2) Stabilization Services must:

(A) identify the supports needed, including development of natural supports;

(B) specify, in a measurable manner, the services to be provided.

(3) Reimbursement for Stabilization Services is based upon the number of hours the ~~service recipient~~ member is employed at a rate of minimum wage or above.

(4) If the member needs job coach services after the expiration of Stabilization Services, Employment Training

Specialist Services may be authorized for the hours necessary to provide direct support to the member or consultation to the employer as described in outcomes and methods in the Individual Plan.

**317:40-7-13. Supplemental Supports for Center-Based Services**

(a) In those instances when a ~~service—recipient member~~ receiving Center-Based Services needs additional supports, the provider assigns staff in patterns that most effectively meet the needs of each ~~service—recipient member~~ as indicated by a personal care and/or a risk assessment and defined in the Individual Plan (IP) or Protective Intervention Plan.

(b) If re-arranging staff patterns is not sufficient to meet the ~~service—recipient's member's~~ needs, the provider may file a request and plan for Supplemental Supports utilizing Vocational Habilitation Training Specialist Services. Supplemental Supports can be claimed only if provided by a staff member who has completed all specialized training and individual-specific training prescribed by the Team in accordance with OAC 340:100-3-38.

(c) Supplemental Supports for Center-Based Services include two types of services, behavioral continuous support, and personal care intermittent support.

(1) **Continuous Supplemental Supports.** Continuous Supplemental Supports cannot exceed 15 hours per week for persons receiving services through the Homebound waiver unless specifically approved through the exception process described in OAC 317:40-7-21.

(A) To be eligible for continuous supplemental supports, the ~~service—recipient member~~ must have:

- (i) a protective intervention plan that:
  - (I) contains a restrictive or intrusive procedure as defined in OAC 340:100-1-2 implemented in the employment setting;
  - (II) has been submitted to the Human Rights Committee (HRC) ~~in accordance with~~ per OAC 340:100-3-6; and
  - (III) has been approved by the State Behavior Review Committee (SBRC) ~~in accordance with~~ per OAC 340:100-3-14 or by the Developmental Disabilities Services Division (DDSD) staff ~~in accordance with subsection (d) of~~ per OAC 340:100-5-57; or

(ii) procedures included in the protective intervention plan which address dangerous behavior that places the ~~service—recipient member~~ or others at risk of serious physical harm. The Team submits documentation of this risk and the procedures to the DDSD positive support field specialist to assure that positive approaches are being used to manage dangerous behavior.

(B) The Team documents discussion of the need for continuous Supplemental Supports.

(2) **Intermittent Supplemental Supports.** To receive personal care intermittent support, a ~~service—recipient~~

~~member~~ must have a personal care need ~~which that~~ requires staffing of at least one-to-one during that time frame when the support is needed.

(A) If a ~~service—recipient member~~ needs intermittent personal care support during Center-Based Services, the Team documents discussion of:

- (i) the specific support need(s) of the ~~service—recipient member~~, such as staff-assisted repositioning, lifting, transferring, individualized bathroom assistance, or nutritional support; and
- (ii) ~~the number of staff necessary to provide the support; and~~
- (~~iii~~ ii) the calculations ~~which that~~ combine the time increments of support to determine the total number of units needed on the Plan of Care.

(B) The case manager sends the documentation to the case management supervisor for approval.

(C) The case management supervisor signs and forwards a copy of the approval, denial, or recommended modifications to the case manager within two working days of receipt.

(D) A ~~service—recipient member~~ may receive Center-Based Services and Intermittent Supplemental Supports at the same time.

(d) Supplemental Support for Center-Based Services described in this Section cannot be accessed in Community-Based Services.

(e) Sufficient staff must be available in the center-based facility to provide the supplemental support in order for a provider to claim the units.

*[OAR Docket #09-923; filed 5-14-09]*

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

*[OAR Docket #09-910]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions  
317:45-1-1. through 317:45-1-3. [AMENDED]
  - Subchapter 7. ~~Insure Oklahoma/O-EPIC PAESI~~ Employer Eligibility  
317:45-7-1. [AMENDED]
  - Subchapter 11. ~~Insure Oklahoma/O-EPIC IP~~  
Part 5. ~~Insure Oklahoma/O-EPIC Individual Plan~~ IP Member Eligibility  
317:45-11-25. [AMENDED]
- (Reference APA WF # 08-55)**

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1009.2, Section 1010.1, and Section 1011.10 of Title 56 of Oklahoma Statutes

**DATES:**

**Comment period:**

January 15, 2009 through February 14, 2009

# Permanent Final Adoptions

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## Effective:

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Subchapter 1. General Provisions

317:45-1-1. through 317:45-1-3. [AMENDED]

Subchapter 7. Insure Oklahoma/O-EPIC ~~PAESI~~ Employer Eligibility

317:45-7-1. [AMENDED]

Subchapter 11. Insure Oklahoma/O-EPIC IP

Part 5. Insure Oklahoma/O-EPIC ~~Individual Plan~~ IP Member Eligibility

317:45-11-25. [AMENDED]

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### INCORPORATIONS BY REFERENCE:

N/A

### ANALYSIS:

Rules are revised to expand the Insure Oklahoma/O-EPIC ESI and IP programs from an employee size of 50 or fewer employees to 250 or fewer employees. In addition, Oklahoma full-time college students from 19 through 22 years of age whose household income is under 200% FPL will be able to participate in either the ESI or IP program. Currently, college students are only eligible under ESI or IP if they are working for a business with 50 or fewer employees and have household income under 200% FPL. These revisions comply with Sections 1009.2, 1010.1, and 1011.10 of Title 56 of Oklahoma Statutes. This expansion to the Insure Oklahoma/O-EPIC program will help increase access to health care for Oklahomans, thereby reducing the amount of uncompensated care provided by health care providers.

### CONTACT PERSON:

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 317:45-1-1. Purpose and general program provisions

The purpose of this Chapter is to provide rules, in compliance with all applicable federal and state regulations, for the Insure Oklahoma/Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) program that establishes access to affordable health coverage for low-income working adults, ~~and~~ their spouses, and qualified college

students. The Oklahoma Health Care Authority (OHCA) contracts with a Third Party Administrator (TPA) for administration of the Program program.

### 317:45-1-2. Program limitations

(a) The Insure Oklahoma/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~~1) All monies accruing to the credit of the fund are budgeted and expended by the OHCA to implement the Program program.

(~~e~~2) The Program program is funded through a portion of monthly proceeds from the Tobacco Tax, O.S.S. §68-302-5 et seq., collected and dispersed through the HEEIA revolving fund, pursuant to Title 68, Section 302-5 (B.1. and D.1.) and Section 402-3 (B.1 and C.1.) of the Oklahoma Statutes.

(~~d~~3) The Program program is limited in scope such that available funding is not exceeded. Available funding includes the estimated annual deposits from tax collections, accrued interest, federal matching funds and any other revenue source deposited in the HEEIA Revolving Fund for the purpose of this program. If at any time it becomes apparent there is risk the available funding may be exceeded, OHCA must take action to ensure the Insure Oklahoma/O-EPIC program continues to operate within its fiscal capacity.

(~~+~~A) Insure Oklahoma/O-EPIC may limit eligibility based on:

(A*i*) the federally-approved capacity of the Insure Oklahoma/O-EPIC services for the Health Insurance Flexibility and Accountability (HIFA) Waiver/1115 Waiver; and

(~~B~~ii) Tobacco Tax collections.

(~~2~~B) The Insure Oklahoma/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.

(A*i*) Applicants, not previously enrolled and participating in the program, submitting new applications for the Insure Oklahoma/O-EPIC program are placed on a waiting list. These applications are date and time stamped when received by the TPA. Applications, with the exception of college students, are identified by region and Insure Oklahoma/O-EPIC program. Regions are established based on population density statistics as determined through local and national data and may be periodically adjusted to assure statewide availability. Insure Oklahoma/O-EPIC program size is determined by OHCA and may be periodically adjusted.

(B ii) The waiting list utilizes a "first in - first out" method of selecting eligible applicants by region and ~~O-EPIC~~ program.

(C iii) When an applicant is determined eligible and moves from the waiting list to active participation, the applicant must submit a new application.

(D iv) Enrolled applicants who are currently participating in the ~~O-EPIC~~ program are not subject to the waiting list.

(E v) For approved employers of ~~O-EPIC~~, 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.

(F vi) For approved employers of ~~O-EPIC~~, 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.

(b) College students' eligibility and participation in the Insure Oklahoma/O-EPIC program is contingent upon sufficient funding from the Oklahoma legislature. This funding is separate from the funding described in subsection (a) of this Section.

**317:45-1-3. Definitions**

The following words or terms, when used in this Chapter, will have the following meanings unless the context clearly indicates otherwise:

"Carrier" means:

(A) an insurance company, group health service or Health Maintenance Organization (HMO) that provides health benefits pursuant to Title 36 O.S., Section 6512 insurance service, insurance organization, or group health service, which is licensed to engage in the business of insurance in the State of Oklahoma and is subject to State law which regulates insurance, or Health Maintenance Organization (HMO) which provides or arranges for the delivery of basic health care services to enrollees on a prepaid basis, except for copayments or deductibles for which the enrollee is responsible, or both and is subject to State law which regulates Health Maintenance Organizations (HMOs);

(B) A a Multiple Employer Welfare Arrangement (MEWA) licensed by the Oklahoma Insurance Department; or

(C) A a domestic MEWA exempt from licensing pursuant to Title 36 O.S., Section 634(B) that otherwise meets or exceeds all of the licensing and financial requirements of MEWAs as set out in Article 6A of Title 36; or

(D) any entity organized pursuant to the Interlocal Cooperation Act, Section 1001 et seq. of Title 74 of the Oklahoma Statutes as authorized by Title 36 Section 607.1 of the Oklahoma Statutes and which is eligible to qualify for and hold a certificate of authority

to transact insurance in this State and annually submits on or before March 1st a financial statement to the Oklahoma Insurance Department in a form acceptable to the Insurance Commissioner covering the period ending December 31st of the immediately preceding fiscal year.

"Child Care Center" means a facility licensed by OKDHS which provides care and supervision of children and meets all the requirements in OAC 340:110-3-1 through OAC 340:110-3-33.3.

"College Student" means an Oklahoma resident between the age of 19 through 22 that is a full-time student at an Oklahoma accredited University or College.

"Dependent" means the spouse of the approved applicant and/or child under 19 years of age or his or her child 19 years through 22 years of age who is attending an Oklahoma qualified institution of higher education and relying upon the insured employee or member for financial support.

"Eligibility period" means the period of eligibility extending from an approval date to an end date.

"Employer Sponsored Insurance" means the program that provides premium assistance to qualified businesses for approved applicants.

"EOB" means an Explanation of Benefits.

"Explanation of Benefit" means a statement issued by a Carrier carrier that indicates services rendered and financial responsibilities for the Carrier carrier and Insure Oklahoma/O-EPIC PA member.

"Full-time Employment" means a normal work week of 24 or more hours.

"Full-time Employer" means the employer who employs an employee for 24 hours or more per week to perform work in exchange for wages or salary.

"Individual Plan" means the ~~O-EPIC~~ program that provides services to those individuals who do not meet the criteria for ~~O-EPIC~~ PA safety net program for those qualified individuals who do not have access to Insure Oklahoma/O-EPIC ESI.

"O-EPIC" means the Oklahoma Employer and Employee Partnership for Insurance Coverage program.

"Insure Oklahoma/O-EPIC" means a health plan purchasing strategy in which the State uses public funds to pay for a portion of the costs of health plan coverage for eligible populations.

"Insure Oklahoma/O-EPIC IP" means the Individual Plan program.

"Insure Oklahoma/O-EPIC PAESI" means the ~~Premium Assistance~~ Employer Sponsored Insurance program.

"Member" means an individual enrolled in the Insure Oklahoma/O-EPIC ESI or IP program.

"OESC" means the Oklahoma Employment Security Commission.

"OHCA" means the Oklahoma Health Care Authority.

"OKDHS" means the Oklahoma Department of Human Services.

"Oklahoma Employer and Employee Partnership for Insurance Coverage" means a health plan purchasing strategy in which a state uses public funds to pay for a portion of the costs of health plan coverage for eligible populations.

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"PCP" means Primary Care Provider.

"PEO" or "Professional Employer Organization" means any person engaged in the business of providing professional employer services. A person engaged in the business of providing professional employer services shall be subject to registration under the Oklahoma Professional Employer Organization Recognition and Registration Act as provided in Title 40, Chapter 16 of Oklahoma Statutes, Section 600.1 et seq.

~~"Premium Assistance" means the O-EPIC program that provides premium assistance to small business for certain employees.~~

"Primary Care Provider" means a provider under contract to the Oklahoma Health Care Authority to provide primary care services, including all medically-necessary referrals.

~~"Primary Employer" means the employer who employs an employee for 24 hours or more per week to perform work in exchange for wages or salary.~~

"Premium" means a monthly payment to a ~~Carrier~~ carrier for health plan coverage.

"QHP" means Qualified Health Plan.

"Qualified Health Plan" means a health plan that has been approved by the OHCA for participation in the Insure Oklahoma/O-EPIC program.

"Qualifying Event" means the occurrence of an event that permits individuals to join a group health plan outside of the "open enrollment period" and/or that allows individuals to modify the coverage they have had in effect. Qualifying Events events are defined by the employer's health plan and meet federal requirements under Public Law 104-191 (HIPAA), and 42 U.S.C. 300bb-3.

"State" means the State of Oklahoma, acting by and through the Oklahoma Health Care Authority or its designee.

"TPA" means the Third Party Administrator.

"Third Party Administrator" means the entity contracted by the State to provide the administration of the Insure Oklahoma/Oklahoma Employer and Employee Partnership for Insurance Coverage program.

## SUBCHAPTER 7. INSURE OKLAHOMA/O-EPIC PA ESI EMPLOYER ELIGIBILITY

### 317:45-7-1. Employer application and eligibility requirements for Insure Oklahoma/O-EPIC ESI

(a) In order for an employer to be eligible to participate in the Insure Oklahoma/O-EPIC program the employer must:

- (1) have no more than a total of ~~50~~ 250 employees on its payroll. The increase in the number of employees from 50 to 250 will be phased in over a period of time as determined by the Oklahoma Health Care Authority. 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. Employers may provide additional documentation confirming terminated ~~or part-time~~

employees that will be excluded from the OESC employee count. If the employer is exempt from filing an OES-3 form or is contracted with a PEO or is a Child Care Center, 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 at the contracting stage to offer, ~~within 90 calendar days an O-EPIC Qualified Health Plan a QHP.~~ The Qualified Health Plan QHP coverage must begin on the first day of the month and continue through the last day of the month;

(4) offer ~~Qualified Health Plan QHP~~ coverage to employees ~~in accordance with Oklahoma Small Business Statutes, Oklahoma Department of Insurance, and all other regulatory agencies; and~~

(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 Insure Oklahoma/O-EPIC employee's termination or resignation.

## SUBCHAPTER 11. INSURE OKLAHOMA/O-EPIC IP

### PART 5. INSURE OKLAHOMA/O-EPIC INDIVIDUAL PLAN IP MEMBER ELIGIBILITY

#### 317:45-11-25. Premium payment

(a) ~~O-EPIC IP premiums are based upon a percentage of the Federal Poverty Level (FPL) income guidelines. The FPL income guidelines are determined annually by the Federal Government.~~

(b) Monthly premiums in the IP program vary based on:

- (1) ~~income reported on the member's application; and~~
- (2) ~~a family size of one for single coverage or a family size of two for dual coverage.~~

IP health plan premiums are established by the OHCA. Employees and college students are responsible for up to 20 percent of their IP health plan premium. The employees are also responsible for up to 20 percent of their spouse's IP health plan premium if the dependent is included in the program. The combined portion of the employee's or college student's cost sharing for IP health plan premiums cannot exceed four percent of his/her gross annual household income computed monthly.

[OAR Docket #09-910; filed 5-14-09]

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

[OAR Docket #09-909]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions  
317:45-1-4. [AMENDED]
- Subchapter 3. ~~Insure Oklahoma/O-EPIC PA~~ Carriers  
317:45-3-1. through 317:45-3-2. [AMENDED]
- Subchapter 5. ~~Insure Oklahoma/O-EPIC PA~~ Qualified Health Plans  
317:45-5-1. through 317:45-5-2. [AMENDED]
- Subchapter 7. ~~Insure Oklahoma/O-EPIC PA~~ESI Employer Eligibility  
317:45-7-2. through 317:45-7-3. [AMENDED]  
317:45-7-5. [AMENDED]  
317:45-7-8. [AMENDED]
- Subchapter 9. ~~Insure Oklahoma/O-EPIC PA~~ESI Employee Eligibility  
317:45-9-1. through 317:45-9-4. [AMENDED]  
317:45-9-6. through 317:45-9-7. [AMENDED]
- Subchapter 11. ~~Insure Oklahoma/O-EPIC IP~~  
Part 1. Individual Plan Providers  
317:45-11-1. through 317:45-11-2. [AMENDED]  
Part 5. ~~Insure Oklahoma/O-EPIC Individual Plan IP~~ Member Eligibility  
317:45-11-20. through 317:45-11-24. [AMENDED]  
317:45-11-26. through 317:45-11-27. [AMENDED]

(Reference APA WF # 08-56)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1009.2, Section 1010.1, and Section 1011.10 of Title 56 of Oklahoma Statutes

**DATES:**

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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 7, 2009

**Final adoption:**

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N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Rules are revised to update the premium assistance program name from O-EPIC to Insure Oklahoma/O-EPIC. Several current business processes within the Insure Oklahoma/O-EPIC program are also updated. The premium assistance program's name changed to Insure Oklahoma/O-EPIC to coincide with an extensive statewide marketing campaign.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

**SUBCHAPTER 1. GENERAL PROVISIONS**

**317:45-1-4. Reimbursement for out-of-pocket medical expenses**

(a) ~~O-EPIC members~~ Members are responsible for all out-of-pocket expenses. Out-of-pocket expenses for services covered by the health plan, as defined by the health plan's benefit summary and policies, that exceed ~~5%~~ five percent of the employee's gross annual household income during the current eligibility period may be reimbursable.

(b) The ~~O-EPIC~~ member must submit a reimbursement claim form with appropriate documentation to the TPA. Information may be submitted at any time but no later than 90 days after the close of their eligibility period to be considered for reimbursement. Appropriate supporting documentation includes an original EOB or paid receipt if no EOB is issued. Both EOB and paid receipts must include required information listed in OAC 317:45-5-1(c)(1)-(6). Reimbursement for out-of-pocket medical expenses is made for the amount indicated as the member's responsibility on the EOB or receipt reflecting the amount paid for medical expenses. Appropriate supporting documentation for prescribed prescriptions must be an original receipt and include information about the pharmacy at which the drug was purchased, the name of the drug dispensed, the quantity dispensed, the prescription number, the name of the person the drug is for, the date the drug was dispensed and the total amount paid.

(c) Reimbursement for qualified medical expenses is subject to a fixed cap amount. The fixed cap for reimbursement is established annually and is calculated using local and national data concerning individual out-of-pocket health care expenses. The objective of the fixed cap is to set the amount high enough such that, in the great majority of households, all of the costs above the ~~5%~~ five percent threshold would be absorbed.

**SUBCHAPTER 3. INSURE OKLAHOMA/O-EPIC PA 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 QHP~~.

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## 317:45-3-2. Audits

Carriers are subject to audits related to health plan qualifications. These audits may be conducted periodically to determine if ~~Qualified Health Plans QHPs~~ continue to meet all requirements as defined in OAC 317:45-5-1.

## SUBCHAPTER 5. INSURE OKLAHOMA/O-EPIC PA QUALIFIED HEALTH PLANS

### 317:45-5-1. Qualified Health Plan requirements

(a) ~~Participating Qualified Health Plans participating in O-EPIC QHPs~~ must offer, at a minimum, benefits that include:

- (1) hospital services;
- (2) physician services;
- (3) clinical laboratory and radiology;
- (4) pharmacy; and
- (5) office visits.

(b) The health plan, if required, must be approved by the ~~Oklahoma Department of Insurance Oklahoma Insurance Department~~ for participation in the Oklahoma market. All health plans must share in the cost of covered services and pharmacy products in addition to any negotiated discounts with network providers, pharmacies, or pharmaceutical manufacturers. If the health plan requires co-payments or deductibles, the co-payments or deductibles cannot exceed the limits described in this subsection.

(1) An annual out-of-pocket maximum cannot exceed ~~\$3,000 per individual an amount that is established by OHCA. This amount includes any individual non-pharmacy, annual deductible amount for in-network services, except for pharmacy.~~

(2) Office visits cannot require a co-payment exceeding \$50 per visit.

(3) Annual in-network pharmacy deductibles cannot exceed \$500 per individual.

(c) ~~Qualified Health Plans QHPs~~ may provide an ~~Explanation of Benefits (EOB)~~ for paid or denied claims subject to member co-insurance or member deductible calculations. If an EOB is provided it must contain, at a minimum, the:

- (1) provider's name;
- (2) patient's name;
- (3) date(s) of service;
- (4) code(s) and/or description(s) indicating the service(s) rendered, the amount(s) paid or the denied status of the claim(s);
- (5) reason code(s) and description(s) for any denied service(s); and
- (6) amount due and/or paid from the patient or responsible party.

### 317:45-5-2. Closure criteria for health plans

Eligibility for the ~~Carrier's carrier's~~ health plans ends when:

- (1) changes are made to the design or benefits of the ~~Qualified Health Plan QHP~~ such that it no longer meets ~~O-EPIC~~ requirements for ~~Qualified Health Plans QHPs~~.

Carriers are required to report to OHCA any changes in health plans potentially affecting its qualification for participation in the ~~O-EPIC~~ program not less than 90 days prior to the effective date of such change(s).

(2) the ~~Carrier carrier~~ no longer meets the definition set forth in OAC 317:45-1-3.

(3) the health plan is no longer an available product in the Oklahoma market.

(4) the health plan fails to meet or comply with all requirements for a ~~Qualified Health Plan QHP~~ as defined OAC 317:45-5-1.

## SUBCHAPTER 7. INSURE OKLAHOMA/O-EPIC PA ESI EMPLOYER ELIGIBILITY

### 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 Insure Oklahoma/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. The eligibility period will renew automatically unless the employer's eligibility has been closed (refer to OAC 317:45-7-8). The TPA notifies the employer of the eligibility decision for employer and employees.

### 317:45-7-3. Employer cost sharing

Employers are responsible for a portion of the eligible employee's monthly health plan premium as defined in OAC 317:45-7-1. Employers are not required to contribute to an eligible ~~spouse's dependent's~~ coverage.

### 317:45-7-5. Reimbursement

In order to receive a premium subsidy, the employer must submit the current health plan invoice or other approved documentation to the TPA ~~via fax or mail~~.

### 317:45-7-8. Closure

Eligibility provided under the Insure Oklahoma/O-EPIC ESI program ~~ends~~ may end during the eligibility period when:

(1) ~~the employer terminates its contract with all Qualified Health Plans the employer no longer meets the eligibility requirements in OAC 317:45-7-1;~~

(2) the employer fails to pay premiums to the ~~Carrier carrier~~;

(3) the employer fails to provide an invoice verifying the monthly health plan premium has been paid; or

(4) an audit indicates a discrepancy that makes the employer ineligible;

(5) ~~the employer no longer has a business location in Oklahoma; or~~

(6) ~~the Qualified Health Plan or Carrier no longer qualifies for Insure Oklahoma/O-EPIC.~~

**SUBCHAPTER 9. INSURE OKLAHOMA/O-EPIC  
PA ESI EMPLOYEE ELIGIBILITY**

**317:45-9-1. Employee eligibility requirements**

- (a) Employee ~~premium—assistance~~ applications are ~~made with~~ submitted to the TPA.
- (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 in their Employer's QHP. ~~Employees eligible for O-EPIC~~ Eligible employees must:
- (1) have a countable household income at or below 200% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is \$240 per each full-time or part-time employed member;
  - (2) be a US citizen or alien as described in OAC 317:35-5-25;
  - (3) be Oklahoma residents;
  - (4) provide ~~his/her~~ social security number for all household members;
  - (5) ~~not be currently enrolled in, or have an open application for, receiving benefits from~~ SoonerCare/Medicare;
  - (6) be employed with a qualified employer at a business location in Oklahoma;
  - (7) be age 19 through age 64 or an emancipated minor;
  - (8) be eligible for enrollment in the employer's Qualified Health Plan QHP;
  - (9) ~~be working for primary employer(s) not have full-time employment with any employer who all meet does not meet~~ the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and
  - (10) select one of the Qualified Health Plans QHPs the employer is offering.
- (d) An employee's ~~spouse—~~ dependents are eligible ~~for O-EPIC if when:~~
- (1) the employer's health plan includes coverage for spouses dependents;
  - (2) the employee is eligible ~~for O-EPIC~~;
  - (3) if employed, the ~~spouse's primary spouse may not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); employer(s) meets employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and~~
  - (4) the ~~spouse—~~ dependents are enrolled in the same health plan as the employee.
- (e) If an employee or ~~spouse—~~ their dependents are eligible for multiple ~~O-EPIC Qualified Health Plans QHPs~~, each may receive a subsidy under only one health plan.

**317:45-9-2. Employee eligibility period**

- (a) Employee eligibility is contingent upon the employer's program eligibility.
- (b) The employee's eligibility is determined by the TPA using the eligibility requirements listed in OAC 317:45-9-1.
- (c) If the employee is determined eligible ~~for O-EPIC~~, he/she is approved for a period not greater than 12 months. The length of the eligibility period is based on the remaining number of months the employer has left in its eligibility period.
- (d) The employee's eligibility period begins on the first day of the month following the date of approval.

**317:45-9-3. Qualifying Event**

- (a) Employees are allowed to apply ~~for O-EPIC~~ following a Qualifying Event.
- (b) An employee's ~~spouse dependents~~ may become eligible for coverage and ~~is are~~ allowed to apply ~~for O-EPIC~~ following a Qualifying Event ~~of the employee or spouse.~~

**317:45-9-4. Employee cost sharing**

Employees are responsible for up to 15% percent of their health plan premium. The employees are also responsible for up to 15% of their ~~spouse's dependent's~~ health plan premium if the ~~spouse dependent~~ is included in the program. The combined portion of the employee's cost sharing for health plan premiums cannot exceed three percent of his/her gross annual household income computed monthly.

**317:45-9-6. Audits**

Individuals participating in the Insure Oklahoma/O-EPIC program are subject to audits related to their eligibility, subsidy payments, and out-of-pocket reimbursements. Eligibility may be reversed at any time if inconsistencies are found. Any monies paid in error will be subject to recoupment.

**317:45-9-7. Closure**

- (a) Employer and employee eligibility are tied together. If the employer ~~no longer meets the requirements for O-EPIC is no longer eligible~~, then ~~eligibility for~~ the associated employees enrolled under that employer are also ineligible. Employees are mailed a ~~written~~ notice 10 days prior to closure of eligibility.
- (b) The employee's certification period may be terminated when:
- (1) termination of employment, either voluntary or involuntary, occurs;
  - (2) the employee moves out-of-state;
  - (3) the covered employee dies;
  - (4) the employer ends its contract with the Qualified Health Plan QHP;
  - (5) the employer's eligibility ends;
  - (6) an audit indicates a discrepancy that makes the employee or employer ineligible;
  - (7) the employer is terminated from ~~O-EPIC~~ the program;
  - (8) the employer fails to pay the premium;

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- (9) the ~~Qualified Health Plan QHP~~ or ~~Carrier carrier~~ is no longer qualified;
- (10) the employee becomes eligible for Medicaid/Medicare;
- (11) the employee or employer reports to the OHCA or the TPA any change affecting eligibility;
- (12) the employee is no longer listed as a covered person on the employer's health plan invoice; or
- (13) the employee requests closure.

## SUBCHAPTER 11. INSURE OKLAHOMA/O-EPIC IP

### PART 1. INDIVIDUAL PLAN PROVIDERS

#### 317:45-11-1. Insure Oklahoma/O-EPIC Individual Plan providers

Insure Oklahoma/O-EPIC Individual Plan (IP) providers must comply with existing SoonerCare rules found at OAC 317:25 and OAC 317:30. In order to receive ~~SoonerCare~~ reimbursement, the IP provider:

- (1) must enter into a SoonerCare contract; and
- ~~(2) may collect the member's co-pay in addition to the SoonerCare reimbursement;~~
- ~~(3) may refuse to see members based on their inability to pay their co-pay; and~~
- (4) must complete Insure Oklahoma/O-EPIC IP addendum if provider wants to provide primary care services as a PCP.

#### 317:45-11-2. Insure Oklahoma/O-EPIC IP provider payments

Payment for covered benefits rendered to Insure Oklahoma/O-EPIC IP members, as shown in OAC 317:45-11-10 and not listed as a non-covered service in OAC 317:45-11-11, ~~rendered to O-EPIC IP members~~ is made to contracted Insure Oklahoma/O-EPIC IP healthcare providers for medical and surgical services within the scope of OHCA's medical programs, provided the services are medically necessary as defined in OAC 317:30-3-1(f).

- (1) Coverage of certain services requires prior authorization as shown in OAC 317:45-11-10 and may be based on a determination made by a medical consultant in individual circumstances;
- (2) The decision to charge a copayment for a missed visit is at the provider's discretion;
- (3) The provider may collect the member's co-pay in addition to the SoonerCare reimbursement for services provided; and
- (4) The provider may refuse to see members based on their inability to pay their co-pay.

### PART 5. INSURE OKLAHOMA/O-EPIC INDIVIDUAL PLAN IP MEMBER ELIGIBILITY

#### 317:45-11-20. Insure Oklahoma/O-EPIC Individual Plan IP eligibility requirements

(a) Employees not eligible for ~~participating to participate~~ in an employer's ~~Qualified Health Plan (QHP) QHP~~, employees of non-participating employers, self-employed, unemployed seeking work, and workers with a disability may apply for the ~~O-EPIC Individual Plan~~. Applicants cannot obtain ~~O-EPIC IP coverage~~ if they are eligible for ~~O-EPIC PA ESI~~.

~~(b) Applications may be found on the World Wide Web or may be requested by calling the O-EPIC helpline. Completed applications are submitted to the TPA.~~

~~(e) 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 complete application is received by the TPA. The applicant is notified in writing of the eligibility decision.~~

~~(e) In order to be eligible for the IP, the applicant must:~~

- (1) choose a valid PCP according to the guidelines listed in OAC 317:45-11-22, at the time they make application;
- (2) be a US citizen or alien as described in OAC 317:35-5-25;
- (3) be an Oklahoma resident;
- (4) provide his/her social security number numbers for all household members;
- (5) be not currently enrolled in, or have an open application for, SoonerCare/Medicare;
- (6) be age 19 through 64 or an emancipated minor; and
- (7) make premium payments by the due date on the invoice; and
- (8) not have full-time employment with any employer who does not meet the eligible employer guidelines listed in OAC 317:45-7-1(a)(1)-(2).

~~(e) If employed and working for an approved Insure Oklahoma/O-EPIC employer who offers a QHP, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and:~~

- (1) have household income at or below 200% of the Federal Poverty Level.
- (2) be ineligible for participation in their employer's QHP due to number of hours worked.
- (3) have received notification from Insure Oklahoma/O-EPIC indicating their employer has applied for Insure Oklahoma/O-EPIC and has been approved.

~~(e) If employed and working for an employer who doesn't offer a QHP, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and:—(1) have a countable household income at or below 200% of the Federal Poverty Level. The standard deduction for work related expenses such as income tax payments, Social Security taxes, and transportation to and from work, is \$240 per each full-time or part-time employed member; and (2) have received notification from O-EPIC indicating their employer has applied and has been approved with the attestation that they are not offering a QHP.~~

~~(g) If self-employed, the applicant must meet the requirements in subsection ~~(d) (c)~~ of this Section and:~~

- (1) must have household income at or below 200% of the Federal Poverty Level;

- (2) verify self-employment by providing the most recent federal tax return with all supporting schedules and copies of all 1099 forms; ~~and~~
- (3) verify current income by providing appropriate supporting documentation; ~~and~~
- (4) must not be employed by any full-time employer who meets the eligibility requirements in OAC 317:45-7-1(a)(1)-(2).

(~~h~~g) If unemployed seeking work, the applicant must meet the requirements in subsection (~~d~~)(c) of this Section and:

- (1) must have household income at or below 200% of the Federal Poverty Level; and
- (2) verify eligibility by providing a most recent copy of their monetary OESC determination letter and a most recent copy of at least one of the following:
  - (A) OESC eligibility letter,
  - (B) OESC weekly unemployment payment statement, or
  - (C) bank statement showing state treasurer deposit.

(~~h~~h) If working with a disability, the applicant must meet the requirements in subsection (~~d~~)(c) of this Section and:

- (1) must have household income at or below 200% of the Federal Poverty Level based on a family size of one; and
- (2) verify eligibility by providing a copy of their:
  - (A) ticket to work, or
  - (B) ticket to work offer letter.

**317:45-11-21. Spouse Dependent eligibility**

(a) If the spouse of an Insure Oklahoma/O-EPIC IP approved individual is eligible for Insure Oklahoma/O-EPIC PA ESI, they must apply for Insure Oklahoma/O-EPIC PA ESI. Spouses cannot obtain Insure Oklahoma/O-EPIC IP coverage if they are eligible for Insure Oklahoma/O-EPIC PA ESI.

(b) The employed or self-employed spouse of an approved applicant ~~approved according to the~~ must meet the guidelines listed in OAC 317:45-11-20(a) through (h) OAC 317:45-11-20(a) through (g) is to be eligible for Insure Oklahoma/O-EPIC IP.

(c) The spouse dependent of an applicant approved according to the guidelines listed in ~~OAC 317:45-11-20(i) OAC 317:45-11-20(h)~~ does not become automatically eligible for Insure Oklahoma/O-EPIC IP. ~~The spouse may choose to apply separately.~~

(d) The applicant and the spouses' dependents' eligibility are tied together. If the applicant no longer meets the requirements for Insure Oklahoma/O-EPIC IP, then the associated spouse dependent enrolled under that applicant is also ineligible.

**317:45-11-21.1. Certification of newborn child deemed eligible**

(a) A newborn child is deemed eligible on the date of birth for SoonerCare benefits when the child is born to a member of Insure Oklahoma/Oklahoma Employer and Employee Partnership for Insurance Coverage Individual Plan (O-EPIC IP) ~~and the household countable income does not exceed SoonerCare requirements.~~ (For purposes of this subparagraph,

a newborn child is defined as any child under the age of one year). The newborn child is deemed eligible through the last day of the month the child attains the age of one year.

(b) The newborn child's eligibility is not dependent on the mother's continued eligibility for Insure Oklahoma/O-EPIC IP. The child's eligibility is based on the original eligibility determination of the mother for Insure Oklahoma/O-EPIC IP and consideration is not given to any income or resource changes that occur during the deemed eligibility period.

(c) The newborn child's certification period is shortened only in the event the child:

- (1) leaves the mother's home;
- (2) loses Oklahoma residence;
- (3) has medical needs included in another assistance case; or
- (4) expires.

(d) No other conditions of eligibility are applicable, including social security number enumeration; however, it is recommended that social security number enumeration be completed as soon as possible after the child's birth.

**317:45-11-22. PCP choices**

(a) The ~~applicants~~ applicant (and spouse dependents if also applying for Insure Oklahoma/O-EPIC IP) ~~are~~ is required to select valid PCP choices as required on the application.

(b) If a valid PCP is selected by the applicant or spouse dependents and they are not enrolled with the first PCP choice, they are enrolled with the next available PCP choice. The applicant is notified in writing why their initial choice was not selected.

(c) After initial enrollment in Insure Oklahoma/O-EPIC IP, the applicant or spouse dependents can change their PCP selection by calling the Insure Oklahoma/O-EPIC helpline. Changes take effect the first day of the next month or the first day of the 2nd consecutive month. Applicant and spouse dependents are only allowed to change their PCP a maximum of four times per calendar year.

**317:45-11-23. Employee eligibility period**

(a) The rules in this subsection apply to applicants eligible according to ~~OAC 317:45-11-20(a) (f) OAC 317:45-11-20(a) through (e).~~

(1) The employee's coverage period begins only after receipt of the premium payment.

(A) If the application is received and approved before the 15th of the month, eligibility begins the first day of the second consecutive month. If the application is not received or approved before the 15th of the month, eligibility begins the first day of the 3rd consecutive month. (Examples: An application is received and approved on ~~1-14-06~~ January 14<sup>th</sup> and the premium is received before ~~2-15-06~~ February 15<sup>th</sup>, eligibility begins ~~3-1-06~~ March 1<sup>st</sup>; or an application is received and approved ~~1-15-06~~ January 15<sup>th</sup> and the premium is received on ~~3-15-06~~ March 15<sup>th</sup>, eligibility begins ~~4-1-06~~ April 1<sup>st</sup>.)

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(B) If premiums are paid early, eligibility still begins as scheduled.

(2) Employee eligibility is contingent upon the ~~employer's program eligibility~~ employer meeting the program guidelines.

(3) The employee's eligibility is determined by the TPA using the eligibility requirements listed in OAC 317:45-9-1 or ~~OAC 317:45-11-20(a) — (f)~~ OAC 317:45-11-20(a) through (e).

(4) If the employee is determined eligible for Insure Oklahoma/O-EPIC IP, he/she is approved for a period not greater than 12 months. The length of the eligibility period is based on the remaining number of months the employer has left in its eligibility period as defined in OAC 317:45-7-1, 317:45-7-2 and 317:45-7-8.

(b) The rules in this subsection apply to applicants eligible according to ~~OAC 317:45-11-20(a) (d) — and 317:45-11-20(g) (i)~~ OAC 317:45-11-20(a) through (c) and OAC 317:45-11-20(f) through (h).

(1) The applicant's eligibility is determined by the TPA using the eligibility requirements listed in ~~OAC 317:45-11-20(a) (d) — and 317:45-11-20(g) (i)~~ OAC 317:45-11-20(a) through (c) and OAC 317:45-11-20(f) through (h).

(2) If the applicant is determined eligible for Insure Oklahoma/O-EPIC IP, he/she is approved for a period not greater than 12 months.

(3) The applicant's eligibility period begins only after receipt of the premium payment.

(A) If the application is received and approved before the 15th of the month, eligibility begins the first day of the second consecutive month. If the application is not received or approved before the 15th of the month, eligibility begins the first day of the 3rd consecutive month. (Examples: An application is approved on ~~1-14-06~~ January 14<sup>th</sup> and the premium is received before ~~2-15-06~~ February 15<sup>th</sup>, eligibility begins ~~3-1-06~~ March 1<sup>st</sup>; or an application is approved ~~1-15-06~~ January 15<sup>th</sup> and the premium is received on ~~3-15-06~~ March 15<sup>th</sup>, eligibility begins ~~4-1-06~~ April 1<sup>st</sup>.)

(B) If premiums are paid early, eligibility still begins as scheduled.

### 317:45-11-24. Member cost sharing

(a) Members are given monthly invoices for health plan premiums. The premiums are due, and must be paid in full, no later than the 15<sup>th</sup> day of the month prior to the month of IP coverage.

(1) Members are responsible for their monthly premiums, in an amount not to exceed four percent of their gross monthly household income.

(2) Working disabled individuals are responsible for their monthly premiums in an amount not to exceed 4% of their gross monthly household income, based on a family size of one and capped at ~~151%~~ 200% of the Federal Poverty Level.

(b) IP coverage is not provided until the premium and any other amounts due are paid in full. Other amounts due may include but are not limited to any fees, charges, or other costs incurred as a result of Insufficient/Non-sufficient funds.

### 317:45-11-26. Audits

Members participating in the Insure Oklahoma/O-EPIC program are subject to audits related to their eligibility, subsidy payments, premium payments and out-of-pocket reimbursements. Eligibility may be reversed at any time if inconsistencies are found. Any monies paid in error will be subject to recoupment.

### 317:45-11-27. Closure

(a) Members are mailed a ~~written~~ notice 10 days prior to closure of eligibility.

(b) ~~Employer~~ The employer and employees eligibility are tied together. If the employer no longer meets the requirements for Insure Oklahoma/O-EPIC then eligibility for the associated employees enrolled under that employer are also ineligible.

(c) The employee's certification period may be terminated when:

- (1) the member requests closure;
- (2) the member moves out-of-state;
- (3) the covered member dies;
- (4) the employer's eligibility ends;
- (5) an audit indicates a discrepancy that makes the member or employer ineligible;
- (6) the employer is terminated from Insure Oklahoma/O-EPIC;
- (7) the member fails to pay the ~~premium as well as any other amounts on or before the due date~~ amount due within 60 days of the date on the bill;
- (8) the ~~Qualified Health Plan QHP or Carrier~~ carrier is no longer qualified;
- (9) the member ~~becomes eligible~~ begins receiving SoonerCare benefits for Medicaid/Medicare; or
- (10) the member or employer reports to the OHCA or the TPA any change affecting eligibility.

(d) This subsection applies to applicants eligible according to ~~OAC 317:45-11-20(a) (d) and 317:45-11-20(g) (i)~~ OAC 317:45-11-20(a) through (c) and 317:45-11-20(f) through (h).

The member's certification period may be terminated when:

- (1) the member requests closure;
- (2) the member moves out-of-state;
- (3) the covered member dies;
- (4) the employer's eligibility ends;
- (5) an audit indicates a discrepancy that makes the member or employer ineligible;
- (6) the member fails to pay the ~~premium~~ amount due within 60 days of the date on the bill;
- (7) the member becomes eligible for Medicaid Sooner-Care/Medicare; or

(8) the member or employer reports to the OHCA or the TPA any change affecting eligibility.

[OAR Docket #09-909; filed 5-14-09]

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

[OAR Docket #09-920]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 11. Insure Oklahoma/O-EPIC IP  
Part 3. Insure Oklahoma/O-EPIC IP Member Health Care Benefits  
317:45-11-10. through 317:45-11-11. [AMENDED]  
(Reference APA WF # 08-35)

**AUTHORITY:**

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 1010.1 et seq. of Title 56 of Oklahoma Statutes

**DATES:**

**Comment period:**

January 15, 2009 through February 14, 2009

**Public hearing:**

February 19, 2009

**Adoption:**

March 12, 2009

**Submitted to Governor:**

March 12, 2009

**Submitted to House:**

March 12, 2009

**Submitted to Senate:**

March 12, 2009

**Gubernatorial approval:**

April 13, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 7, 2009

**Final adoption:**

May 7, 2009

**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 11. Insure Oklahoma/O-EPIC IP  
Part 3. Insure Oklahoma/O-EPIC IP Member Health Care Benefits  
317:45-11-10. through 317:45-11-11. [AMENDED]  
(Reference APA WF # 08-35)

**Gubernatorial approval:**

December 11, 2008

**Register publication:**

26 Ok Reg 409

**Docket number:**

08-1504

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

Rules are revised to expand the Insure Oklahoma/O-EPIC IP benefits package to include physical therapy, occupational therapy and speech therapy in an outpatient hospital setting and outpatient behavioral health services provided by an individual LBHP. Currently, adult therapies is not offered as a covered service under the IP program. The added adult therapies benefit will only be compensable when provided in an outpatient hospital setting. This addition to the IP program is consistent with current benefit offerings within many private insurance plans. Without this added benefit, IP members

will continue to be unable to have coverage for adult therapies that may be recommended as medically necessary. Following an injury or illness, the provision of adult therapies can help individuals more quickly and safely return to full working function and prevent further injury from occurring. Outpatient behavioral health services are currently offered under the IP program but only at mental health centers. The addition of outpatient behavioral health services by individual LBHPs is consistent with current benefit offerings within many private insurance plans. By allowing outpatient behavioral health services provided by individual LBHPs, IP members in rural parts of Oklahoma will be better able to access behavioral health services as currently there are limited resources in rural areas.

**CONTACT PERSON:**

Tywanda Cox at 522-7153

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 11. INSURE  
OKLAHOMA/O-EPIC IP**

**PART 3. INSURE OKLAHOMA/O-EPIC IP  
MEMBER HEALTH CARE BENEFITS**

**317:45-11-10. Insure Oklahoma/O-EPIC IP benefits**

(a) All ~~O-EPIC~~ IP benefits are subject to rules delineated in OAC 317:30 except as specifically set out in this Section. The scope of IP benefits described in this Section are subject to specific non-covered services listed in OAC 317:45-11-11.

(b) A PCP referral is required to see any other provider with the exception of the following services:

- (1) behavioral health services;
- (2) prenatal and obstetrical supplies and services, meaning prenatal care, delivery and 60 days of postpartum care;
- (3) family planning supplies and services, meaning an office visit for a comprehensive family planning evaluation, including obtaining a Pap smear;
- (4) women's routine and preventive health care services;
- (5) emergency medical condition as defined in OAC 317:30-3-1; and
- (6) services delivered to American Indians at Indian Health Service, tribal, or urban Indian clinics.

(c) ~~O-EPIC~~ IP covered benefits for in-network services, limits, and applicable co-payments are listed in this subsection. In addition to the benefit-specific limits, there is a maximum lifetime benefit of \$1,000,000. Coverage includes:

- (1) Anesthesia / Anesthesiologist Standby. Covered in accordance with OAC 317:30-5-7. Eligible services are covered for covered illness or surgery including services provided by a Certified Registered Nurse Anesthetist (CRNA).
- (2) Blood and Blood Products. Processing, storage, and administration of blood and blood products in inpatient and outpatient settings.

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- (3) Chelation Therapy. Covered for heavy metal poisoning only.
- (4) Diagnostic X-ray, including Ultrasound. Covered in accordance with OAC 317:30-5-22(b)(2). PCP referral is required. Standard radiology (X-ray or Ultrasound): \$0 co-pay. Specialized scanning and imaging (MRI, MRA, PET, or CAT Scan); \$25 co-pay per scan.
- (5) Emergency Room Treatment, services and supplies for treatment in an emergency. Contracted provider services are subject to a \$30 co-pay per occurrence. The emergency room co-pay will be waived if the member is admitted to the hospital or death occurs before admission.
- (6) Inpatient Hospital Benefits. Covered in accordance with OAC 317:30-5-41, 317:30-5-47 and 317:30-5-95; \$50 co-pay per admission.
- (7) Preventive Office Visit. For services of evaluation and medical management (wellness exam); one visit per year with a \$10 co-pay. This visit counts as an office visit.
- (8) Office Visits/Specialist Visits. Covered in accordance with OAC 317:30-5-9, 317:30-5-10, and 317:30-5-11. For services of evaluation and medical management; up to four visits are covered per month; PCP referral required for specialist visits; \$10 co-pay per visit.
- (9) Outpatient Hospital/Facility Services.
  - (A) Includes hospital surgery services in an approved outpatient facility including outpatient services and diagnostic services. Prior authorization required for certain procedures; \$25 co-pay per visit.
  - (B) 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; \$10 co-pay per visit.
  - (C) Physical, Occupational and Speech Therapy services. Coverage is limited to one evaluation/re-evaluation visit (unit) per discipline per calendar year and 15 visits (units) per discipline per date of service per calendar year; \$10 co-pay per visit.
- (10) Maternity (Obstetric). Covered in accordance with OAC 317:30-5-22. Nursery care paid separately under eligible child; \$50 inpatient hospital co-pay.
- (11) Laboratory/Pathology. Covered in accordance with OAC 317:30-5-20; \$0 co-pay.
- (12) Mammogram (Radiological or Digital). Covered in accordance with OAC 317:30-5-901; \$0 co-pay.
- (13) Immunizations ~~for Adults~~. Covered in accordance with OAC 317:30-5-2; ~~\$10 co-pay per immunization~~.
- (14) Assistant Surgeon. Covered in accordance with OAC 317:30-5-8.
- (15) Dialysis, Kidney dialysis, and services and supplies, either at home or in a facility; \$0 co-pay.
- (16) Oral Surgery. Services are limited to the removal of tumors or cysts; Inpatient Hospital \$50 or Outpatient Hospital/Facility; \$25 co-pay applies.
- (17) ~~Mental Behavioral Health (Mental Health and Substance Abuse) Treatment (Inpatient)~~. Covered in

accordance with OAC 317:30-5-95.1; \$50 co-pay per admission.

~~(18) Mental Behavioral Health (Mental Health and Substance Abuse) Treatment (Outpatient). Covered in accordance with OAC 317:30-5-241; \$10 co-pay per visit.~~

~~(A) Agency services. Covered in accordance with OAC 317:30-5-241; \$10 co-pay per visit.~~

~~(B) Individual provider services. Licensed Behavioral Health Professionals (LBHPs) are defined as follows for the purpose of Outpatient Mental Health Services and Outpatient Substance Abuse Treatment:~~

~~(i) 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.~~

~~(ii) 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 (I) through (VI) below. The exemptions from licensure under 59 §1353(4) and (5), 59 §1903(C) and (D), 59 §1925.3(B) and (C), and 59 §1932(C) and (D) do not apply to Outpatient Behavioral Health Services.~~

~~(I) Psychology.~~

~~(II) Social Work (clinical specialty only).~~

~~(III) Professional Counselor.~~

~~(IV) Marriage and Family Therapist.~~

~~(V) Behavioral Practitioner, or~~

~~(VI) Alcohol and Drug Counselor.~~

~~(iii) 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.~~

~~(iv) A Physician's Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.~~

~~(v) LBHPs must have a valid Insure Oklahoma contract in order to bill for services rendered.~~

~~(vi) LBHP services require prior authorization and are limited to 8 therapy services per month and 8 testing units per year; \$10 co-pay per visit.~~

~~(19) Substance Abuse Treatment (Outpatient). Covered in accordance with OAC 317:30-5-241; \$10 co-pay per visit.~~

~~(20) Durable Medical Equipment and Supplies. Covered in accordance with OAC 317:30-5, Part 17 OAC 317:30-5-210 through 317:30-5-218. A PCP referral and prior authorization is required for certain items. DME/Supplies are covered up to a \$15,000 annual maximum; exceptions from the annual DME limit are~~

diabetic supplies, oxygen, home dialysis, and parenteral therapy; \$5 co-pay for durable/non-durable supplies and \$25 co-pay for durable medical equipment.

~~(21 20)~~ Diabetic Supplies. Covered in accordance with ~~OAC 317:30-5, Part 17 OAC 317:30-5-211.15~~; not subject to \$15,000 annual DME limit; \$5 co-pay per prescription.

~~(22 21)~~ Oxygen. Covered in accordance with ~~OAC 317:30-5, Part 17 OAC 317:30-5-211.11 through 317:30-5-211.12~~; not subject to \$15,000 annual DME limit; \$5 co-pay per month.

~~(23 22)~~ Pharmacy. Covered in accordance with OAC 317:30-5-72.1 and 317:30-5-72. Prenatal vitamins and smoking cessation products do not count against monthly prescription limits; \$5/\$10 co-pay per prescription.

~~(24 23)~~ Smoking Cessation Products. Products do not count against monthly prescription limits. Covered in accordance with ~~OAC 317:30-5-77.2 OAC 317:30-5-72.1~~; \$5/\$10 co-pay per product.

~~(25 24)~~ Nutrition Services. Covered in accordance with OAC 317:30-5-1076; \$10 co-pay per visit.

~~(26 25)~~ External Breast Prosthesis, Bras and Prosthetic Garments. Covered in accordance with ~~OAC 317:30-5, Part 17 OAC 317:30-5-211.13~~; \$25 co-pay per prosthesis.

~~(27 26)~~ Surgery. Covered in accordance with OAC 317:30-5-8; \$50 co-pay per inpatient admission and \$25 co-pay per outpatient visit.

~~(28 27)~~ Home Dialysis. Covered in accordance with ~~OAC 317:30-5, Part 17 OAC 317:30-5-211.13~~; not subject to \$15,000 annual DME limit; \$0 co-pay.

~~(29 28)~~ Parenteral Therapy. Covered in accordance with ~~OAC 317:30-5, Part 17 OAC 317:30-5-211.14~~; not subject to \$15,000 annual DME limit; \$25 co-pay per month.

~~(30 29)~~ Family Planning Services and Supplies, including Sterilizations. Covered in accordance with OAC 317:30-3-57; \$0 co-pay.

~~(31 30)~~ Home Health Medications, Intravenous (IV) Therapy and Supplies. Covered in accordance with ~~OAC 317:30-5-211(a)(3)(D)(i) and 317:30-5-41(2)(J)(iii) OAC 317:30-5-211.15 and 317:30-5-42.16(b)(3)~~.

~~(32 31)~~ Ultraviolet Treatment-Actinotherapy.

~~(33 32)~~ Fundus photography.

~~(34 33)~~ Perinatal dental care for pregnant women. Covered in accordance with OAC 317:30-5-696; \$0 co-pay.

(6) supportive devices for the feet (orthotics) except for the diagnosis of diabetes;

(7) cosmetic surgery, except as medically necessary and as covered in OAC 317:30-3-59(19);

(8) over-the-counter drugs, medicines and supplies except contraceptive devices and products, and diabetic supplies;

(9) experimental procedures, drugs or treatments;

(10) dental services (preventive, basic, major, orthodontia, extractions or services related to dental accident) except for pregnant women and as covered in OAC 317:30-5-696;

(11) vision care and services (including glasses), except services treating diseases or injuries to the eye;

(12) physical medicine including ~~speech, physical, occupational,~~ chiropractic, acupuncture and osteopathic manipulation therapy;

(13) hearing services;

(14) transportation [emergent or non-emergent (air or ground)];

(15) rehabilitation (inpatient);

(16) cardiac rehabilitation;

(17) allergy testing and treatment;

(18) home health care with the exception of medications, intravenous (IV) therapy, supplies;

(19) hospice regardless of location;

(20) Temporomandibular Joint Dysfunction (TMD) (TMJ);

(21) genetic counseling;

(22) fertility evaluation/treatment/and services;

(23) sterilization reversal;

(24) Christian Science Nurse;

(25) Christian Science Practitioner;

(26) skilled nursing facility;

(27) ~~long-term~~ long-term care;

(28) stand by services;

(29) thermograms;

(30) abortions (for exceptions, refer to OAC 317:30-5-6);

(31) services of a Lactation Consultant;

(32) services of a Maternal and Infant Health Licensed Clinical Social Worker; and

(33) enhanced services for medically high risk pregnancies as found in OAC 317:30-5-22.1.

[OAR Docket #09-920; filed 5-14-09]

**317:45-11-11. Insure Oklahoma/O-EPIC IP non-covered services**

Certain health care services are not covered in the Insure Oklahoma/O-EPIC IP benefit package listed in OAC 317:45-11-10. These services include, but are not limited to:

- (1) services that the member's PCP or Insure Oklahoma/O-EPIC does not consider medically necessary;
- (2) any medical service when the member refuses to authorize release of information needed to make a medical decision;
- (3) organ and tissue transplant services;
- (4) treatment of obesity;
- (5) procedures, services and supplies related to sex transformation;

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 75. OKLAHOMA-BRED PROGRAM**

[OAR Docket #09-1077]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
325:75-1-2 [AMENDED]  
325:75-1-3 [AMENDED]

# Permanent Final Adoptions

325:75-1-3.1 [NEW]  
325:75-1-4 [AMENDED]  
325:75-1-4.1 [NEW]  
325:75-1-5 [AMENDED]  
325:75-1-7 [AMENDED]  
325:75-1-8 [AMENDED]  
325:75-1-9 [AMENDED]  
325:75-1-10 [AMENDED]  
325:75-1-12 [AMENDED]  
325:75-1-12.1 [NEW]  
325:75-1-13.1 [NEW]  
325:75-1-14 [AMENDED]  
325:75-1-16 [AMENDED]  
325:75-1-19 [AMENDED]

## AUTHORITY:

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

## DATES:

### Comment Period:

February 17, 2009 through March 19, 2009

### Public Hearing:

March 19, 2009

### Adoption:

March 26, 2009

### Submitted to Governor:

March 27, 2009

### Submitted to House:

March 27, 2009

### Submitted to Senate:

March 27, 2009

### Gubernatorial approval:

May 4, 2009

### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

### Final Adoption:

May 20, 2009

### Effective:

June 25, 2009

### SUPERSEDED EMERGENCY ACTIONS:

Not Applicable

### INCORPORATED BY REFERENCE:

Not Applicable

### ANALYSIS:

In January, 2008, the Oklahoma Quarter Horse Racing Association, the official horsemen's representative organization for Quarter Horses, Appaloosas and Paints, proposed amendments and a new rule to Chapter 75 to: (1) match changes already in place in the national breed registries for Quarter Horses, Paints, Appaloosas and Thoroughbreds; (2) add language for broodmare domicile exceptions; (3) set new fees and increase the ownership transfer fee; (4) clarify the horse certificate forms to be inspected by the Oklahoma-Bred Registering Agency and (5) make consistent the use of terms such as 'accredit' rather than the current use of interchanging the terms 'accredit' and 'register.'

At its March 27, 2008 meeting, the Commission received a number of written responses from horsemen and horsemen's organizations in opposition to the proposed broodmare domicile exceptions. In addition, there was much discussion about the meaning of the proposals and the suggested changes to the proposals. The Commission sent the proposed rule amendments and new rule back to be redrafted as well as the drafting of additional definitions.

At its May 15, 2008 meeting, the Commission Chairman appointed an Ad Hoc Committee on Oklahoma-Bred Program Rule Revisions, chaired by Commissioner John Smicklas. The Ad Hoc Committee membership included two other Commissioners [Mr. Melvin Bollenbach and Mr. Patrick Grimmett], Ms. Debbie Schauf, Executive Director of the Oklahoma Quarter Horse Racing Association [representing the Quarter Horses, Paints and Appaloosas], Mr. R.D. Logan, Executive Director of the Oklahoma Thoroughbred Association [representing the Thoroughbreds], Mr. Constantine Rieger, Commission Executive Director, and Ms. Tara Teel, Oklahoma-Bred Registrar.

The charge to the Ad Hoc Committee was to review the current Oklahoma-Bred rules to: (1) match changes already in place in the national breed registries for Quarter Horses, Paints, Appaloosas and Thoroughbreds; (2) consider new fees as well as increasing the ownership transfer fee; (3) clarify the horse certificate forms to be inspected by the Oklahoma-Bred

Registering Agency, (4) expand the list of defined terms [such as 'accredit,' 'accreditation,' 'eligible,' 'enroll,' 'register' and 'registration'], and (5) make consistent the use of terms such as 'accredit' rather than the current use of interchanging the terms 'accredit' and 'register.' The Ad Hoc Committee then met a number of times and presented its proposed rule amendments and proposed new rules to the Commission at its January 22, 2009 meeting.

### CONTACT PERSON:

Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

## PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:

### 325:75-1-2. 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.]

"Accredit" means to certify as meeting the standard of eligibility for participation as a broodmare, stallion or racing stock in the Oklahoma-Bred Program.

"Accreditation" means the process of verifying and certifying the eligibility of a broodmare, stallion or racing stock for participation in the Oklahoma-Bred Program and adding its name to the official registry.

"Accredited Oklahoma-Bred horse" means a broodmare, stallion or racing stock horse that is eligible pursuant to the Act and Commission rules and whose registration enrollment in the Oklahoma-Bred Program has been completed by the official Registering Agency.

"Added money" means the amount exclusive of trophy added into a stakes by the organization licensee, or by sponsors, state-bred programs, or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

"Age" means that the age of a horse is reckoned recognized as beginning on the first day of January in the year in which the horse is foaled.

"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.

"Breakage" means the net pool minus payout.

"Breeder" means the owner of a horse's dam at the time of foaling for Thoroughbreds, and means the owner of a horse's dam at time of conception for non-Thoroughbreds.

"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.

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

"Dual breed registered horse" means an accredited Oklahoma-Bred horse that has filed with the Registering Agency

Registration Certificates from more than one breed national registry. A dual breed registered horse may be eligible for dual breed Oklahoma-Bred awards.

"Eligible" means a broodmare, stallion, or racing stock horse that can satisfy all of the requirements for participation in the Oklahoma-Bred Program.

"Enroll" means to enter the name of an eligible broodmare, stallion, or racing stock horse on the official roll, register, or record as a qualified participant in the Oklahoma-Bred Program.

"Hardship Application" means that a horse owner is eligible to complete a Hardship Application if the horse in question is a mare that is accredited as Racing Stock in the Oklahoma-Bred Program, with the proper Oklahoma-Bred stamp, but was not accredited as a Broodmare in the Oklahoma-Bred Program prior to producing a foal.

"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.

"Lessee" means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

"Lessor" means the Owner of a horse that is leased.

"Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Nominator" means the person who nominates a horse as a possible contender in a race.

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

"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.

"Race" means a contest between horses.

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

"Races" mean:

- (A) **Allowance.** An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings, number of wins, and distance of race.
- (B) **Claiming.** A race in which any horse starting may be claimed and purchased for a designated amount in conformance with the rules in this Title.
- (C) **Exhibition.** A race on which no wagering is permitted.

(D) **Handicap.** A race in which the weights to be carried by the horses are assigned by the Racing Secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

(E) **Invitational.** A race in which the competing horses are selected by inviting their Owners to enter specific horses.

(F) **Maiden.** A race restricted to non-winners.

(G) **Match.** A race contested between two or more horses under conditions agreed to by their Owners.

(H) **Nomination.** A race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least seventy-two (72) hours before the first post time of the day the race is originally scheduled to be run.

(I) **Oklahoma-Bred.** A race for which entry may be restricted to accredited Oklahoma-Bred registered horses.

(J) **Overnight (Purse).** A race for which entries close at a time set by the Racing Secretary.

(K) **Progeny.** A race restricted to the offspring of a specific stallion or stallions.

(L) **Schooling.** A preparatory race for entry qualification in official races which conforms to requirements adopted by the Commission.

(M) **Stakes.** A race which is eligible for stakes or "black-type" recognition by the particular breed registry.

(N) **Trial.** A race of a series of races in which horses participate for the purpose of determining eligibility for a subsequent contest.

(O) **Walkover.** A race in which only one horse starts or in which all the starters are owned by the same interest. To claim the purse, a horse must start and go the distance of the race.

"Register" means the official record of names of broodmares, stallions, or racing stock horses that have been approved for participation in the Oklahoma-Bred Program.

"Registration" means placing the name of approved broodmares, stallions, or racing stock horses in the official record of horses approved to participate in the Oklahoma-Bred Program.

"Registration Certificate" means the official document from the breed-specific national registry, providing the horse's name, foal date, age, color, sex, pedigree and breeder and confirming the horse's registration with the appropriate national breed registry.

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

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

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

"Unclaimed ticket" means:

- (A) A winning or refundable pari-mutuel ticket which was not cashed during the performance for which it was issued; or

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(B) Proceeds which shall be remitted by the Organization Licensee to the Commission for deposit in the Oklahoma-Breeding Development Fund Special Account in accordance with provisions of statute and as prescribed by the Commission.

"**Week**" means a period of seven (7) days beginning at 12:01 a.m. Monday during which races are conducted.

"**Year**" means a calendar year.

### 325:75-1-3. **Definition of accredited Oklahoma-Bred Thoroughbred**

As used in this Chapter, an accredited Oklahoma-Bred Thoroughbred horse shall mean an Arabian horse, Appaloosa horse, Quarter Horse, Paint horse, Pinto horse, a Thoroughbred horse, or a horse of any other breed not otherwise specified in the Act, and which horse meets the requirements below:

(1) **Stallion.** An accredited Oklahoma-Bred stallion is one that is permanently domiciled in Oklahoma, stands for service in Oklahoma, and is registered in the Oklahoma-Bred Program permanent stallion registry. An Oklahoma-Bred that is accredited as racing stock is not registered as breeding stock in the registry. For resulting foals to be eligible for accreditation as an Oklahoma-Bred, the stallion must be registered in the Oklahoma-Bred Program permanent stallion registry prior to the service that produces the resulting foal. Except for those foals that are sired by non-accredited stallions which are eligible for registration in the Oklahoma-Bred Program, any foals conceived prior to the stallion being registered in the Oklahoma-Bred Program permanent stallion registry will not be eligible for accreditation. Domicile begins when the stallion's registration is filed with the Oklahoma-Bred Registering Agency and such registration is in substantial compliance with the registration requirements of the registry. A stallion's accreditation shall be forfeited if the stallion leaves Oklahoma for reasons other than racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. Approved departure for breeding purposes shall be granted by the Registering Agency upon written notification by the stallion owner or manager as to the destination of the stallion, the duration of the absence of the stallion, and the date the stallion will return to Oklahoma. The stallion must return to Oklahoma to resume his domicile prior to February 1 of the subsequent year. If a stallion loses his accreditation, to become eligible for future stallion awards a stallion must re-register in the Oklahoma-Bred Program, including payment of required fees, and resume his domicile within Oklahoma. Except for late applications, the stallion's registration must be filed with the Oklahoma-Bred Registering Agency by February 1 of that breeding season. Late applications will be accepted by the Oklahoma-Bred Registering Agency after February 1 and through June 30 of that breeding season at twice the normal fee. If a stallion stands for service outside of Oklahoma during the calendar year in which the foal(s) was conceived, any foal conceived after registration of the stallion in the Oklahoma-Bred permanent stallion registry and while the accredited stallion was standing in Oklahoma

and which otherwise is eligible for accreditation may be registered in the Oklahoma-Bred Program upon presentation of acceptable documentation reflecting that the service producing the foal occurred while the accredited stallion was standing in Oklahoma. The owner of a stallion that stood for service outside of Oklahoma during the calendar year shall be eligible for stallion awards from those breedings that occurred while the accredited stallion stood in Oklahoma. The Commission may require a copy of the stallion breeding report submitted to the official breed registry, or other acceptable verification approved by the Commission, for any breeding season during which the stallion is standing as an accredited Oklahoma-Bred stallion. Failure to provide the required documentation for any year shall result in the stallion owner being ineligible for stallion awards for all foals resulting from that breeding season unless the required documentation is received by the Commission Inspector upon written notice. Further, foals shall be ineligible for accreditation unless the required stallion breeding report or other acceptable verification is received by the Commission not later than ten (10) days after written request. The owner of an accredited Oklahoma-Bred stallion (for the purpose of qualifying for stallion awards) is the owner or lessee of record at the time the offspring is conceived.

(1) **Stallion.** An accredited Oklahoma-Bred stallion is one that is domiciled in Oklahoma, stands for service in Oklahoma, and is enrolled in the Oklahoma-Bred stallion registry. An Oklahoma-Bred Stallion that is accredited as racing stock is not accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. For resulting foals to be eligible for accreditation as Oklahoma-Bred racing stock, the stallion must be accredited in the Oklahoma-Bred stallion registry prior to the service that produces the resulting foal. Except for those foals eligible for accreditation that are sired by non-accredited stallions, any foals conceived prior to the stallion being accredited in the Oklahoma-Bred stallion registry will not be eligible for accreditation. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the stallion registry is submitted, at which time the stallion must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. The stallion's application must be filed with the Oklahoma-Bred registering agency by February 1 of that breeding season. Late applications will be accepted after February 1 and through June 30 of that season. A stallion's accreditation shall not be forfeited if the stallion leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred stallion may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of a sale consignment, an accredited stallion returned to Oklahoma to resume his domicile within 30 days after the sale date is not required to become re-accredited. Foals conceived after sale date will be ineligible if the stallion fails to resume domicile

within thirty (30) days. Should the stallion not meet the return period from the sale, the stallion must be re-accredited upon resuming his domicile in order to be eligible for breeder awards from foals conceived after the date of departure. The burden of proof relating to such race, performance, medical, sale consignment or breeding shall be on the owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

**(A) Stallions Leaving Oklahoma for Breeding Purposes in Another Hemisphere:** Approved departure for breeding purposes shall be granted by the registering agency upon written notification by the stallion owner or manager as to the destination of the stallion, the anticipated date the stallion will be leaving and the anticipated date of return to Oklahoma. The stallion must re-establish his domicile in Oklahoma prior to servicing any mare for which subsequent foals conceived by service from that stallion are to be eligible for accreditation. The owner or manager of the stallion must provide written notice of the exact date of stallion's return and re-established domicile location in Oklahoma and the effective date for the stallion's eligibility to earn awards will be the date of return if notice is provided within 30 days of that date, or upon receipt of notice if longer than 30 days after the return of the Stallion.

**(B) Re-Accreditation of Stallions:** If a stallion leaves the State of Oklahoma for any reason other than breeding, sale consignment, performance, or medical treatment and terminates his domicile, that stallion will not be eligible to sire subsequent foals eligible for accreditation as racing stock in the Oklahoma-Bred Program. If the stallion returns to Oklahoma to re-establish his domicile, pays the appropriate fees and meets all other qualifying requirements, the stallion may become re-accredited in the Oklahoma-Bred stallion registry. If a stallion stands for service outside of Oklahoma during the calendar year in which a foal(s) was conceived, any foal conceived after accreditation or re-accreditation in the Oklahoma-Bred stallion registry and while the accredited stallion was standing in Oklahoma and which otherwise may be accredited in the Oklahoma-Bred Program upon presentation of acceptable documentation reflecting that the service producing the foal occurred while the accredited stallion was standing in Oklahoma. The stallion shall be eligible for stallion awards only from those breedings that occurred while the accredited stallion was physically domiciled in Oklahoma. The Registering Agency may require an affidavit for any breeding season during which the stallion is standing as an accredited Oklahoma-Bred stallion. Failure to provide the required documentation for any year shall result in the stallion owner being ineligible for stallion awards for all foals resulting from that breeding season unless the required documentation is received by the Registering Agency within thirty (30) days after

written request. Further, foals conceived during that breeding season shall be ineligible for accreditation unless the required affidavit is received by the Registering Agency not later than thirty (30) days after written request. An accredited stallion who terminates his domicile in Oklahoma and later returns to Oklahoma to resume his domicile, prior to breeding, but fails to reaccredit in the Oklahoma-Bred stallion registry, may qualify for a hardship reaccreditation. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred stallion registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal by the stallion seeking reaccreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred stallion registry. Acceptance of a foal application under these circumstances, by the official Registering Agency, is subject to the stallion being enrolled under a hardship reaccreditation application in the Oklahoma-Bred stallion registry within sixty (60) days from receipt of notice by the stallion owner that the stallion was not reaccredited in the Oklahoma-Bred stallion registry prior to breeding. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a stallion under a hardship application within sixty (60) days from receipt of notice that the stallion was not reaccredited prior to breeding will result in the rejection of any pending racing stock applications for foals by the stallion. The owner of an accredited Oklahoma-Bred stallion (for the purpose of qualifying for stallion awards) is the owner or lessee of record at the time the offspring is conceived.

(2) **Broodmare.** An accredited Oklahoma-Bred broodmare is one that is permanently domiciled in Oklahoma and is registered enrolled in the Oklahoma-Bred Program broodmare registry. An Oklahoma-Bred mare that is accredited as racing stock is not registered accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. Domicile begins when the broodmare's registration is filed with the Oklahoma Bred Registering Agency and such registration is in substantial compliance with the registration requirements of the registry. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the broodmare registry is submitted, at which time the broodmare must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. Except for late applications and hardship applications, the The broodmare's registration application must be filed with the Oklahoma-Bred Registering Agency by December

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31 of the year prior to foaling. Late applications will be accepted after December 31, but must be prior to foaling. Hardship applications are accepted at any time. A broodmare's accreditation shall not be forfeited if the broodmare leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred broodmare may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of sale consignment, an accredited broodmare returned to Oklahoma to resume her domicile within 30 days after the sale date is not required to become re-accredited. The burden of proof relating to such race, performance, medical, sale consignment or breeding shall be on the owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

(A) **Thoroughbred Broodmares Serviced by Thoroughbred Out-of-State Stallions:** An accredited Oklahoma-Bred broodmare may be shipped out of Oklahoma to be serviced by a non-accredited Thoroughbred stallion, provided she is returned to Oklahoma to resume her domicile not later than August 15 of the calendar year in which she is serviced. Failure of the accredited broodmare to return to Oklahoma to resume her domicile not later than August 15 shall have two results: First, the broodmare loses her accreditation in the program; Second, the resultant foal is ineligible for ~~registration~~ accreditation in the Oklahoma-Bred Program, unless the broodmare resumes her domicile in Oklahoma and files for re-accreditation prior to the birth of the foal. In order for the broodmare to produce successive foals eligible for accreditation in the Oklahoma-Bred Program, beginning with foals born in 2011, she must produce a foal in Oklahoma in alternating years by an accredited stallion standing in Oklahoma.

(B) **Quarter Horse, Paint, Appaloosa Broodmares and Thoroughbred Broodmares Serviced by Non-Thoroughbred Stallions:** ~~an~~ An accredited Oklahoma-Bred Thoroughbred broodmare that is serviced by a Non-Thoroughbred stallion shall be subject to the same regulations as Quarter Horse, Paint, or Appaloosa broodmares with regard to its accreditation and eligibility to produce accredited Oklahoma-Bred racing stock so long as the mare is serviced by a Quarter Horse, Paint, or Appaloosa stallion. ~~returns to Oklahoma after August 15 shall result in the resultant foal being ineligible for registration in the Oklahoma Bred Program. The broodmare shall not be eligible to produce a foal that is eligible for registration in the Oklahoma Bred Program unless she returns to Oklahoma to resume her domicile not later than December 31 of the year prior to being bred to an accredited Oklahoma Bred stallion and that written notice of such return has been received by the Oklahoma Bred Registering~~

~~Agency. If a broodmare leaves the State of Oklahoma, terminating her domicile to produce foal(s) in a jurisdiction other than Oklahoma, that broodmare will not be eligible to produce subsequent foals for accreditation or earn broodmare awards for those foals until she returns to Oklahoma to re-establish her domicile and the appropriate fees are paid to re-register her in the Oklahoma Bred Broodmare Registry. The Commission may request a copy of the foal report submitted to the official breed registry for any accredited Oklahoma Bred broodmare.~~

(C) **Reaccreditation Rule:** If a broodmare leaves the State of Oklahoma to produce foal(s) in a jurisdiction other than Oklahoma, or for any reason other than breeding, performance, sale consignment or medical, that broodmare shall not be eligible to produce a subsequent foals that is are eligible for registration-accreditation in the Oklahoma-Bred Program ~~unless she returns to Oklahoma to re-establish her domicile; the appropriate fees to re-register her in the Oklahoma Bred Program are paid; and all other qualifying requirements are met. or to earn broodmare awards for those foals. If the broodmare returns to Oklahoma to re-establish her domicile, pays the appropriate fees and meets all other qualifying requirements, the broodmare may become re-accredited in the Oklahoma-Bred broodmare registry. The Registering Agency may request a copy of the foal report submitted to the official breed registry for any accredited Oklahoma-Bred broodmare. An accredited broodmare who terminates her domicile in Oklahoma and later returns to Oklahoma to resume her domicile, prior to foaling, but fails to reaccredit in the OK-Bred broodmare registry, may qualify for a hardship re-accreditation. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal out of the broodmare seeking re-accreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred broodmare registry. Acceptance of a foal application under these circumstances, by the official Registering Agency, is subject to the broodmare being enrolled under a hardship re-accreditation application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare owner that the broodmare was not reaccredited in the Oklahoma-Bred broodmare registry prior to foaling. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a broodmare under a hardship application~~

within sixty (60) days from receipt of notice that the broodmare was not reaccredited prior to foaling will result in the rejection of any pending racing stock applications for foals out of that mare.

(D) Oklahoma broodmares are classified annually as one of the following and are eligible for awards from Oklahoma-Bred funds as defined, and must meet all other eligibility requirements:

(i) Category A - Accredited Oklahoma-Bred Broodmare who is bred to an accredited Oklahoma-Bred Stallion receives 100% of the available broodmare awards for that foal [Oklahoma conceived and foaled].

(ii) Category B - Accredited Oklahoma-Bred Broodmare who is bred to a non-Oklahoma-Bred accredited Stallion receives 50% of the available broodmare awards for that foal [Oklahoma foaled].

(iii) Category C - A broodmare who is accredited for the first time in the Oklahoma-Bred Program, whether or not bred to an accredited Oklahoma-Bred Stallion, receives 100% of the available breeders awards for her first foal. [Re-accredited broodmares do not qualify for Category C.] All subsequent awards for the broodmare will be based upon the first two foal options listed above.

(D)E) For Purposes of Qualifying for Broodmare Awards: the owner of an accredited Oklahoma-Bred Thoroughbred broodmare is the owner or lessee of record at the time of foaling. ~~As to all breeds other than Thoroughbred, the owner of an accredited Oklahoma-Bred broodmare is the owner or lessee of record at the time of conception.~~

(3) **Hardship application.** Notwithstanding other provisions of this Section, a mare ~~registered accredited~~ in the Oklahoma-Bred Program as a racing stock (with the proper Oklahoma-Bred stamp) ~~but which has not been registered accredited as a broodmare in the Oklahoma-Bred broodmare registry prior to foaling producing a foal that would otherwise be eligible for registration accreditation in the Oklahoma-Bred Program may be registered accredited in the Oklahoma-Bred broodmare registry. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. upon payment of the normal registration fee plus an additional \$200.00 and further provided all other qualifications and requirements for registration as a broodmare in the Oklahoma-Bred permanent broodmare registry are met. The Commission-Registering Agency may require proof that all requirements for registration accreditation have been met. In such event, any~~ Any foal out of that the broodmare that would otherwise be eligible for ~~registration accreditation~~ as racing stock in the Oklahoma-Bred Program will be eligible for ~~registration accreditation~~ upon ~~registration enrollment of the broodmare in the Oklahoma-Bred permanent broodmare registry.~~ Acceptance of a foal application under these circumstances by the official Registering Agency is

subject to the broodmare being ~~registered accredited enrolled~~ under a hardship application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare owner that the broodmare was not ~~registered accredited~~ in the Oklahoma-Bred broodmare registry. The fee to ~~register enroll~~ the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Oklahoma-Bred Registering Agency received the racing stock application. Failure to ~~register enroll~~ a broodmare under a hardship application within sixty (60) days from receipt of notice from the official Registering Agency that the broodmare was accredited ~~as racing stock in the Oklahoma-Bred Program in the Oklahoma-Bred racing stock registry and not as a broodmare~~ in the Oklahoma-Bred broodmare registry, will result in the rejection of any pending racing stock applications for foals out of that mare.

(4) **Racing stock.** An accredited Oklahoma-Bred ~~Thoroughbred~~ racehorse is one that foaled in Oklahoma, and meets the following requirements:

(A) ~~Thoroughbreds:~~ Beginning with the foal crop of 2001 there will be two (2) classifications of Thoroughbred foals eligible for accreditation in the Oklahoma-Bred ~~program~~ Program. The category for those foals out of an accredited Oklahoma-Bred broodmare and by an accredited Oklahoma-Bred Stallion shall be classified as Oklahoma-Bred Conceived and Foaled. The second category for foals out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion shall be classified as Oklahoma-Bred Foaled. A foal out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion may receive accreditation in the Oklahoma-Bred racing stock registry provided all other requirements are met. In such an event, to be eligible for accreditation, the next foal out of said broodmare presented for accreditation must be by an accredited Oklahoma-Bred stallion and meet all other requirements. Further, in no event can a broodmare produce accredited Oklahoma-Bred foals in succession that are by non-accredited stallions. Except for the initial foal accredited in the Oklahoma-Bred Program, all accredited foals sired by non-accredited stallions must be preceded [by year of birth] in the registry by an accredited foal sired by an accredited stallion. Re-accreditation shall not preclude the listed rule. Provided all other requirements are met, both classifications are eligible for accreditation and may compete in Oklahoma-Bred races.

(B) ~~All Other Breeds:~~ ~~and is by an accredited Oklahoma-Bred stallion and out of an accredited Oklahoma-Bred broodmare, except that a foal out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion may receive accreditation in the Oklahoma-Bred racing stock registry provided all other requirements are met. In such event, to be eligible for accreditation, the next foal out of said broodmare presented for accreditation must be by an~~

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~~accredited Oklahoma-Bred stallion and meet all other requirements. Further, in no event can a broodmare produce accredited Oklahoma-Bred foals in succession that are by non-accredited stallions. Except for the initial foal registered in the Oklahoma-Bred Program, all accredited foals sired by non-accredited stallions must be preceded (by year of birth) in the registry by an accredited foal sired by an accredited stallion. An Oklahoma-Bred that is accredited as racing stock is not registered accredited as breeding stock in the registry. The owner of an accredited Oklahoma-Bred racehorse (for the purpose of qualifying for added purse supplements) is the owner or lessee of record at the time of the race.~~

(5) **Late applications.**

(A) **Broodmare.** A broodmare may be ~~registered~~ accredited in the Oklahoma-Bred ~~permanent~~ broodmare registry after December 31 of the year prior to foaling if:

~~(i) the registration is submitted to the Oklahoma-Bred Registering Agency prior to foaling; and~~

~~(ii) the broodmare is otherwise in substantial compliance with the registration requirements of the registry. Domicile must begin when the broodmare's registration is filed with the Oklahoma-Bred Registering Agency. the application for accreditation is submitted to the Oklahoma-Bred Registering Agency prior to foaling; and the broodmare is otherwise in substantial compliance with the requirements of the registry. Domicile must be established in Oklahoma when the broodmare's application is filed with the Oklahoma-Bred Registering Agency.~~

(B) **Stallion.** A stallion may be ~~registered~~ accredited in the Oklahoma-Bred stallion registry after February 1 and by June 30 and complete the current breeding season if the stallion is otherwise in substantial compliance with the ~~registration~~ requirements of the registry. ~~Domicile must begin when the stallion's registration is filed with the Oklahoma-Bred Registering Agency. Domicile must be established in Oklahoma when the stallion's application is filed with the Oklahoma-Bred Registering Agency.~~

(C) **Fee.** The fee to ~~register~~ accredit a broodmare or stallion under a late application is twice the regular fee. The fee will not be refunded if the ~~Commission~~ Registering Agency rejects the application but will be applied to ~~registration~~ accreditation of the horse for the next ensuing year.

(6) **Domicile exception.** An Oklahoma-Bred broodmare or stallion may leave Oklahoma for an indefinite period of time for race, performance or for medical treatment; ~~however, the burden of proof relating to such race, performance, or medical treatment shall be on the owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency upon request. The broodmare or stallion may leave Oklahoma for the~~

purpose of being offered in a recognized sale consignment, and, if returned within thirty (30) days of sale date, is not required to become re-accredited. Should the broodmare or stallion not meet the return period from the sale, it must be re-accredited. The burden of proof shall be on the owner to notify the Registering Agency of the intent to leave the state for any of the above reasons. The Registering Agency may further require verification of participation, treatment or consignment to an sale. Further, the owner must report to the Oklahoma-Bred Registering Agency the date the broodmare or stallion returned to Oklahoma.

**325:75-1-3.1. Definition of accredited Oklahoma-Bred Quarter Horse, Paint or Appaloosa**

As used in this Chapter, an accredited Oklahoma-Bred Appaloosa, Quarter Horse, or Paint horse is a horse which meets the requirements below:

(1) **Stallion.** An accredited Oklahoma-Bred stallion is one that is domiciled in Oklahoma, stands for service in Oklahoma, and is enrolled in the Oklahoma-Bred stallion registry. An Oklahoma-Bred Stallion that is accredited as racing stock is not accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. For resulting foals to be eligible for accreditation as Oklahoma-Bred racing stock, the stallion must be accredited in the Oklahoma-Bred Program stallion registry prior to the service that produces the resulting foal. Except for those foals eligible for accreditation that are sired by non-accredited stallions, any foals conceived prior to the stallion being accredited in the Oklahoma-Bred Program stallion registry will not be eligible for accreditation. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the stallion registry is submitted, at which time the stallion must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. The stallion's application must be filed with the Oklahoma-Bred registering agency by February 1 of that breeding season. Late applications will be accepted after February 1 and through June 30 of that season. A stallion's accreditation shall not be forfeited if the stallion leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred stallion may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of sale consignment, an accredited stallion returned to Oklahoma to resume his domicile within 30 days after the sale date is not required to become re-accredited. Any foals conceived after date of departure and prior to sale date shall be eligible for accreditation if the stallion does not return within thirty (30) days. Foals conceived after sale date will be ineligible if the stallion fails to resume domicile within thirty (30) days. Should the stallion not meet the return period from the auction or sale, the stallion must be re-accredited upon resuming his domicile in order to be eligible for breeder awards conceived after the

date of departure. The burden of proof relating to such race, performance, medical, sale consignment or breeding shall be on the owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

**(A) Stallions leaving Oklahoma for breeding purposes in another hemisphere:** Approved departure for breeding purposes shall be granted by the registering agency upon written notification by the stallion owner or manager as to the destination of the stallion, the anticipated date the stallion will be leaving and the anticipated date of return to Oklahoma. The stallion must re-establish his domicile in Oklahoma prior to servicing any mare for which subsequent foals conceived by service from that stallion are to be eligible for accreditation. The owner or manager of the stallion must provide written notice of the exact date of stallion's return and re-established domicile location in Oklahoma and the effective date for the stallion's eligibility to earn awards will be the date of return if notice is provided within 30 days of that date, or upon receipt of notice if longer than 30 days after the return of the Stallion.

**(B) Use of preserved semen to service broodmares:** So long as an accredited Quarter Horse, Paint, Appaloosa or Thoroughbred stallion is in compliance with the accreditation requirements for the Oklahoma-Bred Program, the stallion may service mares through the use of semen preserved in accordance with the rules adopted by the appropriate national breed registry for that breed of stallion. Additionally, if an accredited stallion dies or becomes physically incapable of servicing mares while in compliance with the accreditation requirements of the Oklahoma-Bred Program, semen preserved in accordance with the rules adopted by the appropriate national breed registry for that breed of stallion may be used to service mares with the resulting foals eligible for accreditation as racing stock so long as all other conditions of eligibility are met for those resulting foals.

**(C) Re-accreditation of stallions:** If a stallion leaves the State of Oklahoma for any reason other than breeding, sale consignment, performance, or medical treatment and terminates his domicile, that stallion will not be eligible to sire subsequent foals eligible for accreditation as racing stock in the Oklahoma-Bred Program. If the stallion returns to Oklahoma to re-establish his domicile, pays the appropriate fees and meets all other qualifying requirements, the stallion may become re-accredited in the Oklahoma-Bred stallion registry. If a stallion stands for service outside of Oklahoma during the calendar year in which a foal(s) was conceived, any foal conceived after accreditation or re-accreditation of the stallion in the Oklahoma-Bred stallion registry and while the accredited stallion was standing in Oklahoma and which otherwise may be accredited in the Oklahoma-Bred Program upon presentation of

acceptable documentation reflecting that the service producing the foal occurred while the accredited stallion was standing in Oklahoma. The stallion shall be eligible for stallion awards only from those breedings that occurred while the accredited stallion was physically domiciled in Oklahoma. The Registering Agency may require an affidavit for any breeding season during which the stallion is standing as an accredited Oklahoma-Bred stallion. Failure to provide the required documentation for any year shall result in the stallion owner being ineligible for stallion awards for all foals resulting from that breeding season unless the required documentation is received by the Registering Agency within thirty (30) days after written request. Further, foals conceived during that breeding season shall be ineligible for accreditation unless the required affidavit is received by the Registering Agency not later than thirty (30) days after written request. An accredited stallion who terminates his domicile in Oklahoma and later returns to Oklahoma to resume his domicile, prior to breeding, but fails to reaccredit in the Oklahoma-Bred stallion registry, may qualify for a hardship reaccreditation. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred stallion registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal by the stallion seeking reaccreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred stallion registry. Acceptance of a foal application under these circumstances, by the official Registering Agency, is subject to the stallion being enrolled under a hardship reaccreditation application in the Oklahoma-Bred stallion registry within sixty (60) days from receipt of notice by the stallion owner that the stallion was not reaccredited in the Oklahoma-Bred stallion registry prior to breeding. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a stallion under a hardship application within sixty (60) days from receipt of notice that the stallion was not reaccredited prior to breeding will result in the rejection of any pending racing stock applications for foals by the stallion. The owner of an accredited Oklahoma-Bred stallion (for the purpose of qualifying for stallion awards) is the owner or lessee of record at the time the offspring is conceived.

**(2) Broodmare.** An accredited Oklahoma-Bred Quarter Horse, Paint, or Appaloosa broodmare is one that is domiciled in Oklahoma and is enrolled in the Oklahoma-Bred broodmare registry. An Oklahoma-Bred mare that

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is accredited as racing stock is not accredited as breeding stock in the registry unless the required application is filed and fee paid to Registering Agency. Eligibility for participation in the Oklahoma-Bred Program begins when the application for the broodmare registry is submitted, at which time the broodmare must be domiciled in Oklahoma, and such application is in substantial compliance with the requirements of the registry. The broodmare's application must be filed with the Oklahoma-Bred Registering Agency by December 31 of the year prior to foaling. Late applications will be accepted after December 31, but must be prior to foaling. Hardship applications are accepted at any time. A broodmare's accreditation shall not be forfeited if the broodmare leaves Oklahoma for an indefinite period of time for racing, medical treatment, performance, or approved departure for breeding purposes in another hemisphere. An Oklahoma-Bred broodmare may leave Oklahoma for the purpose of being offered in a recognized sale consignment. In the case of sale consignment, an accredited broodmare returned to Oklahoma to resume her domicile within 30 days after sale date is not required to become re-accredited. The burden of proof relating to such race, performance, medical, sale consignment or breeding shall be on the owner of record who shall produce such evidence to the Oklahoma-Bred Registering Agency.

**(A) Broodmares serviced out-of-state:** An accredited Oklahoma-Bred broodmare may be shipped out of Oklahoma to be serviced by a non-accredited stallion, provided she is returned to Oklahoma to resume her domicile not later than August 15 of the calendar year in which she is serviced. Failure of the accredited broodmare to return to Oklahoma to resume her domicile not later than August 15 shall have two results: First, the broodmare loses her accreditation in the program; Second, the resultant foal is ineligible for accreditation in the Oklahoma-Bred Program unless the broodmare resumes her domicile in Oklahoma and files for re-accreditation prior to the birth of the foal.

**(B) Multiple foals by accredited broodmares:** An accredited broodmare shall be eligible to produce multiple foals eligible for accreditation as Oklahoma-Bred racing stock and shall be eligible to receive breeders awards so long as the multiple foals are produced in accordance with guidelines or requirements adopted or approved by the national breed registry for the breed of foal being produced, and the resulting foals are eligible for registration with the appropriate national breed registry.

**(C) For purposes of qualifying for broodmare awards:** The owner of an accredited Oklahoma-Bred broodmare bred to a Quarter Horse, Paint, or Appaloosa stallion is the owner or lessee of record at the time of conception. No accredited Oklahoma-Bred broodmare shall be permitted to earn broodmare awards from the accreditation of Oklahoma-Bred racing stock foals by non-accredited Oklahoma-

Bred stallions if the broodmare has consecutive years with service only by non-accredited stallions.

**(D) Re-accreditation rule:** If a broodmare leaves the State of Oklahoma for any reason other than breeding, sale consignment, performance, or medical treatment and terminates her domicile, that broodmare will not be eligible to produce subsequent foals eligible for accreditation as racing stock in the Oklahoma-Bred Program. If the broodmare returns to Oklahoma to re-establish her domicile, pays the appropriate fees and meets all other qualifying requirements, the broodmare may become re-accredited in the Oklahoma-Bred broodmare registry. In the event a re-accredited broodmare produces successive foals by non-accredited Oklahoma-Bred stallions, the broodmare owner will not receive any breeder awards for the second foal. The Registering Agency may request a copy of the foal report submitted to the official breed registry for any accredited Oklahoma-Bred broodmare. An accredited broodmare who terminates her domicile in Oklahoma and later returns to Oklahoma to resume her domicile, prior to foaling, but fails to reaccredit in the OK-Bred broodmare registry, may qualify for a hardship re-accreditation. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal out of the broodmare seeking re-accreditation that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon hardship re-accreditation in the Oklahoma-Bred broodmare registry. Acceptance of a foal application under these circumstances, by the official Registering Agency, is subject to the broodmare being enrolled under a hardship re-accreditation application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare owner that the broodmare was not reaccredited in the Oklahoma-Bred broodmare registry prior to foaling. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Registering Agency receives the racing stock application. Failure to enroll a broodmare under a hardship application within sixty (60) days from receipt of notice that the broodmare was not reaccredited prior to foaling will result in the rejection of any pending racing stock applications for foals out of that mare.

**(3) Hardship application.** Notwithstanding other provisions of this Section, a mare accredited in the Oklahoma-Bred Program as a racing stock (with the proper Oklahoma-Bred stamp) but which has not been accredited in the Oklahoma-Bred broodmare registry prior to producing a foal that would otherwise be eligible

for accreditation in the Oklahoma-Bred Program may be accredited in the Oklahoma-Bred broodmare registry. In addition to the regular application fee, the applicant shall be charged an additional \$200.00 fee. All other qualifications and requirements of the Oklahoma-Bred broodmare registry must be met as well. The Registering Agency may require proof that all requirements for accreditation have been met. Any foal out of the broodmare that would otherwise be eligible for accreditation as racing stock in the Oklahoma-Bred Program will be eligible for accreditation upon enrollment in the Oklahoma-Bred broodmare registry. Acceptance of a foal application under these circumstances by the official Registering Agency is subject to the broodmare being enrolled under a hardship application in the Oklahoma-Bred broodmare registry within sixty (60) days from receipt of notice by the broodmare owner that the broodmare was not accredited in the Oklahoma-Bred broodmare registry. The fee to enroll the racing stock in the Oklahoma-Bred Program will be based upon the age of the foal on the date the Oklahoma-Bred Registering Agency received the racing stock application. Failure to enroll a broodmare under a hardship application within sixty (60) days from receipt of notice from the official Registering Agency that the broodmare was accredited in the Oklahoma-Bred racing stock registry and not in the Oklahoma-Bred broodmare registry, will result in the rejection of any pending racing stock applications for foals out of that mare.

(4) **Racing stock.** An accredited Oklahoma-Bred Quarter Horse, Paint, or Appaloosa racehorse is a horse foaled in Oklahoma that meets one of the following requirements:

(A) The racehorse is a Quarter Horse, Paint, or Appaloosa horse registered by the appropriate national breed registry(s) and is by an accredited Oklahoma-Bred stallion and out of an accredited Oklahoma-Bred broodmare; or

(B) The racehorse is a foal out of an accredited Oklahoma-Bred broodmare and by a non-accredited stallion. ; and

(C) In no event can an accredited broodmare produce accredited Oklahoma-Bred Racing Stock foals in successive years that are by non-accredited stallions; however, multiple foals out of an accredited Oklahoma-Bred broodmare and by both accredited Oklahoma-Bred stallions and non-accredited stallions in the same calendar year shall be eligible. With regard to multiple embryos, if the appropriate national breed registry permits registration of multiple foals from the same broodmare in a single year, all foals conceived and foaled by that broodmare or her recipients shall be eligible for accreditation in the Oklahoma-Bred Program if the other requirements of the program are met or

(D) Except for the initial foal accredited in the Oklahoma-Bred Program, all foals to be accredited in the Oklahoma-Bred Program sired by non-accredited stallions must be preceded (by year of birth) in the

registry by either an Oklahoma-Bred accredited foal sired by an accredited stallion, or by affidavit or other documentation accepted by the Registering Agency that verifies the broodmare was bred to an accredited stallion and subsequently produced a foal that died after the broodmare was bred back to an out-of-state stallion but prior to registering that live foal; or produced a foal carried by a recipient mare which was stillborn or died prior to being registered but after the accredited broodmare was bred to an out-of-state stallion in the subsequent year. In such case, if the broodmare is permitted to produce accredited foals by non-accredited stallions in two consecutive years, that broodmare must for the next subsequent year be bred to an accredited stallion and produce a foal which is accredited for subsequent foals to be eligible for accreditation. An Oklahoma-Bred that is accredited as racing stock is not accredited as breeding stock in the registry. The owner of an accredited Oklahoma-Bred racehorse (for the purpose of qualifying for added purse supplements) is the owner or lessee of record at the time of the race.

(5) **Late applications.**

(A) **Broodmare.** A broodmare may be accredited in the Oklahoma-Bred broodmare registry after December 31 of the year prior to foaling if the application and fee are submitted to the Oklahoma-Bred Registering Agency prior to foaling; and the broodmare is otherwise in substantial compliance with the requirements of the registry. Domicile must be established when the broodmare's application is filed with the Oklahoma-Bred Registering Agency.

(B) **Stallion.** A stallion may be accredited in the Oklahoma-Bred stallion registry after February 1 and by June 30 and complete the current breeding season if the stallion is otherwise in substantial compliance with the requirements of the registry. Domicile must be established when the stallion's application is filed with the Oklahoma-Bred Registering Agency.

(C) **Fee.** The fee to accredit a broodmare or stallion under a late application is twice the regular fee. The fee will not be refunded if the Registering Agency rejects the application but will be applied to accreditation of the horse for the next ensuing year.

(6) **Domicile exception.** An Oklahoma-Bred broodmare or stallion may leave Oklahoma for an indefinite period of time for race, performance purposes or for medical treatment. The broodmare or stallion may leave Oklahoma for the purpose of being offered in a recognized sale consignment, and, if returned within thirty (30) days of sale date, is not required to become re-accredited. Should the broodmare or stallion not meet the return period from the sale, it must be re-accredited. The burden of proof shall be on the owner to notify the Registering Agency of the intent to leave the state for any of the above reasons. The Registering Agency may further require verification of participation, treatment or consignment to a sale. Further, the owner must report

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to the Oklahoma-Bred Registering Agency the date the broodmare or stallion returned to Oklahoma.

### **325:75-1-4. Registration Accreditation of Oklahoma-Bred**

The breeder or owner of a horse that is eligible for participation in the Oklahoma-Bred Program accreditation may register accredit such horse with the Oklahoma Horse Racing Commission by submitting a Commission-approved application, all required documents, and the appropriate fee to the official Registering Agency. Failure to submit either the required fee and/or a Commission-approved application will result in the immediate rejection of the application. Failure to complete the registration accreditation process of a racing stock by submitting all required documentation, including the original or replacement Certificate of Registration, to the Commission by December 31 of the horse's three-year-old year will result in the application being rejected with no refund of fee. Failure to complete the registration accreditation process of a broodmare or stallion by submitting all required documentation to the Commission within one (1) year from submitting the original application will result in the application being rejected with no refund of fee. In such event, a new application along with the necessary documentation and applicable fees must be submitted to the Commission in order to register accredit the horse in the Oklahoma-Bred Program. The Commission may contract with and designate an official Registering Agency to implement the registration accreditation of Oklahoma-Bred horses. [3A:208.3(C)].

#### **325:75-1-4.1. Dual breed Oklahoma-Bred registration**

(a) To be eligible for dual breed awards, the application for accreditation in the Oklahoma-Bred program shall be submitted and must indicate the horse is registered with more than one breed national registry. The application must be in substantial compliance with the Registering Agency's accreditation requirements. The applicable fee for a dual breed registered horse must be submitted to the Registering Agency together with the application for accreditation and all Registration Certificates from the national registries.

(b) If an initial application for accreditation is submitted to the Registering Agency indicating registration in only one breed national registry along with the application fee and Registration Certificate from the national registry, that horse may still become eligible for dual breed awards by filing an amended application as follows. To be eligible, the Registration Certificate from the additional national registry must be submitted to the Registering Agency together with an amended application for accreditation and with application fee equal to the fee found in 325:75-1-13.

##### **(1) Stallions.**

(A) Stallion owners are only eligible to receive awards based on the performance of foals by a stallion when:

(i) the foal is from a breed for which the stallion's Oklahoma-Bred accreditation application for that breed has been completed and the stallion

is enrolled in the Oklahoma-Bred stallion registry for the breed of the foal, and

(ii) the foal is conceived after the stallion is enrolled in the Oklahoma-Bred stallion registry stallion for the breed of the foal.

(B) If properly indicated on the application that the horse is a dual breed horse, copies of both Registration Certificates shall be submitted within one (1) year of receipt of the original application. The stallion will not be eligible for any Oklahoma-Bred breeder awards for which a breed Registration Certificate is not filed within the year. An amended application may be submitted in order to participate as a dual breed in the Oklahoma-Bred Program which will be subject to the fees in effect at the time of submission. If an amended application is submitted, eligibility for the stallion to receive awards from eligible foals of that breed shall only be effective from the date the amended application is completed and the stallion is enrolled in the Oklahoma-Bred stallion registry.

##### **(2) Broodmares.**

(A) Broodmare owners are only eligible to receive awards based on the performance of foals out of the broodmare when:

(i) the foal is from a breed for which the broodmare's Oklahoma-Bred accreditation application for that breed has been completed and is enrolled in the Oklahoma-Bred broodmare registry for the breed of that foal, and

(ii) the foal is born after the broodmare is enrolled in the Oklahoma-Bred broodmare registry for the breed of that foal.

(B) If properly indicated on the application that the horse is a dual breed horse, copies of both Registration Certificates shall be submitted within one (1) year of receipt of the original application. The broodmare will not be eligible for any Oklahoma-Bred breeder awards for which a breed Registration Certificate is not filed within the year. An amended application may be submitted in order to participate as a dual breed in the Oklahoma-Bred Program which will be subject to the fees in effect at the time of submission. If an amended application is submitted, eligibility for the broodmare to receive awards from eligible foals of that breed shall only be effective from the date the amended application is completed and the broodmare is enrolled in the Oklahoma-Bred broodmare registry.

**(3) Racing Stock.** All dual breed registered foals that are sired by an accredited Oklahoma-Bred stallion and foaled in Oklahoma out of an accredited Oklahoma-Bred broodmare, which are otherwise substantially in compliance with the Oklahoma-Bred program requirements, shall be eligible to be accredited as racing stock in the Oklahoma-Bred program. If the horse is initially accredited as a single breed, the performance of that horse in races for another breed will not be eligible for purse supplements until an amended application and fee is submitted for the other breed, together with the

original Registration Certificate for that breed. If properly indicated on the initial application that the horse is a dual breed registered horse, both original Registration Certificates shall be submitted to the Registering Agency by December 31 of the horse's three-year-old year. If the original Registration Certificates or the original Registration Certificate for one of the breeds is not submitted by December 31 of the horse's three-year-old year, the horse will not be accredited for any breed for which an original Registration Certificate has not been submitted. An amended application may be submitted in order to participate as a dual breed in the Oklahoma-Bred Program which will be subject to the fees in effect for the age of the horse at the time of application.

### **325:75-1-5. Administration of Oklahoma-Bred program**

The management procedures, rules and regulations, fee schedules, registration accreditation forms, publications, and all other instruments necessary to the operation of the Oklahoma-Bred Program by the official Registering Agency shall be subject to the review and approval of the Commission. The Commission shall be provided access to the records of the official Registering Agency during normal business hours. The Commission shall be provided copies of the completed registration accreditation forms for all horses entered in the Oklahoma-Bred Program, or the Oklahoma Stallion or Broodmare Registry. The official Registering Agency shall provide the Commission with a financial accounting of the Oklahoma-Bred Program by a Certified Public Accountant within 30 days of the end of the Commission's fiscal year. [3A:208.3(D)]

### **325:75-1-7. Registration Accreditation required for Oklahoma-Bred eligibility**

Unless the breeder or owner of an Oklahoma-Bred racing stock has registered accredited the horse with the official Oklahoma-Bred Registering Agency and attested that the horse is an Oklahoma-Bred, and unless the horse's official Certificate of Registration has been affixed with the Oklahoma-Bred Program Stamp to complete the enrollment process for Oklahoma-Bred racing stock, which is on file with the applicable racetrack is stamped with the official Oklahoma-Bred Program stamp such horse is ineligible to start in races for Oklahoma-Bred horses and ineligible for Oklahoma-Bred purse supplements. An accredited racing stock horse shall be considered eligible to start in races for Oklahoma-Bred horses and earn Oklahoma-Bred purse supplements if the official Certificate of Registration has been re-issued by the national breed registry and has not been affixed with the Oklahoma-Bred Program Stamp so long as the official Oklahoma-Bred Registering Agency can verify the eligibility of the horse. Unless the owner of an Oklahoma-Bred stallion or broodmare has registered accredited the horse with the official Oklahoma-Bred Registering Agency and attested that the horse is in compliance with the rules of the Oklahoma-Bred Program ~~an Oklahoma-Bred~~ such horse is ineligible for Oklahoma-Bred

stallion or broodmare awards. The Registering Agency will verify the current eligibility of a participating horse prior to distributing any purse supplement, stake, reward or award from the Oklahoma Breeding Development Fund Special Account.

### **325:75-1-8. Inspection of horses**

Any applicant or registrant for the Oklahoma-Bred Program shall be deemed to have given consent to any duly authorized employee or agent of the Commission to enter and inspect any horse ~~registered or to be registered that has completed an application to be accredited~~ in the Program. Refusal to permit such inspection may constitute grounds for denial of the application or removal of the horse from the Program. Horses ~~registered or to be registered~~ accredited in the Oklahoma-Bred Program will be subject to periodic checks to verify ~~the validity of such registration~~ compliance with the rules of the program. [3A:208.3]

### **325:75-1-9. Decision as to eligibility of Oklahoma-Bred**

Questions as to the accreditation, eligibility for ~~registration accreditation~~ accreditation, or breeding of an Oklahoma-Bred horse shall be decided by the official Registering Agency designated by the Commission. The official Registering Agency may demand and inspect any Registration Certificate, ~~or record of an Oklahoma breeder, records or other acceptable documentation from the official breed registry, stallion owner, breeding farm manager, or Oklahoma breeder,~~ and shall verify that the horse involved complies with the requirements for accreditation, or receipt of a the purse supplement, stake, reward or award. ~~Concerning questions as to parentage, the official Registering Agency may require blood typing of the horse in question, as well as its sire and dam. Such blood typing shall be done by an organization approved by the official Registering Agency. The results of this test may be taken into consideration by the official Registering Agency in its determination of the horse's parentage.~~ When a person has been suspended from participation in the Oklahoma-Bred Program, any other ownership entity in which such person may have ownership interest shall also be ineligible for added purse supplements and any broodmare or stallion awards from the Oklahoma-Bred Program; and any horse owned by such entity shall be ineligible for registration accreditation, or participation in the Oklahoma-Bred Program for the same period of time as designated in such person's suspension. A decision of the official Registering Agency shall be subject to review by the Commission, which retains the right to make the final decision as to any right or liability under this Chapter.

### **325:75-1-10. False statements concerning Oklahoma-Bred Registration accreditation**

Any person who fails to disclose or states falsely any information required in the ~~registration accreditation~~ accreditation process for the Oklahoma-Bred Program may be subject to penalties at the discretion of the Commission. Such penalties may include disqualification and exclusion from the Oklahoma-Bred

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Program of both the horse(s) and person(s) involved in the dispute. Should a person be disqualified, excluded, and/or found to be ineligible for the Oklahoma-Bred award and/or registration program, the family (husband, wife, dependent children) of that person may be deemed ineligible to participate for the same period of time as that person. [3A:208.3; see also 3A:203.6]

### **325:75-1-12. Registration Application requirements, categories and fees for Quarter Horses, Appaloosas or Paints**

(a) Except as provided in ~~325:75-1-3(5)(C)~~ and ~~325:75-1-3.1(3)~~, all broodmares must be ~~registered~~ accredited in the ~~permanent~~ broodmare registry prior to foaling an Oklahoma-Bred eligible foal. All stallions must be ~~registered~~ accredited in the ~~permanent~~ stallion registry prior to conceiving an Oklahoma-Bred eligible foal. Racing stock may register in the racing stock registry by December 31 of the year of the horse's birth with a fee of \$25.00. Other racing stock ~~registering~~ applying by June 1 of their yearling year must pay a \$50.00 fee. The ~~registration~~ application fee is \$500.00 for all other racing stock registered through December 31 of the horse's three-year-old year. On or after January 1 of their four-year-old year, the ~~registration~~ application fee shall be \$1,000.00. Broodmares may register in the broodmare registry by December 31 of the year prior to foaling with a fee of \$35.00. Broodmares ~~registering~~ applying under late applications but prior to foaling must pay a \$70.00 fee. Broodmares ~~registering~~ applying under hardship applications must pay \$235.00. Stallions may ~~register~~ apply in the stallion registry by February 1 of that breeding season with a fee of \$100.00. Stallions ~~registering~~ applying after February 1 and by June 30 of that breeding season must pay \$200.00.

(b) The breeder or owner of an Oklahoma-Bred horse shall pay the fee required for ~~registration~~ application in the following categories:

- (1) ~~Permanent~~ Stallion Registry Application by February 1 of Breeding Year - \$100.00
- (2) ~~Permanent~~ Stallion Registry Application After February 1 and by June 30 of the Breeding Year - \$200.00
- (3) Stallion Reaccreditation Application by February 1 of Breeding Year - \$100.00
- (4) Stallion Reaccreditation Application After February 1 and by June 30 of the Breeding Year - \$200.00
- (5) ~~Permanent~~ Broodmare Registry Application by December 31 of Year Prior to Foaling - \$35.00
- (6) ~~Permanent~~ Broodmare Registry Application under Late Application - \$70.00
- (7) ~~Permanent~~ Broodmare Registry Application under Hardship Application - \$235.00
- (8) Broodmare Reaccreditation Application by December 31 prior to foaling - \$35.00
- (9) Broodmare Reaccreditation Application after December 31 and prior to foaling - \$70.00
- (10) Foals Application by December 31 in Year of Birth - \$25.00
- (11) Yearlings Application by June 1 of Yearling Year - \$50.00

(12) ~~All~~ Racing Stock Application After June 1 of Yearling Year through December 31 of Three-Year-Old Year - \$500.00

(13) ~~All~~ Racing Stock Application On or After January 1 of Four-Year-Old Year - \$1,000.00

(14) Transfer Fee - ~~\$40.00~~ \$25.00

(c) Paragraphs (1), (2), (3), (4), (5), (6), (7), (8) and (9) of (b) of this Section are registries for breeding purposes only. Paragraphs (10), (11), (12) and (13) of (b) of this Section are for racing purposes only.

### **325:75-1-12.1. Application requirements, categories and fees for Thoroughbreds, beginning with an effective date of January 1, 2010**

(a) Except as provided in ~~325:75-1-3(5)(C)~~, all broodmares must be accredited in the broodmare registry prior to foaling and Oklahoma-Bred eligible foal. All stallions must be accredited in the stallion registry prior to conceiving an Oklahoma-Bred eligible foal. Racing stock may apply for the racing stock registry by December 31 of the year of the horse's birth with a fee of \$50.00. Other racing stock may apply by December 31 of the horse's yearling year with a fee of \$150.00. The horse may apply by December 31 of its two-year old year for \$450.00. After that date, a three-year or older foal may apply for a fee of \$1,000.00. Broodmares may apply for the broodmare registry by December 31 of the year prior to foaling for a fee of \$75.00. Broodmares applying under late application but prior to foaling must pay a fee of \$150.00. Broodmares applying under hardship applications must pay a fee of \$350.00 (including penalty). Stallions may apply for the stallion registry by February 1 of that breeding season with a fee of \$225.00. Stallions applying after February 1 and by June 30 of that breeding season must pay a fee of \$400.00. Further, the stallion must pay a yearly re-certification fee. If paid prior to February 1 the fee is \$25.00; after February 1 but before June 30, the fee is \$50.00. If the yearly fee is paid after June 30, the yearly fee is \$400.00.

(b) The breeder or owner of an Oklahoma-Bred horse shall pay the fee required for applying in the following categories:

- (1) Stallion Application by February 1 of breeding year - \$225.00
- (2) Stallion Application after February 1 but before June 30 of the breeding year - \$400.00
- (3) Stallion Reaccreditation Application by February 1 of breeding year - \$225.00
- (4) Stallion Reaccreditation Application after February 1 but before June 30 of breeding year - \$400.00
- (5) Yearly Recertification of Stallion in Registry by February 1 of breeding year - \$25.00
- (6) Yearly Recertification of Stallion in Registry after February 1 but before June 30 of breeding year - \$50.00
- (7) Yearly Recertification of Stallion in Registry after June 30 of breeding year - \$400.00
- (8) Broodmare Application by December 31 of Year prior to foaling - \$75.00
- (9) Broodmare Application after December 31 and prior to foaling - \$150.00

- (10) Broodmare Application under Hardship Application - \$350.00 (including penalty)
- (11) Broodmare Reaccreditation Application by December 31 prior to foaling - \$75.00
- (12) Broodmare Reaccreditation Application after December 31 and prior to foaling - \$150.00
- (13) Foal Application in Year of Birth by December 31 - \$50.00
- (14) Foal Application in Yearling Year by December 31 - \$ 150.00
- (15) Foal Application in Two-Year-Old Year by December 31 - \$450.00
- (16) Foal Application in Three-Year-Old Year by December 31 - \$750.00
- (17) Foal Application after December 31 of Three-Year-Old Year - \$1,000
- (18) Transfer fee - \$25.00

(c) Paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), and (12) of (b) of this Section are registries for breeding purposes only. Paragraphs (13), (14), (15), (16), and (17) of (b) of this Section are for racing purposes only.

(d) Proceeds from the fees listed above are to be distributed in the following manner:

- (1) 85% placed into the Oklahoma-Bred Fund for Thoroughbreds. Should the Legislature in the future authorize the Oklahoma Breeding Development Fund Special Account monies to be used for the care of retired and unwanted Oklahoma-Bred accredited horses, then 50% of such fees shall be placed in the Fund to be administered by the Commission for the care of retired and unwanted accredited Oklahoma-Bred Thoroughbred horses, and 35% placed in the Oklahoma-Bred Fund for Thoroughbreds, and
- (2) 15% to the Oklahoma Horse Racing Commission to:

(A) Assist in funding to oversee the Fund in (c) (2), to cover related costs to administering the Oklahoma-Bred Program for Thoroughbreds, and

(B) Improve and increase the number of inspections for compliance for Thoroughbred broodmares, stallions and foals to be eligible for the Oklahoma-Bred Program.

**325:75-1-13.1. Dual breed application categories and fees**

The breeder or owner of a dual breed registered Oklahoma-Bred horse shall pay the fee required for accreditation in the following categories:

- (1) Stallion Application by February 1 of Breeding Year - \$150.00
- (2) Amended Stallion Application by February 1 of Breeding Year - \$100.00
- (3) Stallion Application after February 1 and by June 30 of the Breeding Year - \$300.00
- (4) Amended Stallion Application after February 1 and by June 30 of the Breeding Year - \$200.00
- (5) Stallion Reaccreditation Application by February 1 of Breeding Year - \$150.00

- (6) Stallion Reaccreditation Application after February 1 and by June 30 of the Breeding Year - \$300.00
- (7) Broodmare Application by December 31 of Year Prior to Foaling - \$60.00
- (8) Amended Broodmare Application by December 31 of Year Prior to Foaling - \$35.00
- (9) Broodmare Application after December 31 and Prior to Foaling - \$120.00
- (10) Amended Broodmare Application after December 31 and Prior to Foaling - \$70.00
- (11) Broodmare Hardship Application - \$235.00
- (12) Broodmare Reaccreditation Application by December 31 of Year Prior to Foaling - \$60.00
- (13) Broodmare Reaccreditation Application after December 31 and Prior to Foaling - \$120.00
- (14) Foal Application in Year of Birth by December 31 - \$40.00
- (15) Amended Foal Application in Year of Birth by December 31 - \$25.00
- (16) Yearling Application by June 1 of Yearling Year - \$80.00
- (17) Amended Yearling Application by June 1 of Yearling Year - \$50.00
- (18) Racing Stock Application after June 1 of Yearling Year through December 31 of Three-Year-Old Year - \$750.00
- (19) Amended Racing Stock Application after June 1 of Yearling Year through December 31 of Three-Year-Old Year - \$500.00
- (20) Racing Stock Application on or after January 1 of Four-Year-Old Year - \$1,500.00
- (21) Amended Racing Stock Application on or after January 1 of Four-Year-Old Year - \$1,000.00

**325:75-1-14. Establishment of Oklahoma-Bred added money and award payments at race meetings**

The Commission shall establish initial Oklahoma-Bred added money and award payment levels for ~~accredited~~ eligible Oklahoma-Bred maiden, claiming and allowance races at Commission-licensed race meetings; and authorize increases or decreases in those levels as the Commission deems appropriate with respect to funds available in the Oklahoma Breeding Development Fund Special Account. The Commission may designate added money from the Oklahoma Breeding Development Fund Special Account for specific feature races open to ~~accredited~~ eligible Oklahoma-Bred horses.

**325:75-1-16. Disposition or unexpended Oklahoma-Bred funds generated at a race meeting**

Breakage and unclaimed ticket revenue generated from wagering by an organization licensee shall be remitted to the Commission for deposit to the Oklahoma Breeding Development Fund Special Account [3A:208.3(A)]. Distribution of these funds is made by the Commission to owners of ~~accredited~~ eligible Oklahoma-Bred horses which qualify

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through participation at race meetings held by the organization licensee generating the funds. In the event that the total amount of breakage and unclaimed ticket funds generated at a race meeting are not fully distributed to ~~accredited~~ eligible Oklahoma-Bred participants during that race meeting, the unexpended amount(s) shall be carried over for ~~accredited~~ eligible Oklahoma-Bred purse supplements and awards to the next subsequent race meeting conducted for that breed(s) by the same organization licensee. In the event an organization licensee does not conduct such subsequent race meeting in the succeeding calendar year for that breed(s) or the Commission does not re-license the organization licensee for the succeeding calendar year, then any amounts which would have been carried over shall be allotted by the Commission to the credit of the respective breeds participating in the immediate subsequent calendar year race meeting to provide purse supplements and awards to ~~accredited~~ eligible Oklahoma-Bred participants at levels established by the Commission. Nothing in this Section shall prohibit the Commission from authorizing funds derived from breakage and/or unclaimed ticket proceeds to be used for other purposes established by the Act.

## 325:75-1-19. Embryo transfer

For a resulting foal from an embryo transfer to be eligible for ~~registration~~ accreditation in the Oklahoma-Bred Registry, the donor mare must be ~~registered~~ accredited in the ~~permanent~~ broodmare registry prior to foaling. If a donor mare is bred in Oklahoma, the donor mare may be shipped out of Oklahoma to have the embryo removed but must return to Oklahoma within 30 days to continue her domicile, or if the donor mare is to be bred in subsequent cycles at an out-of-state location to obtain additional embryos, the broodmare must return to Oklahoma and resume her domicile within thirty (30) days of her final breeding date for that year's breeding season. Nothing in this section would prohibit an accredited broodmare that is serviced out-of-state [325:75-1-3.1(2)(a)] from producing multiple embryos which are transferred to recipient mares during the period of time she is permitted to be out-of-state for breeding purposes. All other eligibility requirements must be met for the resulting foal to be eligible for ~~registration~~ accreditation in the Oklahoma-Bred Registry.

[OAR Docket #09-1077; filed 5-26-09]

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

[OAR Docket #09-1078]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 9. Requirements for Manufacturer, Distributor, or Manufacturer/Distributor, and Their Employee License Applicants  
325:80-9-1 [AMENDED]  
325:80-9-2 [AMENDED]  
Subchapter 11. Requirements for Vendor License

325:80-11-2 [AMENDED]

325:80-11-3 [AMENDED]

Subchapter 15. Requirements for Independent Testing Laboratory License

325:80-15-1 [AMENDED]

### AUTHORITY:

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

### DATES:

#### Comment Period:

February 17, 2009 through March 19, 2009

#### Public Hearing:

March 19, 2009

#### Adoption:

March 26, 2009

#### Submitted to Governor:

March 27, 2009

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March 27, 2009

#### Submitted to Senate:

March 27, 2009

#### Gubernatorial approval:

May 4, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

#### Final Adoption:

May 20, 2009

#### Effective:

June 25, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

Not Applicable

#### INCORPORATED BY REFERENCE:

Not Applicable

#### ANALYSIS:

A Commission Gaming Agent proposed that application deadlines be added to the gaming license rules to provide more timely receipt and subsequent approval consideration before the beginning of the calendar year for which the license is requested. The current rule language did not provide an application deadline date. A second amendment was proposed to 325:80-15-1, Application Required, to eliminate the mandatory requirement of annual site visits to each of the applicants for Independent Testing Laboratory License and leave the frequency of site visits to the recommendation of the Law Enforcement Division to the Commission Executive Director.

#### CONTACT PERSON:

Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, 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, 2009:**

## 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.

(d) All renewal applications for Manufacturer, Distributor, or Manufacturer/Distributor Licenses must be submitted to the Commission no later than November 15<sup>th</sup> of the current license year. Failure to submit renewal applications by the November 15<sup>th</sup> deadline may result in disciplinary action in accordance with Title 3A, O.S. § 204.

**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. All Manufacturer's, Distributor's, or Manufacturer/Distributor's employee license renewals must be submitted to the Commission no later than November 15<sup>th</sup> of the current license year. Failure to submit renewal applications by the November 15<sup>th</sup> deadline may result in disciplinary action in accordance with Title 3A, O.S. § 204.

**SUBCHAPTER 11. REQUIREMENTS FOR VENDOR LICENSE**

**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. All Vendor License renewals must be submitted to the Commission no later than December 1<sup>st</sup> of the current license year. Failure to submit renewal applications by the December 1<sup>st</sup> deadline may result in disciplinary action in accordance with Title 3A, O.S. § 204.

**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. All Vendor Employee License renewals must be submitted to the Commission no later than December 1<sup>st</sup> of the current license year. Failure to submit renewal applications by the December 1<sup>st</sup> deadline may result in disciplinary action in accordance with Title 3A, O.S. § 204.

**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:

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(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~~ may 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. The frequency of the on-site review will be recommended by the Commission Law Enforcement Division's Director to the Commission Executive Director.

(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 rely 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.

*[OAR Docket #09-1078; filed 5-26-09]*

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

*[OAR Docket #09-994]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. Human Resources Management Division (HRMD)

Part 7. Recruitment, Selection, and Placement

340:2-1-83 [AMENDED]

(Reference APA WF 09-05)

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Sections 250 et seq. of Title 75 of the Oklahoma Statutes.

**DATES:**

**Comment period:**

February 17, 2009 through March 19, 2009

**Public hearing:**

None requested

**Adoption:**

March 24, 2009

**Submitted to Governor:**

March 24, 2009

**Submitted to House:**

March 24, 2009

**Submitted to Senate:**

March 24, 2009

**Gubernatorial approval:**

April 27, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 16, 2009.

**Final adoption:**

May 16, 2009

**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

OAC 340:2-1-83 is amended to clarify language for selecting employees in entry-level nonsupervisory positions.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:**

**SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)**

**PART 7. RECRUITMENT, SELECTION, AND PLACEMENT**

**340:2-1-83. Selection advisory committee for positions in the classified and unclassified service**

(a) A committee is established by the selecting official or designee to provide assistance in the consideration, interview, and selection process of candidates for any classified supervisory or managerial position. Upon request, the requirement for a committee may be waived. A waiver request, including justification, must be submitted to the Human Resources Management Division (HRMD) director for consideration. If there is only one candidate, a committee is not required.

(b) Initial and any subsequent committees must have at least three members, one of whom must be from outside the program or division of the vacant position.

(c) The selecting official does not serve as a member of any committee.

(d) The requirements of this subsection are waived for non-mandated committees convened at the discretion of the local administrator. A selection advisory committee is not required for entry-level and nonsupervisory positions. When a local administrator elects to use a committee for such positions, there is no minimum member requirement and the requirement for one member to be from outside the program or division is waived.

The selecting official may delegate responsibility for conducting interviews or include other staff members in the interview process for entry-level and nonsupervisory positions as an alternative to use of a committee.

(e) This procedure may be utilized when filling an unclassified position, although it is not a requirement.

*[OAR Docket #09-994; filed 5-20-09]*

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

*[OAR Docket #09-995]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Office of Client Advocacy
  - Part 1. Administration
    - 340:2-3-1 through 340:2-3-2 [AMENDED]
  - Part 5. Grievances
    - 340:2-3-45 through 340:2-3-48 [AMENDED]
    - 340:2-3-50 through 340:2-3-51 [AMENDED]
    - 340:2-3-54 [AMENDED]
  - Part 7. Grievance and Abuse Review Committee
    - 340:2-3-64 [AMENDED]
  - Part 9. Ombudsman Advocacy Programs
    - 340:2-3-71 through 340:2-3-75 [AMENDED]

(Reference APA WF 09-03)

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Section 10-102 et seq. of Title 43A of the Oklahoma Statutes.

**DATES:**

**Comment period:**

February 17, 2009 through March 19, 2009

**Public hearing:**

None requested

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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 16, 2009.

**Final adoption:**

May 16, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The revisions to Subchapter 3 of Chapter 2 amend the rules to: (1) reflect the definition of maltreatment included in the Protective Services for Vulnerable Adults Act; (2) clarify the actions taken by the local grievance coordinator (LGC) and others when the grievance decisionmaker elects to accept or reject a proposed resolution; (3) amend the requirements for a LGC to improve accessibility to grievants or their representatives; (4) establish a timeframe for notifying clients and their guardians or custodians when the

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designated LGC changes; (5) clarify the process for submitting additional evidence for consideration of the Grievance and Abuse Review Committee; (6) address the redundancy in notice to Office of Client Advocacy (OCA) advocates by eliminating the on-call system; (7) remove the requirement that advocates attend Behavior Review Committee and Human Rights Committee meetings; (8) increase number of advocate visits with their clients; (9) update language to current terminology; (10) add clarifying language; and (11) remove internal procedures from the rules.

## CONTACT PERSON:

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:**

## SUBCHAPTER 3. OFFICE OF CLIENT ADVOCACY

### PART 1. ADMINISTRATION

#### 340:2-3-1. Purpose

The purpose of this Subchapter is to outline the rules governing the operation of the Office of Client Advocacy (OCA). Policies relating to:

- (1) administrative investigations conducted by OCA are in OAC 340:2-3-32 through 340:2-3-38;
- (2) investigations of alleged retaliation or discrimination against a foster parent are in OAC 340:2-3-38;
- (3) disciplinary options regarding Oklahoma Department of Human Services (OKDHS) employees in response to OCA investigation findings are in OAC 340:2-3-12;
- (4) grievance systems maintained by OCA are in OAC 340:2-3-45 through 340:2-3-55;
- (5) the Grievance and Abuse Review Committee (GARC) are in OAC 340:2-3-61 through 340:2-3-65; and
- (6) OCA ~~Ombudsman~~ Advocacy Programs are in OAC 340:2-3-71 through 340:2-3-75.

#### 340:2-3-2. Definitions

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

**"Abuse"** means, with regard to:

- (A) minors and youth, the causing or permitting harm or threatened harm to the health, safety, or welfare of the minor or youth by a caretaker responsible for the minor's or youth's health, safety, or welfare, including but not limited to sexual abuse, sexual exploitation, and the intentional use of excessive or unauthorized force aimed at hurting or injuring the minor or youth; or
- (B) vulnerable adults, abuse as defined by Section 10-103(8) of Title 43A of the Oklahoma Statutes.

**"Administrator,"** including the person designated by an administrator to act on the administrator's behalf, means, with regard to:

- (A) minors in Oklahoma Department of Human Services (OKDHS) custody living in a private residential facility, the chief administrative officer of the facility;
- (B) minors in OKDHS custody in an OKDHS operated shelter or group home, the director of the shelter or group home;
- (C) minors in OKDHS custody and youth in voluntary care of OKDHS who live in any other setting, including any type of out-of-home placement, the applicable OKDHS county director;
- (D) foster parents, the applicable OKDHS county director or area director, as appropriate;
- (E) minors and youth in residential care facilities operated by Office of Juvenile Affairs (OJA) or Department of Rehabilitation Services (DRS), facilities which contract with or are licensed by OJA, Department of Mental Health and Substance Abuse Services (DMHSAS), the J.D. McCarty Center, or OKDHS, and other residential care facilities, the superintendent, director, chief administrative officer, or head of the facility regardless of the person's working title;
- (F) day treatment programs, the person charged with responsibility for administering the program;
- (G) adults and minors who are in Developmental Disabilities Services Division (DDSD) specialized foster care and DDSD specialized foster parents, the applicable DDSD area manager;
- (H) residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the facility director;
- (I) providers of residential services, vocational services, or in-home paraprofessional supports to individuals with developmental disabilities living in the community, the chief executive officer of the provider; and
- (J) residents of group homes for persons with developmental disabilities, the director of the group home.

**"Adult Protective Services"** or **"APS"** means the Adult Protective Services Unit of OKDHS.

**"Advocate,"** ~~also known as "ombudsman" or "ombuds,"~~ means an Office of Client Advocacy (OCA) employee who provides assistance to OCA clients in exercising their rights, listening to their concerns, encouraging them to speak for themselves, seeking to resolve problems, helping protect their rights, and seeking to improve the quality of their life and care.

**"Advocate general"** means the chief administrative officer of the OCA designated in Section 7004-3.4(B)(1) of Title 10 of the Oklahoma Statutes. The e-mail address for the advocate general is \*OCA.advocategeneral@okdhs.org.

**"Authorized use of physical force"** by a caretaker of minors and youths residing outside their homes, other than minors and youth in foster care means:

(A) the use of physical contact to control or contain a person when the caretaker reasonably considers that person to:

- (i) pose a risk of inflicting harm to self or others; or
- (ii) be in the process of leaving a facility without authorization; and

(B) when the use of physical force is authorized, the least force necessary under the circumstances is employed. In determining whether excessive force has been used, all of the circumstances surrounding the incident are taken into consideration, including:

- (i) the grounds for belief that force was necessary;
- (ii) the age, gender, and strength of the parties involved;
- (iii) the nature of the force employed;
- (iv) the availability of alternative means of force or control; and
- (v) the extent of the harm inflicted.

**"Caretaker"** means, with regard to:

- (A) minors and youth, an agent or employee of:
  - (i) a public or private residential home, institution, or facility above the level of foster family care; or
  - (ii) a day treatment program as defined in Section 175.20 of Title 10 of the Oklahoma Statutes; and
- (B) vulnerable adults, caretaker as defined in Section 10-103(6) of Title 43A of the Oklahoma Statutes.

**"Caretaker misconduct":**

- (A) means an act or omission that:
  - (i) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices;
  - (ii) is not found to be abuse or neglect; and
  - (iii) results in or creates the risk of harm to a minor or vulnerable adult.
- (B) includes, but is not limited to:
  - (i) acts or omissions that contribute to the delinquency of a minor;
  - (ii) unintentional excessive or unauthorized use of force not rising to abuse or neglect;
  - (iii) unintentionally causing mental anguish;
  - (iv) other acts exposing a client to harm or threatened harm to the health, safety or welfare of the client; or
  - (v) use of abusive or professionally inappropriate language not rising to the level of verbal abuse.

**"Case manager"** means the person assigned by DDSD who has the responsibility for ensuring that services to an individual are planned and provided in a coordinated fashion.

**"Child placing agency"** means an agency that provides social services to children and their families that supplement, support, or substitute parental care and supervision for the purpose of safeguarding and promoting the welfare of children. The agency may provide full time placement services for children away from their own homes, such as adoptive

homes, foster family homes, group homes, and transitional or independent living programs.

**"Client"** means, with regard to:

- (A) ~~OCA's~~ OCA investigation services, those individuals listed in OAC 340:2-3-32(a)(2);
- (B) ~~OCA's~~ OCA grievance services, those individuals listed in OAC 340:2-3-45(a)(2); and
- (C) ~~OCA's ombudsman~~ OCA advocacy program, those individuals listed in OAC 340:2-3-71(b).

**"Community services worker"** or **"CSW"** means any person not a licensed health professional who is employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance as those terms are defined in Section 1025.1 of Title 56 of the Oklahoma Statutes.

**"Community Services Worker Registry"** or **"CSW Registry"** means the Community Services Worker Registry established by OKDHS in accordance with Section 1025.3 of Title 56 of the Oklahoma Statutes.

**"Day treatment program"** means a non-residential, partial hospitalization program, day treatment program, or day hospital program in which minors are provided intensive services, psychiatric, or psychological treatment.

**"DDSD"** means the Developmental Disabilities Services Division of OKDHS.

**"DHS"** or **"Department"** or **"OKDHS"** means the Oklahoma Department of Human Services.

**"Disposition,"** with regard to ~~OCA's~~ OCA intake processes, means the action taken by OCA intake in response to a referral received, pursuant to OAC 340:2-3-35.

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

**"DRS"** means the Oklahoma Department of Rehabilitation Services.

**"E-mail"** means:

- (A) with regard to the advocate general, an e-mail sent to \*oca.advocategeneral@okdhs.org;
- (B) with regard to OCA grievance matters, an e-mail sent to \*oca.grievances@okdhs.org;
- (C) with regard to OCA investigation matters, an e-mail sent to \*oca.investigations@okdhs.org; and
- (D) with regard to OCA intake matters, \*oca.intake@okdhs.org.

**"Emergency"** means a situation in which a person is likely to suffer death or serious physical harm without immediate intervention.

**"Excessive use of force"** by a caretaker, with regard to minors and youths residing outside their homes, other than minors and youth in foster care, means the failure to employ the least amount of physical force necessary under the circumstances, taking into consideration all of the circumstances surrounding the incident, including:

- (A) the grounds for belief that force was necessary;
- (B) the age, gender, and strength of the parties involved;
- (C) the nature of the force employed;
- (D) the availability of alternative means of force or control;

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- (E) the extent of the harm inflicted; and
- (F) the method(s) of restraint and intervention approved for use with the person against whom the force was used.

**"Exploitation" or "exploit"** with regard to vulnerable adults, means exploitation or exploit as defined in Section 10-103(9) of Title 43A of the Oklahoma Statutes.

**"Facility"** means:

- (A) a public or private agency, corporation, partnership, or other entity which:
  - (i) operates a residential child care center; or
  - (ii) contracts with or is licensed or funded by OKDHS, OJA, or DMHSAS for the physical custody, detention, or treatment of minors;
- (B) an OKDHS operated shelter;
- (C) an OKDHS, OJA, DMHSAS, or DRS operated residential child care center;
- (D) a community-based youth services shelter or community intervention center;
- (E) the J.D. McCarty Center;
- (F) a day treatment program;
- (G) a private psychiatric facility for minors;
- (H) sanctions programs certified by OJA to provide programming for minors who are court ordered to participate in that program; or
- (I) SORC, NORCE, and Greer.

**"Financial neglect"** with regard to vulnerable adults, means financial neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

**"Foster care" or "foster care services"** means continuous 24-hour care and supportive services provided for an individual in a foster placement, including but not limited to the care, supervision, guidance, and rearing of a foster child by the foster parent.

**"Foster child"** means a child placed in a foster family placement.

**"Foster parent"** means an individual maintaining a foster family home who is responsible for the care, supervision, guidance, rearing, and other foster care services provided to another individual.

**"GARC"** means the Grievance and Abuse Review Committee described in OAC 340:2-3-61.

**"Guardian"** means a person appointed by a court to ensure that the essential requirements for the health and safety of an incapacitated or partially incapacitated person, the ward, are met, to manage the estate or financial resources of the ward, or both. As used in this Subchapter, guardian includes: a general or limited guardian of the person; a general or limited guardian of the estate; a special guardian; and a temporary guardian. The term does not include a person appointed as guardian ad litem.

**"Guardian ad litem" or "GAL"** means a person appointed by a court, pursuant to Section 1415 of Title 10 of the Oklahoma Statutes, to represent the interests of an individual as specified in the court order.

**"Harm or threatened harm to the health, safety, or welfare"** includes but is not limited to:

- (A) non-accidental physical injury or mental anguish;
- (B) sexual abuse;
- (C) sexual exploitation;
- (D) failure to provide protection from harm or threatened harm;
- (E) the unauthorized use of force; or
- (F) the use of excessive force.

**"Hissom class member"** means an individual certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound, Inc., et al. vs. The Hissom Memorial Center, et al.*, Case No. ~~85-C-437-E~~ 85-C-437-TCK-SAJ.

**"Hotline"** means the statewide, toll free hotline, 1-800-522-3511, maintained by OKDHS for the purpose of receiving reports of abuse, neglect, or exploitation of children and adults. The hotline is in operation 24 hours a day, 7 days a week.

**"ICF/MR" or "Intermediate Care Facility for the Mentally Retarded,"** also known as a "specialized facility for the mentally retarded," means a private or public residential facility, licensed in accordance with state law and certified by the federal government as a provider of Medicaid services, for mentally retarded persons as that term is defined in Title XIX rules and regulations of the Social Security Act.

**"Incapacitated person"** means:

- (A) any person 18 years of age or older who is impaired by reason of mental or physical illness or disability, dementia, or related disease, mental retardation, developmental disability, or other cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage financial resources or to meet essential requirements for mental or physical health or safety without assistance from others; or
- (B) a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

**"Indecent exposure"** means indecent exposure as defined by Section 10-103(12) of Title 43A of the Oklahoma Statutes.

**"In-home supports" and "IHS"** means services funded through Medicaid Home and Community-Based Waivers (HCBW) as defined in Section 1915(c) of the Social Security Act and administered by OKDHS DDS, which are provided in the service recipient's home and are not residential services as defined in OAC 340:100-5-22.1 or group home services as defined in Title 10, Section 1430.2 of the Oklahoma Statutes.

**"Injury"** means any hurt, harm, appreciable physical pain, or mental anguish.

**"Maltreatment"** ~~is used collectively in this Subchapter to refer to abuse, neglect, verbal abuse, exploitation, caretaker misconduct, sexual abuse, and sexual exploitation as defined in this Section~~ means abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation or sexual exploitation of vulnerable adults as defined in Section 10-103 of Title 43A of the

Oklahoma Statutes; or abuse, neglect, sexual abuse or sexual exploitation of children as defined in Section 7102 of Title 10 of the Oklahoma Statutes.

**"Medicaid personal care assistant"** or **"MPCA"** means a person who provides Medicaid services funded under Oklahoma's personal care program who is not a certified nurse aide or a licensed professional.

**"Mental anguish"** means mental damage evidenced by distress, depression, withdrawal, severe anxiety, or unusually aggressive behavior toward self or others.

**"Minor"** means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

**"Minor physical injury"** means a demonstrable injury reasonably expected to be treated with the administration of first aid, over the counter remedies, or both. A demonstrable injury includes damage to bodily tissue caused by non-therapeutic conduct, illness, new or an increased impairment of physical or cognitive functioning, evidence of a physical injury (for example, a laceration, bruise, or burn), and an injury which is confirmed by a physician, dentist, nurse, or other health care professional.

**"Neglect"** means, with regard to:

(A) minors and youth, the failure of a caretaker to provide:

- (i) adequate food, clothing, shelter, medical care, or supervision which includes, but is not limited to, lack of appropriate supervision which results in sexual activity between minors; or
- (ii) special care made necessary by the physical or mental condition of the minor or youth; or

(B) vulnerable adults, neglect as defined in Section 10-103(10) of Title 43A of the Oklahoma Statutes.

**"OCA"** means the Office of Client Advocacy of OKDHS.

**"OCA intake"** means the centralized intake system maintained by OCA in its Oklahoma City office that receives referrals of alleged abuse, neglect, verbal abuse, and financial exploitation.

**"OJA"** means the Oklahoma Office of Juvenile Affairs.

**"Ombudsman"** or **"ombuds,"** means "advocate" as defined in this subsection.

**"Personal support team"** or **"team,"** formerly known as the "interdisciplinary team," means the decision-making body for service planning, implementation, and monitoring of the individual plan, as more fully described in OAC 340:100-5-52.

**"Preponderance of the evidence"** means information or evidence that is of a greater weight or more convincing than the information or evidence offered in opposition. It is that degree of proof which is more probable than not.

**"Problem resolution"** means verbal or written communications which seek to resolve concerns, complaints, service inadequacies, or issues identified by the client or members of the client's team, including the client's guardian, the OCA advocate for the client, a volunteer advocate for the client, or other persons interested in the welfare of the client.

**"Provider"** means a program, corporation, partnership, association, individual, or other entity that contracts with, or is licensed or funded by, OKDHS to provide community-based residential or vocational services to persons with mental retardation or developmental disabilities, or which contracts with the Oklahoma Health Care Authority to provide residential or vocational services or in-home supports to individuals with mental retardation through the Home and Community-Based Waiver.

**"Referring party"** means the individual who informs OCA verbally or in writing that an incident occurred.

**"Reporting party"** means the individual who initially tells someone verbally or in writing that an incident occurred.

**"Residential child care center"** means a 24-hour-a-day residential group care facility at which a specified number of minors, normally unrelated, reside with adults other than their parents.

**"Self-neglect"** means self-neglect as defined in Section 10-103(13) of Title 43A of the Oklahoma Statutes.

**"Serious physical injury"** means a physical injury to a person's body determined to be serious by a physician, dentist, or nurse. It includes, but is not limited to, death, suicide attempt, fracture, dislocation of any major joint, internal injury, concussion, head injury with loss of consciousness, ingestion of foreign substances and objects that are harmful; near drowning, lacerations involving injuries to tendons or organs and those for which complications are present, lacerations requiring four or more stitches or staples to close, heat exhaustion or heatstroke, injury to an eyeball, irreversible loss of mobility, permanent damage to or loss of a tooth, skin deterioration, and a second or third degree burn and other burns for which complications are present. It also includes multiple abrasions, bruises, and minor physical injuries on the body of a person, identified around the same time or over a period of several weeks, that have no clear, known explanation.

**"Sexual abuse"** means, with regard to:

(A) minors and youth, rape, incest, and lewd or indecent acts or proposals, as defined by state law, by a caretaker responsible for the health, safety, or welfare of the minor or youth; or

(B) vulnerable adults, sexual abuse as defined by Section 10-103(11) of Title 43A of the Oklahoma Statutes.

**"Sexual exploitation"** means, with regard to:

(A) minors and youth:

- (i) allowing, permitting, or encouraging a minor or youth to engage in sexual acts with others or prostitution, as defined by state law, by a caretaker responsible for the minor's or youth's health, safety, or welfare; or
- (ii) allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a minor or youth in those acts as defined by the state law, by a caretaker responsible for the minor's health, safety, or welfare; or

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(B) vulnerable adults, sexual exploitation as defined by Section 10-103(14) of Title 43A of the Oklahoma Statutes.

**"Specialized foster care"** means foster care provided to a minor or adult in a specialized foster home or agency-contracted home which has been certified by DDS, is monitored by DDS, and is funded through the Home and Community-Based Waiver Services Program administered by DDS.

**"State office"** means the administrative offices of OKDHS in Oklahoma City.

**"State office administrator,"** including the person designated by a state office administrator to act on the state office administrator's behalf, means, with regard to:

(A) grievances of minors, youths, and foster parents regarding the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS or an OKDHS operated shelter or residential facility, or of an agent or contractor of OKDHS, or a child placement agency, the director of OKDHS Children and Family Services Division (CFSD);

(B) grievances regarding a decision, behavior, or action by an OKDHS employee, agent, contractor, foster parent, or by any person residing in the same placement setting, the director of the OKDHS Field Operations Division;

(C) DDS clients, the director of DDS; and

(D) other OKDHS clients, the appropriate chief oficer or division director.

**"Subpoena"** means a command to appear at a certain time and place to give testimony. A "subpoena duces tecum" is a command requiring the person subpoenaed to bring records with them.

**"Suspicious injury"** means an injury for which there is no credible explanation that makes it unlikely to be the result of client maltreatment.

(A) It includes but is not limited to an injury that:

(i) appears inconsistent with the offered explanation(s) for the injury;

(ii) is unusual;

(iii) cannot be explained as the result of an accident, self-injurious behavior or normal activities of daily living;

(iv) is a minor injury located on or near a private part of the body or on a part of the body that makes it unlikely to have been the result of self-injury or an accident during the course of daily living activities; and

(v) involves multiple abrasions, bruises, and minor injuries on the body of a person, identified around the same time or over a period of several weeks, but have no clear, known explanation.

(B) The determination whether an injury is suspicious is made from the point of view of an independent skeptical reviewer. An injury is suspicious if there is no credible explanation for it consistent with the injury not being the result of maltreatment.

**"Unauthorized use of force"** means, with regard to minors and youths residing outside their homes, other than minors

and youth in foster care, a use of force that is not an authorized use of physical force as defined in this subsection. It includes unacceptable physical handling of and contact with clients including, but not limited to, slapping, kicking, punching, poking, pulling hair or an ear, pinching, using a choke hold, smothering, spitting, head butting, and tugging.

**"Unexplained injury"** means an injury for which there is no known credible origin or cause, even though a possible explanation for the injury may be offered.

**"Verbal abuse"** means verbal abuse as defined in Section 10-103(15) of Title 43A of the Oklahoma Statutes.

**"Vulnerable adult"** means vulnerable adult as defined by Section 10-103(5) of Title 43A of the Oklahoma Statutes.

**"Ward"** means a person over whom a guardianship has been given by the court.

**"Youth"** means, with regard to:

(A) OCA's OCA investigation programs, a person over the age of 18 in OJA custody and residing in an OJA operated facility or a facility which contracts with OJA; or

(B) OCA's OCA grievance programs, a person over the age of 18 in OJA custody or voluntary care of OKDHS.

## PART 5. GRIEVANCES

### 340:2-3-45. Grievance system protocols

#### (a) Legal authority, scope, and purpose.

##### (1) Legal authority.

(A) Section 7004-3.4 of Title 10 of the Oklahoma Statutes confers on the Office of Client Advocacy (OCA) the responsibility to establish and maintain a fair, simple, and expeditious grievance system for complaints filed by or on behalf of children in the custody of the Oklahoma Department of Human Services (OKDHS).

(B) Section 1415.1(A)(2) of Title 10 of the Oklahoma Statutes requires OKDHS to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS, including an appeals procedure for the resolution of grievances and complaints of residents, their parents, and their court-appointed guardians. OKDHS has conferred this responsibility on OCA.

(C) OKDHS also has conferred on OCA the responsibility for grievance systems for other clients listed in paragraph (2) of this subsection.

(2) **Scope.** OCA administers and monitors grievance programs for the individuals listed in (A) through (H) of this paragraph, all of whom are collectively referred to as the "client" throughout this Section and OAC 340:2-3-46. Further detail about grievances for:

(A) minors who are in the custody of OKDHS regardless of placement, refer to OAC 340:2-3-47 through 340:2-3-49;

(B) youth in voluntary care of OKDHS, refer to OAC 340:2-3-49;

(C) foster parents approved by OKDHS, refer to OAC 340:2-3-50;

(D) residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer), refer to OAC 340:2-3-51;

(E) Hissom class members, refer to OAC 340:2-3-52;

(F) other clients receiving services in the community from the Developmental Disabilities Services Division (DDSD) of OKDHS, refer to OAC 340:2-3-53;

(G) residents of group homes for persons with developmental or physical disabilities due to a developmental disability that are subject to Section 1430.1 et seq. of Title 10 of the Oklahoma Statutes, refer to OAC 340:2-3-54; and

(H) clients receiving OKDHS services who want to file a grievance about a problem, concern, or complaint for which there does not exist another grievance system within OKDHS, refer to OAC 340:2-3-55.

(3) **Purpose.** The purpose of OCA's OCA grievance policies and procedures is to provide clients a fair, simple, effective, and timely system of problem resolution with access to procedures through which clients can obtain a thorough review, fair consideration, and correction when appropriate. These policies also ensure that persons filing grievances are free from restraint, coercion, reprisal, or discrimination. To further this purpose, OCA independently reviews and monitors the implementation of grievance programs subject to this Section.

(4) **Informal problem resolution.** Clients have the right to file grievances. However, resolving problems and concerns informally before filing a grievance is encouraged. Not all client inquiries and requests for explanation are considered grievances. Most can be handled within the regular relationship between clients and OKDHS, provider, and facility staff. Efforts are made at the local level to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally unless the client desires to proceed with the grievance process.

(b) **Definitions.** In addition to the definitions in OAC 340:2-3-2, the following words and terms when used in this Part 5, OAC 340:2-3-45 through 2-3-55, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Area director"** means a director of one of the six service delivery areas designated by OKDHS Field Operations Division (FOD).

(2) **"Area manager"** means a manager of one of the three service delivery areas designated by OKDHS DDSD.

(3) **"Business day" or "working day"** means Monday through Friday, not including federal or state holidays.

(4) **"CFSD"** means the Children and Family Services Division of OKDHS.

(5) **"Client"** means any of the individuals listed in subsection (a) of this Section on whose behalf OCA maintains a grievance system.

(6) **"Contested grievance"** means a grievance that has not been resolved at the local level (first and second levels) and, at the request of the grievant or decisionmaker, is submitted to a higher authority for response.

(7) **"Decisionmaker"** means the person who has authority to decide whether to accept any resolution proposed at each level of the grievance process. It typically is the client who filed the grievance or on whose behalf a grievance was filed. For clients unable to advocate for themselves (for example, young children and persons with severe cognitive limitations), it is a person who speaks on the client's behalf, depending on the circumstances and the nature of the decision to be made.

(A) With regard to minors, it might be a parent, guardian, guardian ad litem, foster parent, or a legal custodian appointed by a court.

(B) With regard to DDSD clients who are adults, it might be a guardian or the individual support team for the client.

(C) When the grievant is not the decisionmaker, the local grievance coordinator (LGC) does not inform the grievant when the proposed resolution is issued or whether it has been accepted or rejected. The decisionmaker may share this information with the person grieving on behalf of the client.

(8) **"Due date"** means the date by which some response or action is required, for example, the date by when a respondent must respond to a grievance. In calculating the due date, the first day of the period computed is not included and only business days are included. If the last day of the period computed is a Saturday, Sunday, or legal holiday, the period runs until the end of the next business day.

(9) **"E-mail"** communication with OCA or with the advocate general means an e-mail sent to the e-mail address: \*oca.grievances@okdhs.org.

(10) **"Facility grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of a facility as defined in OAC 340:2-3-2; or

(B) a decision, act, or omission of an employee, agent, or contractor of a facility.

(11) **"FOD"** means the Field Operations Division of OKDHS.

(12) **"Grievance"** is defined in subsection (c) of this Section.

(13) **"Grievant"** means a client or the person who files a grievance on behalf of a client.

(14) **"Local grievance coordinator" or "LGC"** means, with regard to:

(A) minors in OKDHS custody who live in a residential facility, the individual designated by the facility as its grievance coordinator;

(B) minors in OKDHS custody who do not live in a residential facility, including minors in foster care and foster parents, the individual designated as grievance

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coordinator in the OKDHS county office where the grievant resides;

(C) DDSO clients who are residents of Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate staff assigned to each facility;

(D) foster parents approved by OKDHS, the county director in the OKDHS county office where the grievant resides;

(E) DDSO clients who are pursuing a grievance with a provider of residential, vocational, or in-home supports, the individual designated by the provider as its grievance coordinator; and

(F) all other DDSO clients, the applicable DDSO area manager or designee.

(15) **"OCA grievance liaison"** means the individual(s) designated by the advocate general to coordinate and monitor contested grievances, and local grievance programs.

(16) **"OKDHS grievance"** means a grievance that involves:

(A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS (other than policies, rules, and regulations of OKDHS operated shelters and residential facilities for minors); or

(B) a decision, act, or omission of an employee of OKDHS, including but not limited to a Child Welfare (CW) specialist, a case manager, and OKDHS county directors, but not including an employee of an OKDHS operated facility.

(17) **"Placement grievance"** means a complaint about a present or proposed placement of a minor in OKDHS custody.

(18) **"Respondent"** means the person at each level in the grievance process who has the responsibility for reviewing the grievance and proposing a resolution to resolve the grievance.

(c) **Grievance defined.**

(1) **"Grievance"** means a problem or concern that an individual needs assistance resolving, including a complaint of unfair treatment. At the request of a client, an unresolved problem, concern, complaint, or dispute is processed as a grievance. When a client verbally communicates a complaint to an OKDHS employee or a facility or provider employee that is not resolved, the client is informed of the right to have the problem or concern processed as a grievance. At the request of the client, the employee prepares a written statement of the client's complaint or refers the client to the local grievance coordinator to assist in doing that.

(A) **Facility or provider grievances.** The subject of a facility grievance or a provider grievance includes:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of an OKDHS operated shelter or residential facility for minors, or a facility, agency, or provider which

contracts with OKDHS, or a child placing agency; or

(ii) a decision, act, or omission of an employee, agent, or contractor of such a facility, or any client residing in the same placement setting.

(B) **OKDHS grievances.** The subject of an OKDHS grievance includes:

(i) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS, but this does not include policies, rules and regulations of OKDHS operated shelters and residential facilities for minors;

(ii) a decision, act, or omission of an employee in an OKDHS operated facility; this includes a case manager, a CW specialist, and county office employees; or

(iii) a facility grievance filed by a resident of SORC, NORCE, or Greer.

(C) **Placement grievances.** A placement grievance is defined in subsection (b) of this Section.

(2) **Summary dispositions.** If a grievance is submitted and it falls into one of the categories listed in (A) through (K) of this paragraph, when appropriate, the LGC contacts the client to provide assistance to the client in rewriting the grievance to state the problem(s) or concern(s) the client wants to grieve. If it is determined the client is asking to grieve a problem or concern covered by any of the categories below, the LGC informs the client why the grievance is not being processed, using Form 15GR012E, Notice of Summary Disposition of Grievance - OKDHS County Offices, 15GR013E, Notice of Summary Disposition of Facility Grievance, 15GR014E, Notice of Summary Disposition of Grievance - Developmental Disabilities Services Division (DDSD) Clients, 15GR015E, Notice of Summary Disposition of Developmental Disabilities Services Division (DDSD) Provider Grievance, or 15GR016E, Notice of Summary Disposition of Foster Parent Grievance, whichever is applicable. The LGC also writes the reason on the bottom of Form 15GR001P, Grievance Form, and then dates and signs the form. The grievance is logged on Form 15GR009E, Grievance Tracking Log. The form used to notify the grievant along with a copy of the grievance form is sent within three business days to the advocate general for review, and the original is filed in the appropriate grievance file. Within three business days of receipt, the OCA grievance coordinator reviews the grievance. If the OCA grievance liaison determines the grievance was improperly given a summary disposition, the OCA grievance liaison informs the LGC who immediately processes the grievance. If the OCA grievance liaison concurs with the summary disposition, the OCA grievance liaison informs the LGC in writing.

(A) **Untimely grievances.** A grievance which is not timely filed in accordance with OAC 340:2-3-45(g) can be accepted and processed when good cause exists for the delay in filing the grievance.

There are no time limits for filing grievances on behalf of individuals served by the OKDHS DDS.

(B) **Discrimination based on race, color, national origin, sex, age, religion, or disability.** If a grievance alleges discrimination or other civil rights matters, the client is referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the grievance to the OKDHS civil rights administrator and so informs the grievant.

(C) **A problem that is moot.** A moot problem is one that already has been decided or settled or one that has no practical resolution. For example, a placement grievance with regard to a child who is no longer in OKDHS custody; or a grievance with regard to an event that was in future but is now in the past, when the dispute about the event is unlikely to occur again with regard to this client.

(D) **Duplicative grievances.** This is a grievance which duplicates another pending grievance in the same grievance system by or on behalf of the client involving the same incident or problem.

(E) **Requests to violate laws.** This is a grievance which requests an action that violates state or federal law.

(F) **Collateral complaint.** A collateral complaint does not involve a problem concerning the client who filed or on whose behalf the grievance was filed.

(G) **Remote grievances.** The grievance requires action by a private or public individual or entity over which OKDHS does not have authority or control, such as a grievance about the action of a public school teacher, a guardian, or a physician in private practice. In these situations, the LGC assists the grievant in using any grievance or complaint system which may be available regarding the subject of the grievance.

(H) **Pending proceedings.** The grievance involves a matter which is the subject of a pending civil, criminal, or administrative proceeding, or a decision of a court or administrative hearing, or the subject of a pending OCA, Office of Inspector General (OIG), or Child Welfare investigation.

(I) **Investigative findings.** The results of an investigation regarding abuse, neglect, verbal abuse, caretaker misconduct, or exploitation cannot be grieved.

(J) **Fair hearing decisions.** The results of a fair hearing cannot be grieved pursuant to OAC 340:2-5-50.

(K) **Frivolous grievances.** A frivolous grievance does not state a complaint or problem of any substance. Before declining to process a grievance of this nature, the LGC contacts the grievant to inquire if the grievant needs assistance in submitting a substantive grievance.

(3) **Documenting exclusions.** If a grievance is submitted and it falls into an excluded category listed in the preceding paragraph, the LGC dates and signs Form 15GR001P as received, and notes on the form the reason

the LGC does not process it. The grievant is informed of this decision and the reason. The grievance is logged in the grievance tracking log and the form is filed in the client's grievance file. The LGC sends a copy of the Form 15GR001P and a copy of the applicable Notice of Summary Disposition to the advocate general, or designee, for review.

(4) **Who may file a grievance.** A grievance may be filed by any client listed in subsection (a) of this Section. A grievance may also be filed by or on behalf of a client by any person who knows the client and is interested in the client's welfare, including, but not limited to, a parent, guardian, relative, foster parent, court appointed special advocate, guardian ad litem, case manager, personal support team member, job coach, and others. This includes OKDHS employees and employees of residential, in-home supports, and vocational providers.

(5) **Group grievances.** Grievants whose complaints address the same issue(s) may together file a group grievance. At any time during the processing of a group grievance, an individual grievant can withdraw from the group grievance. If separate grievances are filed by two or more grievants regarding an identical issue, the interests of each grievant is identical, and the grievants do not object, a LGC can combine them for processing as a group, provided this does not unduly delay the processing of any particular grievance. When multiple grievances are grouped for processing, the LGC informs each grievant of that action. When a group grievance is filed, the LGC can ask the grievants to designate in writing a spokesperson for the group.

(6) **Grievances involving reportable incidents.** When a grievance alleges a reportable incident, including but not limited to, facts which constitute abuse, neglect, exploitation, or caretaker misconduct, as defined in OAC 340:2-3-2, the LGC immediately reports it to OCA intake pursuant to OAC 340:2-3-33. A grievance involving a reportable incident may be processed during a pending investigation provided the grievance does not interfere with the investigation and as needed is held in abeyance pending the conclusion of the investigation. If the grievance alleges additional facts which do not constitute abuse, neglect, exploitation, or caretaker misconduct, the grievance is processed as to those facts. The LGC contacts OCA and any other law enforcement agency investigating the matter to coordinate processing the grievance.

(d) **Grievance policies required.** Every provider and facility providing services to a client listed in OAC 340:2-3-45(a)(2) who is living in Oklahoma is required to operate a system for resolution of grievances by clients using policies and procedures meeting the requirements of this Part.

(1) **Designation of LGC.**

(A) Every public and private facility and provider subject to ~~this Part 5, OAC 340:2-3-45 through 2-3-55~~, OKDHS county office, and DDS area office designates an employee to serve as LGC to carry out the responsibilities described in this Section. Facilities and providers inform the advocate general

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of the name, phone number, mailing address, and e-mail address of ~~their~~ its LGC, and inform the advocate general of any changes within 30 calendar days of the effective date of a change by completing Form 15GR021E, Designation of Local Grievance Coordinator, Facilities and Provider Agencies, and submitting it to the Office of Client Advocacy. OCA's OCA advocates assigned to SORC, NORCE, and Greer serve as the LGC at those facilities. The LGC is an individual who:

- (i) implements grievance policies and procedures;
- (ii) has experience with the programs and functions of the facility, provider, county office, or DDS area office;
- (iii) functions impartially and independently in the processing of grievances;
- (iv) reports directly to the administrator with regard to the LGC's LGC grievance duties and functions;
- (v) within 60 calendar days of being designated LGC, completes the online OCA Grievance Course; ~~and~~
- (vi) ensures that client requests regarding how to file a grievance are responded to within two business days; and
- (vii) is accessible and available to meet in person with grievants.

(B) Each facility and provider subject to this Part, each OKDHS county office, and each DDS area office displays in a place conspicuous to its clients a poster notifying clients of its grievance system and the name of its local grievance coordinator, using Form 15GR017E, Grievance Poster - Child Welfare Contracted Facilities, Form 15GR018E, Grievance Poster- Oklahoma Department of Human Services (OKDHS) County Offices, Form 15GR019E, Grievance Poster - Developmental Disabilities Services Division Providers, or 15GR020E, Grievance Poster - Oklahoma Department of Human Services (OKDHS) Developmental Division Services Division (DDS) Offices, whichever is applicable.

(2) **Advocate general review of grievance programs.**

The grievance system operated by each facility and provider subject to ~~this~~ Part 5, OAC 340:2-3-45 through 2-3-55, is subject to the approval of the advocate general. Each provider and facility other than an OKDHS operated facility is required to submit to the advocate general for approval its grievance policies, procedures, forms, and any revisions which are adopted, along with proof that the policies or revisions have been approved by the applicable approving authority. Revised policies are submitted to the advocate general for approval within 30 days of the provider or facility adopting the revised policy.

(3) **Notifying clients of their grievance rights.** Each client covered by these grievance policies is notified of his or her right to and how to access the grievance resolution

procedures using Form 15GR004E, Notice of Grievance Rights - Minors in OKDHS Custody, Form 15GR005E, Notice of Grievance Rights - Minors in OKDHS Custody - Youth in Voluntary OKDHS Care, Form 15GR006E, Notice of Grievance Rights - DDS Service Recipients (General), Form 15GR007E, Notice of Grievance Rights - Hissom Class Members, or Form 15GR008E, Notice of Grievance Rights - Foster Parents, whichever is applicable. Hissom class members are provided notice in accordance with OAC 340:2-3-52. In addition, providers are encouraged to provide a simplified version of their grievance policies using language appropriate to the age level and cognitive functioning of its clients.

(4) **Monitoring and evaluation.** OCA ensures the quality of grievance systems by establishing minimum standards and through an ongoing monitoring program. The advocate general and OCA staff have immediate and unlimited access to clients, staff, and facility files, records, and documents relating to grievance procedures and practices.

(5) **Reporting deficiencies.** An LGC who becomes aware of a deficiency in a grievance system, including a failure to follow or implement the grievance policy, must report it to the advocate general by phone at 1-405-525-4850 or 1-800-522-8014, fax at 1-405-525-4855, or e-mail.

(6) **Advocate general deficiency report.** If the advocate general determines a deficiency exists in the grievance system of a facility or provider, the advocate general sends a report of deficiency to the administrator and, where applicable, to the state office administrator.

(7) **Advocate general grievance.** The advocate general may, on behalf of any or all clients served by the grievance policy in this Section, originate a grievance. An advocate general grievance is filed with the administrator or the state office administrator and processed as a contested grievance.

(8) **Advocate general report.**

(A) The advocate general may initiate an inquiry on behalf of any client as defined in subsection (a) of this Section regarding:

- (i) any aspect of the care of a client that affects the quality of the client's life;
- (ii) the substance, application, or interpretation of any policy, rule, or regulation, written or unwritten, of OKDHS operated shelter or residential facility, or a facility or agency that contracts with OKDHS, or a placement provider; or
- (iii) any decision, behavior, or action of an employee, agent, or contractor of OKDHS, or of any client residing in the same placement setting.

(B) The person to whom the advocate general inquiry is addressed has seven business days to respond in writing to the advocate general.

(C) The advocate general issues a report which sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general

report is submitted to the administrator, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(e) **The grievance form.** A grievant files a grievance by obtaining from the LGC Form 15GR001P, filling it out, and turning it in to the LGC or to any facility or OKDHS staff, who immediately transmits it to the LGC.

(1) LGCs for OKDHS order this form from the OKDHS Warehouse. Private provider and facility LGCs obtain copies of this form from the OCA in Oklahoma City, 1-405-525-4850 or 1-800-522-8014.

(2) Any person who needs assistance in completing the grievance form is given assistance by the LGC or any other staff member.

(3) A grievance received on paper other than Form 15GR001P is attached to a Form 15GR001P filled out by the LGC on behalf of the grievant.

(f) **Retaliation prohibited.** No person filing a grievance shall be retaliated or discriminated against or harassed, solely or in part, for having asserted a grievance, or sought advice or inquired about filing a grievance. Clients are encouraged to use available grievance systems. Clients are not discouraged from filing a grievance.

(g) **Grievance time limits.** Except for DDS clients, in order to be processed for action and resolution, a grievance must be filed within 15 business days of the date of the incident, decision, act, or omission complained about in the grievance, or within 15 business days of the date the grievant becomes aware of or, with reasonable effort, should have become aware of a grievable issue. The time limit for filing a grievance may be extended by the LGC. When a foster parent requests an extension in order to pursue mediation through the Oklahoma Commission on Children and Youth (OCCY) Foster Parent Mediation Program as provided in Section 601.6 of Title 10 of the Oklahoma Statutes, an LGC must grant the requested extension. The grievance is then not processed until the mediation has been completed, and grievance timeframes are suspended for the duration of the mediation. When mediation resolves the original grievance, the foster parent(s) may withdraw the grievance, or the LGC may declare the grievance "administratively resolved" consistent with OAC 340:2-3-45(h). When a foster parent grieves, but has requested mediation of the dispute through ~~OCCY's~~ the OCCY mediation program before filing a grievance that alleges retaliation, the LGC counts from the date of the mediation when computing timeliness.

(1) The filing time and all other time periods contained in this Section are counted in business days unless otherwise specified. In computing any period of time, the day of the incident, decision, act, or omission at issue is not included. The next calendar day is the first day of the time period.

(2) If the LGC or any respondent fails to meet any time limit for processing a grievance without obtaining an extension, the LGC processes the grievance to the next step within three business days of the grievant's request.

(3) Responses, notices, and other documents issued during the processing of a grievance are delivered to the

grievant in person or by mail at the last known address of the grievant. A grievance is considered administratively resolved when a correctly addressed letter sent to the last known address of the grievant with proper postage is returned undeliverable with no forwarding address.

(4) There is no time limit on allegations of abuse, neglect, verbal abuse, exploitation, or caretaker misconduct. If a grievance, timely or untimely, consists of such an allegation, OCA intake is immediately notified in accordance with OAC 340:2-3-33.

(h) **Grievance records, logs, and quarterly reports.** The LGC maintains an accurate and complete record of each grievance filed as well as summary information about the number, nature, and outcome of all grievances filed. Records of grievances are kept separate and apart from other client records and files. Grievance records relating to DDS clients are retained in accordance with OAC 340:100-3-40. OKDHS grievance records and files are retained in accordance with state and federal laws governing retention and destruction of records.

(1) Each LGC tracks grievances as they progress through the system and keeps a log of every numbered grievance form issued by OCA. Form 15GR009E, Grievance Tracking Log, can be used for this purpose. For grievances submitted by a client, the tracking log includes: the grievance number; the name of the grievant given the form; the date the form was submitted by the grievant; the nature and outcome of the grievance; the date of final resolution; and the level where it was resolved. If a grievance form is provided to a client and not turned in, the facility tracks only the number on the form, the name of the client to whom the form was given, and the date it was given to the client.

(2) Each LGC submits to the advocate general a quarterly grievance report, Form 15GR010E, Quarterly Grievance Report. The quarterly report is transmitted to the advocate general no later than the 21st day following the end of each calendar quarter. Quarterly reports are submitted by mail, fax, or e-mail. The e-mail address is: \*oca.grievances@okdhs.org. When no grievance activity occurred or was pending during a particular fiscal year quarter, the LGC so indicates on Form 15GR010E.

(3) If a grievance becomes moot at any point during the local processing of the grievance, the LGC can stop the grievance process and declare the grievance "administratively resolved." The LGC informs the grievant, notes it on the applicable Form 15GR001P and Form 15GR009E, and sends a copy of Form 15GR001P to OCA with the next quarterly grievance report.

(i) **Processing the grievance form.** After completing Form 15GR001P, the grievant submits the form directly to the LGC or any other employee of the facility or OKDHS. Form 15GR001P is printed in duplicate sets with a carbonless yellow copy. The grievant submits the white copy and keeps the yellow copy. If someone other than the LGC receives a grievance, that person submits it directly to the LGC within one business day of receipt.

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(j) **Informal resolution of grievance.** If the LGC is able to promptly resolve the grievance to the grievant's satisfaction without further processing, the LGC fills out the bottom of Form 15GR001P, signs it, and files it in the appropriate grievance file.

(k) **First level problem resolution.** Within three business days of receipt of Form 15GR001P, if the grievance has not been resolved to the ~~grievant's decisionmaker's~~ satisfaction, the LGC fills out Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet.

(1) The LGC identifies who has the authority to provide the quickest and surest resolution to the problem at the lowest level in the organizational structure.

(A) For OKDHS grievances of minors in OKDHS custody and youths in voluntary OKDHS care, the first level respondent may be the supervisor of the grievant's Child Welfare specialist.

(B) For grievances regarding placements above the therapeutic foster care level made by Children and Family Services Division (CFSD) placement services, the respondent is the applicable CFSD programs manager.

(C) For placement grievances regarding a specific foster child, the respondent is the applicable county director.

(D) If the minor also is a DDS client, this may be the DDS case manager supervisor.

(E) For adults receiving services from DDS, the first level respondent may be the DDS case manager supervisor.

(2) The LGC completes the first box in the first level section on Form 15GR002E, attaches the corresponding Form 15GR001P, and other relevant documentation and information, and submits it to the first level respondent, by the most efficient means practicable, within three business days of receipt of the grievance from the grievant.

(3) The first level respondent responds to the grievance within five business days of receipt of Form 15GR002E by completing the second box in the first level section on Form 15GR002E. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action. The grievant can contest the target date by taking the grievance to the next level of problem resolution.

(4) The LGC monitors the timely response by the first level respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E, and the grievance immediately proceeds to the second level of problem resolution.

(5) Within three business days of receipt of the first level response, the LGC or designee contacts the ~~grievant decisionmaker~~ to inform the ~~grievant decisionmaker~~ of the proposed resolution and the right to take the grievance to the second level of problem resolution, and determines if the ~~grievant decisionmaker~~ is satisfied with the proposed resolution. The first level respondent may meet with the ~~grievant decisionmaker~~ with or without the LGC present. If the ~~grievant decisionmaker~~ needs time to decide whether

to accept the proposed resolution, the ~~grievant decisionmaker~~ has three business days ~~within which~~ to make a decision. If no decision is communicated to the LGC within three business days, the ~~grievant decisionmaker~~ is deemed to have accepted the proposed resolution. The LGC is responsible for informing ~~grievants the decisionmaker~~ that ~~they have~~ he or she has three business days ~~in which~~ to accept or ~~to~~ appeal the respondent's proposed resolution.

(6) If the ~~grievant decisionmaker~~ is satisfied with the proposed resolution, the LGC indicates ~~the grievant's~~ his or her acceptance on Form 15GR002E, notifies ~~the individuals—those~~ responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(7) If the proposed resolution has been accepted by the ~~grievant decisionmaker~~ but involves a future target date ~~in the future~~, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been achieved by the target date, the LGC immediately reopens the grievance and processes it for second level of problem resolution.

(8) If the ~~grievant decisionmaker~~ does not accept the proposed resolution and ~~desires—elects~~ to take the grievance to the second level of problem resolution, the LGC processes the grievance for the second level of problem resolution in accordance with subsection (l) of this Section.

(l) **Second level problem resolution.**

(1) If the grievance is not resolved at the first level of problem resolution, the LGC processes it in accordance with this subsection within three business days of the grievant requesting the second level of problem resolution pursuant to subsection (k) of this Section.

(2) The LGC fills out the first box in the second level section on Form 15GR002E, ensures the corresponding Form 15GR001P and other relevant documents are attached, and submits it immediately to the second level respondent. For facilities and providers subject to these rules, the administrator or designee is the second level respondent. For OKDHS grievances, the OKDHS county director or the DDS area manager, whichever is applicable, is the second level respondent. If the administrator, county director, or DDS area manager was the first level respondent, then the second level of problem resolution is skipped and the grievance may be processed as a contested grievance pursuant to OAC 340:2-3-46.

(3) The administrator or designee responds to the grievance within seven business days of receipt of Form 15GR002E by completing the applicable box in the second level section on Form 15GR002E. If the proposed resolution contains a promise of some future action, a target date is specified for full implementation of that future action.

(4) The second level respondent for a placement grievance regarding a specific foster child is the applicable area director.

(5) The LGC monitors the timely response by the respondent. If a complete response is not timely received by the LGC, the LGC notes this on Form 15GR002E and

the grievance immediately is processed as a contested grievance. A contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(6) Within three business days of receipt of the second level response, the LGC contacts the grievant decisionmaker to inform ~~the grievant him or her~~ of the proposed resolution and the right to contest the response to the grievance, and determines if the grievant decisionmaker is satisfied with the proposed resolution. If the grievant decisionmaker needs time to decide whether to accept the proposed resolution, the grievant has three business days ~~within which~~ to make a decision. If no decision is communicated to the LGC within ~~two~~ three business days, the grievant is deemed to have accepted the proposed resolution.

(7) If the grievant decisionmaker is satisfied with the proposed resolution, the LGC ~~indicates documents~~ the grievant's decisionmaker's acceptance on Form 15GR002E, notifies ~~the individuals~~ those responsible for resolution of the grievance, and places the form in the appropriate grievance file.

(8) If the proposed resolution has been accepted by the grievant decisionmaker but involves a future target date ~~in the future~~, the LGC monitors compliance with the target date. If the LGC determines that the resolution has not been completed by the target date, the LGC immediately reopens the grievance and processes it as a contested grievance.

(9) If the grievant decisionmaker does not accept the proposed resolution and ~~indicates a desire~~ elects to contest the response, a contested OKDHS grievance is processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with subsection (m) of this Section.

(m) **Contested facility or provider grievances.** If the grievant decisionmaker does not accept the proposed resolution or the target date of the second level proposed resolution, ~~or both~~, a facility or provider grievance is appealed to the chair of the board of directors of the facility or provider or an appeals committee designated by the board. This section does not apply to grievances of Hissom class members. Grievances at OKDHS operated facilities are appealed as a contested grievance in accordance with OAC 340:2-3-46.

(1) The LGC transmits a contested facility or provider grievance to the chair of the board of directors of the facility or provider, or an appeals committee designated by the board, within three business days of learning notice that the grievant decisionmaker does not accept the proposed resolution and is contesting the proposed resolution.

(2) In reviewing the contested grievance, the board of directors, or appeals committee if applicable, is not required to ~~hold a conduct an evidentiary hearing to hear evidence or arguments~~ hear argument. In the event the board determines that an evidentiary hearing evidence would assist it in resolving the grievance, the board has the option of ~~holding a conducting an informal hearing. If it~~

~~does so, the hearing does not require the formalities of a fair hearing.~~

(3) Within ten business days of receiving a contested grievance, the chair of the board of directors or the appeals committee responds ~~to the grievant~~ by submitting a written decision to the LGC.

(4) Within three business days of receiving the written decision of the chair of the board of directors or the appeals committee, the LGC informs the grievant decisionmaker of ~~that the~~ decision and provides the grievant decisionmaker with a copy of the board's ~~written~~ decision. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

(n) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the OCA grievance liaison for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance liaison ~~can may~~ shorten the response time ~~for responding as warranted by the circumstances~~ circumstances warrant.

(o) **Communications with OCA.** Any notices, forms or other information that facilities, providers, or OKDHS county offices are required to submit to OCA or the advocate general can be submitted by e-mail, using the e-mail address \*oca.grievances@okdhs.org.

(p) **Grievance training required.** LGCs are required to take the OCA online grievance training within 60 days of their appointments, and annually thereafter.

**340:2-3-46. Contested grievances appealed to the state office**

(a) **Application.** This Section describes the processes for contesting the second level response to Oklahoma Department of Human Services (OKDHS) grievances, facility grievances at OKDHS operated facilities, and provider grievances of Hissom class members.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Initiating the contested grievance.** When a grievant decisionmaker asks to appeal a grievance to the state office administrator, within three business days of ~~being informed~~ notice of that the request, the local grievance coordinator (LGC) transmits to the Office of Client Advocacy (OCA), Attn. OCA grievance liaison, Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet, attaching the corresponding Form 15GR001P, Grievance Form, and other documents and information relevant to the subject matter of the grievance.

(d) **Documentation requirements.** When Form 15GR002E is submitted to OCA, it has attached:

- (1) the corresponding Form 15GR001P;
- (2) supporting facts relating to the proposed resolution by the second level respondent, including documentation relating to the first level and second level of problem resolution processes; and

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- (3) any written rule, policy, procedure, regulation, and other information relevant to the subject matter of the grievance.
- (e) **OCA processing of grievance.** Within three business days of OCA's OCA receipt of a contested grievance, the OCA grievance liaison reviews the contested grievance and accompanying documentation and determines if any additional information is necessary for disposition of the appeal. When any information appears to be missing, the OCA grievance liaison contacts the person(s) in possession of the needed information and sets deadlines for submission of the information by the most efficient means to avoid delays in processing the contested grievance.
- (f) **Rejected grievances.** If OCA determines the subject matter of a grievance falls in one of the categories listed in OAC 340:2-3-45(c)(2), the OCA grievance liaison returns the grievance to the LGC with a cover letter indicating the reason the grievance was not accepted for processing as a contested grievance. Within three business days of receipt of OCA's the letter, the LGC contacts the grievant to inform the grievant of the status of the grievance.
- (g) **OCA transmittal to state office administrator.** Within three business days of OCA's OCA receipt of a contested grievance and all documents required by subsection (d) of this Section, the advocate general or designee prepares and sends Form 15GR011E, Contested Grievance Transmittal, to the state office administrator with decision-making authority to respond to the subject of the grievance.
- (h) **State office administrator's response.** The state office administrator who receives a contested grievance responds to the grievant within ten business days or by the due date on Form 15GR011E. The advocate general or designee may grant an extension when good cause is shown, ~~such as the complexity of the issues.~~ The state office administrator sends his or her response directly to the LGC after completing the middle portion of Form 15GR011E. A copy is sent to the advocate general, or designee. The state office administrator attaches his or her response to Form 15GR011E and includes:
- (1) the proposed resolution and how it is to be implemented;
  - (2) the person(s) responsible for implementing the proposed resolution;
  - (3) the target date for the proposed resolution;
  - (4) facts ~~which support the appropriateness of and analysis supporting~~ the proposed resolution ~~by the facility,~~ including relevant documentation; and
  - (5) any ~~relevant~~ written ~~rule rules, policy policies, procedure procedures, regulation-regulations,~~ and other information ~~relevant to the subject matter of the grievance and the proposed resolution.~~
- (i) **Timely response required.** The OCA grievance liaison monitors the timely response by the state office administrator. If a complete response is not timely received by the OCA grievance ~~coordinator~~ liaison and an extension has not been granted, the OCA grievance liaison immediately processes the grievance for review by the Grievance and Review Committee (GARC) in accordance with OAC 340:2-3-64(b). In that event,

OCA notifies the grievant and affected state office administrator that the grievance is being processed for GARC.

(j) **Presentation of proposed resolution.** The LGC or designee contacts the ~~grievant—decisionmaker~~ within three business days of receipt by the LGC of the state office administrator's response. If the ~~grievant~~ decisionmaker accepts the proposed resolution, the LGC notes this on the OCA transmittal memo and files it in the client's grievance file.

(k) **Request for GARC review.** If the grievant does not accept the response of the state office administrator, the LGC completes the bottom portion of Form 15GR011E and returns it to the OCA grievance liaison within three business days. Upon receipt by OCA of Form 15GR011E, the grievance is processed for review by GARC in accordance with OAC 340:2-3-64.

### 340:2-3-47. Grievances of minors in OKDHS custody living in private residential facilities

(a) **Application.** This Section describes processes relating to grievances of minors in the Oklahoma Department of Human Services (OKDHS) custody who are residing in a private residential child care center which contracts with OKDHS.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** The applicable Child Welfare liaison gives Form 15GR004E, Notice of Grievance Rights - Minors in OKDHS Custody, to the client within 24 hours of placement of the client in a private residential placement, and annually thereafter. This form is used to identify the local grievance coordinator (LGC) for the facility and to explain the client's right to grieve. After the client signs the form, a copy is made for the client and the original is maintained in the permanent record for the client. If the designated LGC changes, the facility notifies the clients and the person(s) responsible for the clients' custody of the name and contact information of the new LGC within ten business days.

(d) **Filing and processing of grievance at the facility.** If the grievant files a facility grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(e) **Contested grievances.** Contested OKDHS grievances of residents are processed in accordance with OAC 340:2-3-46. Contested facility grievances are processed in accordance with this subsection. When a ~~grievant in a private residential facility asks decisionmaker elects~~ to appeal a grievance, within three business days of ~~that the~~ request the LGC transmits to the chair of the facility's board of directors, or an appeals committee designated by the board, Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet, which has attached to it the corresponding Form 15GR001E, Grievance Form, and other documents and information relevant to the subject matter of the grievance. The chair of the board of directors or appeals committee responds within ten business days by sending a written response to the LGC. A copy is attached to the applicable quarterly grievance report sent to the OCA grievance liaison in accordance with OAC 340:2-3-45(h)(2). Within three calendar days of receipt of the response, the LGC communicates the

response to the ~~grievant~~ decisionmaker. This concludes the grievance process and the grievant's administrative remedies have been exhausted.

**340:2-3-48. Grievances of minors in OKDHS operated shelters and group homes**

(a) **Application.** This Section describes processes relating to grievances of minors in DHS custody who are residing in a ~~DHS~~ Oklahoma Department of Human Services (OKDHS) operated shelter or residential facility.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form 15GR004E, Notice of Grievance Rights: Minors in ~~DHS~~ OKDHS Custody, is given to the client within 24 hours of placement of the client in the facility by the shelter or group home Child Welfare (CW) ~~Specialist~~ specialist. This form is used to identify the local grievance coordinator (LGC) and to explain the client's right to grieve. After the client signs the form, a copy is given to the client and the original is maintained in the permanent record for the client. If the designated LGC changes, the shelter or group home notifies the clients and the person(s) responsible for the clients' custody of the name and contact information of the new LGC within ten business days.

(d) **Filing and processing of grievance at the facility.** If the grievant files a facility grievance as defined in OAC 340:2-3-45(b), the grievance is processed in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(e) **Contested grievances.** Contested grievances of residents are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section. When a grievant in a ~~DHS~~ OKDHS operated shelter or residential facility asks to appeal a grievance, the appeal is processed in accordance with OAC 340:2-3-46.

**340:2-3-50. Grievances of foster parents**

(a) **Application.** This Section describes processes relating to grievances of foster parents approved by the Oklahoma Department of Human Services (OKDHS). Section 7213 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility to establish grievance procedures for foster parents contracting with ~~whom~~ state agencies or child-placing agencies ~~contract~~.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form 15GR008E, Notice of Grievance Rights - Foster Parents, is given to each foster parent when approved as an OKDHS foster parent and at reassessment. It is given to the foster parent by the Child Welfare (CW) ~~worker~~ specialist assigned to the foster home within two business days of the approval or the reassessment. This form is used to identify the local grievance coordinator (LGC) and to explain the foster parent's right to grieve. After the foster parent signs the form, a copy is given to the foster parent and the original is maintained in the permanent record for the foster

parent. If the designated LGC changes, the state agency or child-placing agency notifies the foster parent(s) of the name and contact information of the new LGC within ten business days.

(d) **Grievance defined.** Foster parents may file grievances with respect to the provision or receipt of services.

(1) **Grievable issues.** Except for the limitations listed in subsection (d)(2) of this Section, matters which can be the subject of a grievance include:

- (A) the substance or application of any policy, rule, or regulation, written or unwritten, of OKDHS; or
- (B) a decision, act, or omission of an employee of OKDHS.

(2) **Summary dispositions.** If it is determined that the foster parent is asking to grieve a problem or concern covered by any of the categories in Section OAC 340:2-3-45(c)(2) or by any of the categories listed in (A) through (G), the LGC informs the foster parent why the grievance is not being processed, using Form 15GR016E, Notice of Summary Disposition of Foster Parent Grievance. In addition to the categories in Section OAC 340:2-3-45(c)(2), situations that are not grievable by foster parents under this grievance system are:

- (A) a decision of a court;
- (B) findings of a child abuse and neglect investigation or assessment in a foster home. The process for appealing these findings is found at OAC 340:75-1-12.2;
- (C) disposition of a fair hearing regarding closure of a foster home. The fair hearing process regarding closure of a foster home is found at OAC 340:75-7-94;
- (D) disputes with other foster parents;
- (E) written plans of compliance. The foster parents provide their written input on the compliance documentation;
- (F) replacement of a child in a foster home after removal due to a child abuse or neglect investigation. The fair hearing process regarding replacement in foster care is found at OAC 340:75-1-12.6; and
- (G) complaint alleges retaliation by an employee of OKDHS, the complaint is forwarded to the OCA Investigations Unit for review and disposition.

(3) **Allegations of retaliation.** Allegations of retaliation or discrimination, as those terms are defined in OAC 340:2-3-38(b), are processed in accordance with that Section.

(4) **Allegations of discrimination.** Allegations of discrimination based on sex, age, national origin, religion, color or disability, are referred to the OKDHS Office for Civil Rights and the LGC immediately forwards the complaint to the OKDHS civil rights administrator, and so informs the foster parent using Form 15GR016E.

(e) **Filing and processing of grievance.** A grievance filed by a foster parent is processed as an OKDHS grievance in accordance with OAC 340:2-3-45 unless otherwise provided in this Section.

(1) The county director serves as the LGC for grievances filed by foster parents. For grievances involving

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specialized foster care, the applicable Developmental Disabilities Services Division (DDSD) area manager or designee serves as the LGC.

(2) Foster parent grievances must be filed within 45 calendar days of the occurrence.

(3) After the grievance procedure has been completed, a foster parent or former foster parent has a right of access to the grievance record of grievances the foster parent filed.

(f) **Contested grievances.** Contested grievances are processed in accordance with OAC 340:2-3-46 unless otherwise provided in this Section.

### 340:2-3-51. Grievances of residents of DDSD Facilities: Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and the Greer Center Facility (Greer)

(a) **Application.** This Section describes processes relating to grievances of residents of Oklahoma Department of Human Services (OKDHS) operated facilities listed in Sections 1406 and 1414.1 of Title 10 of the Oklahoma Statutes, ~~the "residents," who want to file a grievance.~~ Section 1415.1 of Title 10 of the Oklahoma Statutes confers on OKDHS the responsibility for establishing an ombudsman program which includes a grievance system at each OKDHS operated facility for persons with developmental disabilities.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Form 15GR006E, Notice of Grievance Rights - DDSD Clients (General), is given by the Developmental Disabilities Services Division (DDSD) facility to a resident and his or her guardian within 24 hours of the resident's admission to a facility and yearly thereafter at the annual individual planning meeting. This form is used to identify the local grievance coordinator (LGC) and to explain the resident's right to grieve. After the resident or guardian signs the form, a copy is given to the resident or to the resident's guardian, or ~~else~~ responsible family member if the resident does not have a guardian, or both, and the original is maintained in the permanent record for the resident. If the designated local grievance coordinator (LGC) changes, the facility notifies the residents and their guardians or a responsible relative of the name and contact information of the new LGC within 20 business days.

(d) **Filing and processing of grievance at the facility.** Grievances of residents are processed in accordance with OAC 340:2-3-45(g) unless otherwise provided in this Section.

(1) The Office of Client Advocacy (OCA) maintains an ~~ombuds~~ office on campus at SORC and NORCE. OCA assigns advocates to its ~~ombuds~~ offices at the facilities who serve as the LGC at those facilities and Greer and provides assistance to residents, their guardians, and persons interested in their welfare who want to file a grievance. [OAC 340:2-3-71(h)(4)]

(2) The OCA advocates at a facility send a copy of a grievance to the guardian or guardian ad litem of the

resident and to ~~the parent~~ a responsible relative, unless contraindicated.

(3) If a grievance involves a decision of a resident's team, the first level respondent is the applicable unit coordinator, unless the unit coordinator is involved in the decision being grieved.

(e) **Time limits on filing grievances.** The time limit in OAC 340:2-3-45(g) does not apply to grievances filed by or on behalf of residents.

(f) **Second level problem resolution.** The facility director is the second level respondent.

(g) **Contested grievances.** When a resident ~~asks~~ elects to contest the ~~administrator's~~ facility director's response to a grievance, the contested grievance is processed in accordance with OAC 340:2-3-46. The DDSD director or designee is the state office administrator responsible for responding to contested grievances of residents.

(h) **Request for review by Grievance and Review Committee (GARC).** When a resident requests review by GARC of the DDSD director's response to a grievance, the OCA grievance liaison prepares a request for GARC review using a format prescribed by OCA which includes the information listed in subsection (i) of this Section.

(i) **Advocate inquiry.** An OCA advocate may file a formal inquiry to request information relating to: the treatment of one or more residents; the substance, application, or interpretation of any policy, rule or regulation, written or unwritten, of OKDHS or an agent or contractor of OKDHS; or any decision, behavior, or action of an OKDHS employee, agent, or contractor, or of another resident.

(1) An advocate formal inquiry is submitted directly to the facility director or any other OKDHS employee believed to have the knowledge to respond to the inquiry. The person to whom the inquiry is submitted has seven business days from receipt of the inquiry to respond in writing. The advocate general ~~can~~ may grant an extension for good cause shown.

(2) If the response does not resolve the concern which prompted the formal inquiry, or if a response is not timely received, the matter may be treated as a formal grievance and processed as a contested grievance pursuant to OAC 340:2-3-46.

(3) The advocate general issues a report that sets forth the subject matter of the inquiry, the pertinent facts, and recommendations. An advocate general report is submitted to the ~~administrator~~ facility director, when applicable, and the state office administrator. A copy is submitted to the OKDHS Director.

(j) **Advocate grievance.** An OCA advocate ~~can~~ may file a grievance on behalf of a resident even when a grievance has not been filed by or on behalf of a resident.

(1) At the discretion of the advocate general or designee, an advocate grievance is filed directly with the facility director. The facility director has seven business days to respond in writing. The advocate general ~~can~~ or designee may grant an extension ~~for the facility director's response~~ for good cause shown.

(2) If the facility director's response is not acceptable or is not timely submitted, it is processed as a contested grievance pursuant to OAC 340:2-3-46.

(k) **Fast track grievances.** When the subject of an OKDHS grievance is such that time is of the essence, with the approval of the advocate general or designee a grievance can be submitted directly to the facility director or to the OCA grievance liaison for processing as a contested grievance in accordance with OAC 340:2-3-46. When a grievance involves a time sensitive problem, the OCA grievance liaison can shorten the time for responding as warranted by the circumstances.

**340:2-3-54. Grievances of residents of private group homes for individuals with developmental disabilities**

(a) **Application.** This Section describes processes relating to grievances of residents of private group homes subject to Section 1430.01, et seq., of Title 10 of the Oklahoma Statutes. The Oklahoma Department of Human Services (OKDHS) legal authority includes Sections 1430.11 and 1430.20 of Title 10 of the Oklahoma Statutes.

(b) **Definitions.** The definitions in OAC 340:2-3-2 and 340:2-3-45(b) apply to this Section unless the context clearly indicates otherwise.

(c) **Notice of grievance rights.** Upon admission, each individual and, if appropriate, the resident's family or designated representative is given a copy of the group home's grievance procedure and a written notice which identifies the group home's grievance coordinator and explains the resident's right to file grievances. After the resident or the resident's guardian signs the notice form, a copy is made for the resident or the resident's guardian. A copy also is sent to the resident's DDS case manager if one is assigned. The original is maintained in the resident's permanent record. The grievance procedure is reviewed with the resident or the resident's guardian at least one time a year. If the designated LGC changes, the group home notifies the residents and the residents' guardian or a responsible relative of the name and contact information of the new LGC within ten business days.

(d) **Grievance policies required.** Every private group home to which this Section applies is required to operate a system for resolution of grievances by residents using policies and procedures in compliance with OAC 340:2-3-45. If a grievance involves a decision of a resident's team and the resident has a DDS case manager, the first level respondent is the supervisor of the client's case manager.

(e) **Contested grievances appealed to the state office.** When a grievant asks to appeal an OKDHS grievance, the appeal is processed in accordance with OAC 340:2-3-46.

(f) **Monitoring grievance programs.** The Office for Client Advocacy, in cooperation with other monitoring entities to avoid unnecessary duplication, monitors group home grievance programs in accordance with OAC 340:2-3-45(d) through (h).

**PART 7. GRIEVANCE AND ABUSE REVIEW COMMITTEE**

**340:2-3-64. Grievance and Abuse Review Committee (GARC) review of unresolved contested grievances**

(a) **Application.** Grievance and Abuse Review (GARC) reviews unresolved contested grievances when the advocate general receives a proper request for GARC review in accordance with OAC 340:2-3-46(k).

(b) **The GARC worksheet.** If the grievance was filed by or on behalf of a Developmental Disabilities Services Division (DDSD) ~~client services recipient~~ who receives Office of Client Advocacy (OCA) ~~ombuds~~ advocacy services, including residents of the Southern Oklahoma Resource Center (SORC), the Northern Oklahoma Resource Center of Enid (NORCE), or the Greer Center Facility (Greer), the OCA advocate prepares a GARC worksheet using a format prescribed by OCA which includes:

- (1) the grievance number and the names of the resident, grievant, guardian, parent(s), case manager, and OCA advocate;
- (2) a summary of the grievance process, resolutions offered at each level and the decision makers' responses;
- (3) the applicable statutes, policies, and other authorities;
- (4) the resolution sought by the grievant;
- (5) relevant documentation;
- (6) the OCA advocacy position with regard to the subject of the grievance; and
- (7) a copy of Form 15GR001E, Grievance Form, and Form 15GR002E, Local Grievance Coordinator (LGC) Worksheet.

(c) **GARC review summary.** For all grievances being reviewed by GARC, the OCA grievance liaison prepares a GARC review summary that is included in the GARC file.

(ed) **Scope of GARC review.** GARC conducts a *de novo* paper review of the grievance.

- (1) Within three business days of receiving a proper request for GARC review pursuant to OAC 340:2-3-46(k), the advocate general or designee informs the affected state office administrator and administrator of the date of the GARC meeting.
- (2) The grievant, administrators, state office administrators, and their designees may attend the GARC meeting to answer questions. If a grievance involves a Hisson class member, the OCA programs administrator for the community ~~ombuds~~ advocacy program may also ~~attends~~ attend.
- (3) If the grievant wants to submit additional evidence not considered during the processing of the grievance, it is submitted to the advocate general ~~contemporaneously~~ with within five business days of the request for GARC review, but not less than seven business days prior to the GARC meeting. If the administrator or affected state office administrator wants to submit additional evidence not considered during the processing of the grievance, or when GARC review is the result of an untimely response in accordance with OAC 340:2-3-46(I), or for good cause shown, evidence can be submitted to the advocate general seven business days before the GARC meeting.

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(4) When additional information is needed in order for GARC to complete its review, GARC may continue its review of a grievance until its next meeting. GARC may request additional information from OCA, an administrator, or a state office administrator.

(de) **GARC report contents.** Within 15 business days of a GARC meeting to review an unresolved grievance, GARC prepares a report that includes:

- (1) the subject ~~matter~~ of the grievance and identifying information about the grievant, the administrator, and the state office administrator;
- (2) the procedural history of the grievance, identifying proposed resolutions and responses at each ~~step~~ level in the grievance process prior to the GARC review;
- (3) the resolution sought by the grievant and the resolution proposed by the state office administrator;
- (4) ~~GARC's~~ GARC recommended resolution of the grievance;
- (5) the facts on which GARC bases its recommendation;
- (6) the information GARC considered in making its recommendation; and
- (7) areas of concern identified by GARC during its review of the ~~case regarding facility or OKDHS practices or procedures~~ grievance.

(ef) **Distribution of GARC report.** The advocate general forwards ~~GARC's~~ the GARC report to the applicable local grievance coordinator (LGC). Within three business days of receipt of ~~GARC's~~ the GARC report, the LGC contacts the ~~grievant decisionmaker~~ to inform ~~the grievant—him or her~~ of ~~GARC's~~ the GARC recommended resolution, and determines if the ~~grievant decisionmaker~~ is satisfied with it.

(1) If the ~~grievant decisionmaker~~ needs time to decide whether to accept the proposed resolution, the ~~grievant decisionmaker~~ has ~~two~~ three business days ~~within which~~ to make a decision. If no decision is communicated to the LGC within ~~two~~ three business days, the ~~grievant decisionmaker~~ is deemed to have accepted the proposed resolution.

(2) If the ~~grievant decisionmaker~~ is satisfied, the LGC notifies the advocate general, and the advocate general then notifies interested parties. An affected state office administrator has three business days from receipt of this notification to submit to the advocate general a written request for review by the Oklahoma Department of Human Services (OKDHS) Director.

(3) If the ~~grievant decisionmaker~~ is not satisfied with ~~GARC's~~ the GARC recommended resolution and ~~desires~~ elects to contest it, the LGC notifies the advocate general within four business days of receipt of the GARC report. The advocate general ~~or designee~~ transmits the request and ~~GARC's~~ the GARC report for review by the OKDHS Director.

(fg) **OKDHS Director's review of a GARC recommendation.** Upon receipt by the advocate general of a proper and timely written request for review by the OKDHS Director, pursuant subsection (e) of this Section, the advocate general

or designee transmits the request and the GARC report to the OKDHS Director.

(1) Within 15 business days of receipt of ~~GARC's~~ the GARC report, the OKDHS Director decides whether to:

- (A) adopt ~~GARC's~~ the GARC recommended resolution;
- (B) adopt ~~GARC's~~ the GARC recommendation with modifications;
- (C) return the matter to GARC for further consideration; or
- (D) direct another resolution of the grievance.

(2) If the OKDHS Director does not respond within 15 business days, the grievance is deemed resolved in accordance with ~~GARC's~~ the GARC recommended resolution.

(3) The advocate general notifies the grievant and other interested parties of the result of the OKDHS Director's review. The ~~grievant decisionmaker~~ is informed that this concludes the grievant's administrative remedies. If the grievant is a minor, a copy of the grievance and related materials are forwarded to the Office of Juvenile Systems Oversight in the Oklahoma Commission for Children and Youth.

(gh) **Monitoring of resolution.** If the ~~final~~ resolution of the grievance involves an action to be taken by an OKDHS employee ~~at by~~ a future target date, the ~~advocate general or designee~~ identifies the target date and OCA grievance liaison monitors compliance with that ~~deadline—target date~~. In the event of ~~non-compliance~~ the resolution is not implemented or not implemented within the time specified, the OCA grievance liaison informs the advocate general and the advocate general notifies the OKDHS Director in writing.

## PART 9. OMBUDSMAN ADVOCACY PROGRAMS

### 340:2-3-71. Advocacy services of the Office of Client Advocacy (OCA) in general

(a) **Legal authority.**

(1) Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS. OKDHS has conferred this responsibility on the Office of Client Advocacy (OCA).

(2) Orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, Inc., et al. v. The Hissom Memorial Center, et al., Case No. 85-C-437-E 85-C-437-TCK-SAJ, require OKDHS and OCA to provide ~~ombudsman and~~ advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members.

(3) OKDHS also has conferred on OCA other advocacy responsibilities as outlined in ~~this Part of this Subchapter~~ 9, OAC 340:2-3-71 through 340:2-3-75.

(b) **Scope.** OCA provides advocacy services to clients of the OKDHS Developmental Disabilities Services Division (DDSD) listed in this subsection, who are collectively referred

to as "clients" in this Part of this Subchapter 9, OAC 340:2-3-71 through 340:2-3-75.

- (1) ~~OCA's OCA~~ advocacy services for residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer) are outlined in greater detail in ~~Section 72 of this Subchapter OAC 340:2-3-72.~~
- (2) ~~OCA's OCA~~ advocacy services for former residents of SORC, NORCE, and Greer for whom the director of the facility is guardian ad litem (GAL) are outlined in greater detail in ~~Section 73 of this Subchapter OAC 340:2-3-73.~~
- (3) ~~OCA's OCA~~ advocacy services for Hissom class members are outlined in greater detail in ~~Section 74 of this Subchapter OAC 340:2-3-74.~~
- (4) OCA provides advocacy services on a short-term or emergency basis for other DDS clients who have a special advocacy need pursuant to ~~Section 75 of this Subchapter OAC 340:2-3-75.~~

(c) **Mission statement and guiding principles.**

(1) **Mission statement.** ~~OCA's OCA~~ advocacy programs advance the capacity and recognition of individual choice, the realization of rights and responsibilities of citizenship, and the personal well-being of recipients of DDS services.

(2) **Guiding principles.** In addition to those listed in OAC 340:100-1-3.1, the guiding principles for ~~OCA's OCA~~ advocacy on behalf of clients are listed in (A) through (D) of this paragraph.

(A) **Self-determination.** Advocates promote the individual as the driving force of life choices and decisions.

(B) **Meaningful choice.** Advocates promote the development of meaningful choices for persons with developmental disabilities consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, and interests.

(C) **Active citizenry.** Advocates promote the inclusion and involvement of persons with developmental disabilities in the social and political structures of the community.

(D) **Well-being.** Advocates promote access to physical and emotional supports necessary for a healthy life-style.

(d) **Definitions.** In addition to the definitions in ~~Section 2 of this Subchapter OAC 340:2-3-2,~~ the following words and terms when used in ~~Sections 71 through 75 OAC 340:2-3-71 through 340:2-3-75~~ shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Behavior Review Committee"** or **"BRC"** means the BRC established pursuant to OAC 340:100-3-5 and 100-3-5.1 and defined in OAC 340:100-1-2.

(2) **"Guardianship Capacity assessment"** means the process of determining an individual's capacity to make informed decisions and the need for assistance with decision-making regarding personal and financial matters, in accordance with OAC 340:100-1-2.

(3) **"Human Rights Committee"** or **"HRC"** means the HRC created by OAC 340:100-3-6 and defined in OAC 340:100-1-2.

(4) **"Individual plan"** or **"IP"** or **"plan"** means an individual plan established pursuant to OAC 340:100-5-51.

(5) **"Informed consent"** means informed consent as defined in OAC 340:100-1-2.

(6) **"Program coordinator"** or **"PC"** means a program coordinator as defined in OAC 340:100-1-2.

(7) **"Qualified Mental Retardation Professional"** or **"QMRP"** means a QMRP as defined in OAC 340:100-1-2.

(8) **"Service review"** means an assessment by an OCA advocate of a client's health, living circumstances, and the delivery of supportive services. The service review documents the extent of services provided to an individual client and identifies problem areas in service delivery. Each service review is a snapshot of the life of an individual at the time the review is completed.

(9) **"Unit coordinator"** means a team leader as defined in OAC 340:100-1-2.

(e) **Confidentiality.** Information in ~~OCA's OCA~~ records relating to advocacy services provided to the clients listed in subsection (b) of this Section is confidential and protected from unauthorized use. Only authorized individuals are given access to client records or provided information from those records.

(1) The confidentiality provisions of OAC 340:100-3-2 apply to ~~OCA's OCA~~ client files.

(2) The confidentiality provisions of OAC 340:5-1-5 apply to information in OCA records regarding allegations of abuse, neglect, and exploitation of a vulnerable adult as those terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes.

(3) A breach of confidentiality may result in a criminal prosecution. Violations by OKDHS employees can also result in personnel action.

(f) **Training requirements for advocates.** New and tenured OCA advocates receive appropriate training consistent with their background and experience. This includes training on the rights of DDS clients under Oklahoma and federal law.

(g) **Client representation.**

(1) OCA maintains offices on campus at SORC and NORCE, and assigns advocates to represent residents of SORC, NORCE, and Greer.

(2) OCA assigns advocates, in accordance with ~~this Part of this Subchapter 9, OAC 340:2-3-71 through 340:2-3-75,~~ to represent specific DDS clients living in community residential settings, including Hissom class members living in Oklahoma and former residents of SORC, NORCE, and Greer for whom the facility director is the GAL.

(3) An OCA advocate is knowledgeable about the clients represented by him or her and seeks to understand each client's specific challenges and communication styles, needs, interests, and goals. An advocate ascertains the preferences and choices of a client. An advocate becomes familiar with a client by:

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- (A) reviewing relevant client records and files;
  - (B) visits and other contacts with the client at home, at work, and in other contexts; and
  - (C) communication with the client's relatives, loved ones, guardians, program coordinator and other provider staff, case manager, and others in the client's circle of support.
- (h) **OCA ombuds and advocacy services.**
- (1) **Advocacy.** Advocacy is the function of assisting an individual in voicing his or her interests. Clients are encouraged to engage in self-determination, and are assisted to the extent they need and desire. When a client has a limitation in voicing his or her own interests, needs, and preferences, an advocate seeks to speak on behalf of the client. Advocacy services provided by ~~OCA's~~ OCA advocates include:
- (A) supporting the implementation of the least restrictive alternative in residential, vocational, therapeutic, and medical settings;
  - (B) supporting the most appropriate living environment for each client consistent with the client's needs and objectives;
  - (C) encouraging the development of natural supports, including friends, coworkers and neighbors in the community in which an individual lives; and
  - (D) advocating for those responsible for providing services for a client to fulfill their responsibilities by bringing performance issues to the attention of those who are responsible for correcting the situation.
- (2) **Monitoring.** OCA monitors the well-being and provision of services to a client by means of: visits and other forms of contact with the client, staff, family members, and others who know the client; review of records, documentation, contracts, and financial agreements between clients and providers of services, incident reports, and professional assessments; and attendance at IP and other team meetings. ~~OCA's~~ OCA advocates cooperate with and render assistance to outside monitoring and advocacy entities as provided for by federal and state laws, in accordance with the laws and rules relating to client confidentiality and release of information protocols. The monitoring role of an OCA advocate is to ensure that:
- (A) individual needs, preferences, and choices are identified and met appropriately and consistently;
  - (B) health, safety, and welfare standards and safeguards are maintained; and
  - (C) problems and issues are addressed at the earliest juncture by appropriate persons and entities in a prompt manner.
- (3) **Informal problem resolution.** An advocate seeks to resolve issues and client concerns by means of informal problem resolution at the lowest level of administrative responsibility or decision-making. Informal problem resolution seeks to resolve issues and reach a consensus with the client on a plan of action to resolve the problem informally. An advocate uses the problem resolution activity consistent with the nature and imminence of the problem. An advocate assists a client in development of problem resolution skills and self-advocacy.
- (4) **Grievances.** As needed, an OCA advocate files grievances on behalf of clients in accordance with Part 5, ~~of this Subchapter~~ OAC 340:2-3-45 through 340:2-3-55. OCA also advises clients and assists them with filing grievances on their own behalf when they so desire.
- (5) **Protection and safety.** OCA staff take appropriate action under the circumstances to protect the health, safety, and well-being of clients, including reporting allegations of abuse, neglect, maltreatment, and exploitation in accordance with Part 3, ~~of this Subchapter~~ OAC 340:2-3-32 through 340:2-3-38.
- (A) OCA advocates assist OCA and Adult Protective Services investigators and law enforcement officers in obtaining information necessary for completion of investigations in which a client is an alleged victim.
  - (B) Advocates engage in appropriate follow-up activity in response to receiving a referral from ~~OCA's~~ OCA intake unit in accordance with ~~Section 35(a)(7) of this Subchapter~~ OAC 340:2-3-35(a)(7).
  - (C) When an advocate has a concern related to a client's health, safety, well-being, or program implementation, the advocate advises the client's case manager or designated QMRP, as applicable, and others (for example, DDSD staff, provider or facility staff, treatment staff, and health care professionals) as the circumstances warrant.
  - (D) Immediately upon becoming aware of any concerns regarding imminent risk of harm, an advocate advises the applicable residential or vocational provider as well as the client's case manager.
  - (E) An OCA advocate ensures that allegations of abuse, neglect, maltreatment, and exploitation of which the advocate becomes aware are reported to OCA intake in accordance with ~~Section 33 of this Subchapter~~ OAC 340:2-3-33.
- (6) **Promoting informed choice.** An OCA advocate promotes informed decision-making, consistent with a client's unique strengths, resources, priorities, concerns, abilities, capabilities, and interests, through provision of necessary information and assisting a client in understanding options and potential consequences of a decision. If a client is unable to make an informed choice, the advocate seeks to provide the client's legal guardian, GAL, volunteer advocate, and other representative(s) with access to information to make an informed decision on behalf of the client. The advocate general does not provide legal advice to clients, but may provide information about the law.
- (7) **Protection of rights.** An OCA advocate promotes the full exercise of legal rights guaranteed clients under federal and state laws. An advocate takes appropriate steps to protect a client's rights, including ensuring those rights are considered in team decisions and in the manner with which team decisions are carried out. An advocate seeks to ensure the application of due process in administrative, quasi-judicial, and judicial proceedings involving

a client which might result in a rights restriction or a reduction in services. When a rights restriction is absolutely necessary, OCA supports the least restriction necessary for the shortest period of time possible and a plan to remove the restriction as soon as possible.

(8) **Access to services.** An OCA advocate promotes client access to the full range of supports in accordance with the requirements of state and federal programs. Although an advocate takes a position with regard to services needed by a client, an advocate does not have authority to approve services.

(9) **Guardianship issues.** The Oklahoma Guardianship and Conservatorship Act promotes the participation of persons as fully as possible in the decisions which affect them, development of maximum self-reliance and independence, and appointment of guardians and others only to the extent necessitated by the mental and adaptive limitations or other condition of individuals. [30 O.S. § 1-103] Because a full guardianship of the person and estate of a client is the most restrictive intrusion on an individual's decision-making, OCA advocates for the least restrictive alternative to a full guardianship that is feasible under the circumstances, including but not limited to: limited guardianship; representative payee for financial benefits; volunteer advocate; supportive friends and family; health care proxy; durable power of attorney; and advance directives.

(10) **Promoting inclusion.** An advocate promotes the realization of active citizenship and inclusion in the community. This includes but is not limited to encouraging clients to: learn the rights and responsibilities of good citizenship, vote, take classes, participate in volunteer service organizations, attend religious services of the client's choice, attend recreational, cultural and social events, and join citizen advocacy organizations that promote inclusion in the community. An advocate encourages the development of friends who can serve as natural supports for a client. An advocate assists a client in locating relatives who are not currently active in the client's life and encourages relationship building between the client and family members.

(11) **End-of-life issues.** End-of-life issues for an individual with a developmental disability do not differ from those of the community at large. Regardless of the medical circumstance which bring these issues to the forefront, an OCA advocate seeks to have physicians, guardians, and loved ones of a client adhere to Oklahoma laws relating to do-not-resuscitate orders, withdrawal or denial of nutrition or hydration, and withdrawal or termination of medical treatment. In the absence of clear and convincing evidence of a client's wishes, an advocate presumes the client would choose life sustaining measures.

(i) **On-call Contacting an OCA advocate.** OCA advocates carry pagers or cell phones during office hours. If an advocate is not available during office hours, his or her supervisor serves as a back-up to the advocate and can be contacted. Information about the name of the advocate assigned to a client, the advocate's phone and pager numbers, and the name

of the advocate's supervisor can be obtained from ~~OCA's OCA~~ offices in Oklahoma City 1-405-525-4850, ~~or~~ 1-800-522-8014 and Tulsa 918-732-7543. ~~After hours, weekends, and holidays, an advocate is assigned to serve as the on-call advocate 24 hours a day. The on-call advocate can be contacted by cell phone 1-405-203-6056.~~

(j) **OCA access to client records and information.** OCA staff are provided access to all records, files, documents, and information needed to fulfill ~~OCA's OCA~~ responsibilities regarding a client. DDS case managers and employees and staff of provider agencies send to the assigned OCA advocate a copy of documents and notices sent to the client.

**340:2-3-72. Advocacy services for residents of Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)**

(a) **Application.** This Section describes ~~ombudsman and~~ advocacy services the Office of Client Advocacy (OCA) provides to residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and Greer Center Facility (Greer) ("the facilities"). Section 1415.1(A)(2) of Title 10 to the Oklahoma Statutes requires the Oklahoma Department of Human Services (OKDHS) to establish an ombudsman program for each institution and residential facility for the mentally retarded operated by OKDHS. OKDHS has conferred on OCA this responsibility. ~~Ombudsman and advocacy~~ Advocacy services are provided to residents of the facilities consistent with ~~Section 71 of this Subchapter~~ OAC 340:2-3-71.

(b) **Grievance coordination.** ~~OCA's OCA~~ advocates serve as grievance coordinators for resident grievances in accordance with ~~Section 51 of this Subchapter~~ OAC 340:2-3-51.

(c) **Abuse and neglect reporting.**  
 (1) ~~OCA's OCA~~ advocates provide training to new employees of SORC, NORCE, and Greer regarding their obligation to report suspected incidents of abuse, neglect, verbal abuse, and caretaker misconduct in accordance with ~~Section 33 of this Subchapter~~ OAC 340:2-3-33.

(2) ~~OCA's OCA~~ advocates receive referrals of suspected abuse, neglect, and maltreatment, and immediately transmit that information to OCA intake in accordance with ~~Section 33 of this Subsection~~ OAC 340:2-3-33.

(d) **Advocacy and monitoring.** ~~OCA's OCA~~ advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of residents. In addition to the activities described in ~~Section 71 of this Subchapter~~ OAC 340:2-3-71, advocacy and monitoring activities at the facilities include:

(1) a face-to-face visit with each resident at least ~~annually~~ bi-annually, and more frequently as indicated needed, to assess and address the resident's advocacy needs;

(2) periodic site visits to facility buildings frequented by residents, including residential units, vocational programs, canteen, and therapy departments, at least quarterly and more frequently as warranted to monitor compliance

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with health and safety requirements and protection of client rights, including but not limited to privacy rights;

- (3) a visit with a resident at the request of the resident, the resident's guardian, or other person concerned about the well-being of the resident unless contraindicated;
- (4) review relevant documentation within seven calendar days of receipt, including but not limited to: individual plan (IP) and interim IPs; accident and incident reports; OCA investigation findings; and behavior data collection forms, guardianship assessments, and other professional reports and assessments;
- (5) serving as a member of a resident's personal support team;
- (6) attending team meetings when it can reasonably be anticipated that a significant issue will be addressed, including any rights issue and in particular a rights restriction or an intrusive behavior intervention strategy;
- (7) participating in ~~Guardianship Assessment~~ capacity assessment meetings and annual reviews;
- (8) attending facility Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;
- (9) attending ~~Death Review~~ mortality review meetings pursuant to OAC 340:100-3-35;
- (10) promoting team discussion of alternatives to living in the facility, and consulting with teams regarding community supports and community residential alternatives;
- (11) participation in discharge planning meetings;
- (12) when a resident who has been discharged from the facility is not eligible for assignment of an OCA advocate in the community, providing transition advocacy assistance for 90 calendar days from the date the resident moves out of the facility. The 90 days can be extended by the advocate general or designee as warranted; and
- (13) reporting, for administrative action and correction, policy violations to the facility director or quality assurance designee.

### 340:2-3-73. **Advocacy services for former residents of the Northern Oklahoma Resource Center of Enid (NORCE), the Southern Oklahoma Resource Center (SORC), and the Greer Center Facility (Greer)**

(a) **Application.** This Section describes advocacy services the Office of Client Advocacy (OCA) provides to former residents of Southern Oklahoma Resource Center (SORC), Northern Oklahoma Resource Center of Enid (NORCE), and Greer Center Facility (Greer) ("the facilities") for whom the facility director is the guardian ad litem (GAL). Oklahoma Department of Human Services (OKDHS) has conferred on OCA responsibilities for each of these individuals until the court relieves the facility director of GAL responsibilities. Ombudsman and advocacy services are provided to former residents of the facilities consistent with ~~Section 71 of this Subchapter~~ OAC 340:2-3-71.

(b) **Representation.** A person eligible for OCA services pursuant to this Section is assigned to an OCA advocate to

represent the client's interests when OCA has adequate staff resources to provide such services. ~~At~~ A community advocate is assigned 30 calendar days prior to the date identified to transition the client. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and the caseloads of OCA advocates. Requests for a change in the advocate representing an individual are made to the advocate general or designee.

(c) **Team membership.** As a representative of a Developmental Disabilities Services Division (DDSD) client living in a community residential placement, an OCA advocate is a member of the client's personal support team. As a team member, the advocate receives from the client's DDSD case manager timely notice of all team meetings, including emergency team meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.

(d) **Guardianship issues.** The OCA advocate ensures a client has a current ~~guardianship—~~capacity assessment and attends ~~guardianship~~ capacity assessment meetings. If a client has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment or limit it, as the case may be. If the current ~~guardianship~~ capacity assessment for the client recommends a guardian, ~~or~~ or volunteer advocate, ~~or both,~~ the OCA advocate participates with the team in identifying persons who might serve as guardian or advocate for the client. An advocate encourages the development of friends in the community who might become a guardian or advocate for the client. When a guardian is needed and a suitable guardian has been identified, the advocate promotes the filing of a petition with the guardianship court to terminate the GAL appointment and to appoint a guardian.

(e) **Advocacy and monitoring.** OCA advocates provide advocacy and monitoring to ensure compliance with policies, rules, and regulations applicable to the health, safety, and well-being of clients. In addition to the services described in ~~Section 71(h) of this Subchapter~~ OAC 340:2-3-71(h), advocacy and monitoring activities on behalf of each client include:

- (1) verifying Form 06CB034E, Residential Pre-Service Checklist, has been completed and everything on the checklist is in place prior to the resident moving out of the facility;
- (2) a home visit with the client within 30 calendar days of the client's discharge from the facility;
- (3) verifying Form 06CB034E has been completed prior to any subsequent changes in residence, and making a home visit with the client within 30 calendar days after the client moves into a new residence;
- (4) a face-to-face visit with the client at least quarterly and more frequently as indicated, which includes:
  - (A) site visits to a client's residence at least twice a year, every five to seven months, at a time when the client is present in the home; and
  - (B) visits with the client outside the home setting at least twice a year, every five to seven months;

- (5) visits with the client at the request of the client, the client's legal guardian, or other person concerned about the well-being of the client;
- (6) completion of a service review twice a year, every five to seven months;
- (7) in connection with each service review, verifying that direct contact staff have completed required training;
- (8) participating as a member of a resident's personal support team;
- (9) attending annual individual plan (IP) meetings, interim meetings, and follow-up planning meetings;
- (10) attending emergency team meetings;
- (11) attending other team meetings when significant issues are being addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or to be recommended;
- (12) attending guardianship capacity assessment meetings of the client's team;
- (13) attending other team meetings at the request of the client, guardian, or involved family or friend;
- (14) requesting DDS Quality Assurance to conduct an administrative inquiry of suspected provider contract violations in accordance with OAC 340:100-3-27;
- (15) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;
- (16) review of documents, including but not limited to: assessments, IP and interim IP documents; incident reports; Adult Protective Services (APS) and OCA investigation findings; and behavior data collection forms;
- ~~(17) attending Behavior Review Committee (BRC) and Human Rights Committee (HRC) meetings as required or indicated;~~
- ~~(18) attending Death Review mortality review meetings held pursuant to OAC 340:100-3-35;~~
- ~~(19) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;~~
- ~~(20) monitoring semi-annually the hot water in homes where anti-scald devices have been installed, using a thermometer to ensure the water at the faucet where the device is located does not exceed 114 degrees and does not exceed 120 degrees when a tank device is used; and~~
- ~~(21) at least twice a year bi-annually, every five to seven months, verifying verify that appropriate records are kept with regard to an individual's personal finances.~~

**340:2-3-74. Advocacy services for Hissom class members**

(a) **Application.** This Section describes Office of Client Advocacy's Advocacy (OCA's OCA) advocacy services for Hissom class members who reside in Oklahoma. Advocacy services are provided to Hissom class members consistent with ~~Section 71 of this Subchapter~~ OAC 340:2-3-71. Orders of the United States District Court for the Northern District of Oklahoma in Homeward Bound, Inc., et al. vs. The Hissom Memorial Center, et al., Case No. 85-C-437-E 85-C-437-TCK-SAJ, require the Oklahoma Department of

Human Services (OKDHS) and OCA to provide independent advocacy services to individuals certified by the court as members of the plaintiff class, known as Hissom class members. This includes but is not limited to:

- (1) independently advocating for class members rights and interests regarding: their daily lives, proposed movements, medical and behavioral emergencies including hospitalizations, appropriate consents, ~~their~~ financial interests, and meetings held on their behalf;
  - (2) ~~appealing disagreements with a class member's individual plan through OKDHS grievance procedures, Sections 45, 46, and 52 of this Subchapter~~ challenging adverse service authorization actions through the OKDHS administrative appeal and/or grievance procedures; and
  - (3) referral to protection and advocacy agencies in Oklahoma to obtain legal counsel and legal advocacy services.
- (b) **Assignment of advocate.** OCA assigns an advocate to each Hissom class member living in Oklahoma. Clients are provided choices with regard to the advocate assigned to represent them to the extent feasible, taking into consideration the geographic location of the client's residence and the caseloads of OCA advocates. Requests for a change in the advocate representing an individual are made to the advocate general or designee.
- (c) **Team membership.** As a representative of a Hissom class member living in a community residential placement, an OCA advocate is a member of the client's personal support team. As a team member, the advocate receives from the client's ~~Disability~~ Disabilities Services Division (DDSD) case manager timely notice of all team meetings, including emergency team meetings. Within the team context, the advocate assists the client and represents the client's interests without relinquishing priority to client safety and rights.
- (d) **Guardianship issues.** The OCA advocate ensures the client has a current ~~guardianship capacity~~ assessment and attends guardianship capacity assessment meetings. If a client with a full guardianship has sufficient capacity to require no guardian or only a limited guardian, the advocate promotes the filing of a petition with the guardianship court to limit or terminate the guardianship. If the current ~~guardianship capacity~~ assessment of a client who does not have a guardian recommends a guardian, ~~or~~ volunteer advocate, ~~or both,~~ the OCA advocate participates with the team in identifying persons who might serve as guardian or advocate for the client. This includes encouraging the development of friends in the community who might become a guardian or volunteer advocate for the client. The OCA advocate monitors the implementation of the recommendations in the guardianship capacity assessment and advocates for their timely achievement. When a guardian is needed and a suitable guardian has been identified, the advocate promotes the filing of a petition with the guardianship court to appoint a guardian.
- (e) **Advocacy and monitoring services for class members in residential community settings.** OCA advocates provide advocacy and monitoring to class members living in community residential settings, including group homes, to ensure compliance with policies, rules, and regulations applicable to

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the health, safety, and well-being of clients. In addition to the activities described in ~~Section 71(h) of this Subchapter~~ OAC 340:2-3-71(h), advocacy and monitoring activities on behalf of each client include:

- (1) verifying a Form 06CB034E, Residential Pre-service Checklist, is completed prior to any change in residence, and making a home visit with the client within 30 calendar days after the client moves into a new residence;
- (2) a face-to-face visit with the client at least quarterly and more frequently as indicated, including:
  - (A) site visits to a client's residence at least ~~twice a year~~ bi-annually, every five to seven months, at a time when the client is at home; and
  - (B) visits with the client outside the home setting at least twice a year, every five to seven months;
- (3) visits with the client at the request of the client, the client's legal guardian, or other person concerned about the well-being of the client;
- (4) completion of a service review twice a year, every five to seven months
- (5) in connection with each service review, verifying that direct contact staff have completed required training;
- (6) participating as a member of a ~~resident's~~ client's personal support team;
- (7) attending annual individual plan (IP) meetings, interim meetings, and follow-up planning meetings;
- (8) attending emergency team meetings;
- (9) attending other team meetings when significant issues are addressed, including when a rights restriction or an intrusive behavior intervention strategy is contemplated or recommended;
- (10) attending guardianship assessment meetings of the client's team;
- (11) attending other team meetings at the request of the client, guardian, or involved family or friend;
- (12) requesting DDS Quality Assurance to conduct an administrative inquiry of suspected provider contract violations in accordance with OAC 340:100-3-27;
- (13) assisting the client and the client's guardian or representative with the review of proposed financial agreements and contracts between the client and the provider;
- (14) prior to and during a hospitalization, advocating for the provision of adequate staff to be present in the hospital with the client as circumstances warrant;
- (15) review of documents, including, but not limited to: assessments, IP and interim IP documents; incident reports; behavior data collection forms; and Adult Protective Services (APS) and OCA investigation findings;
- ~~(16) attending Behavior Review Committee (BRC) and provider and Human Rights Committee (HRC) meetings as required or indicated;~~
- ~~(17)~~ (16) attending ~~Death Reviews~~ mortality reviews conducted in accordance with OAC 340:100-3-35;
- ~~(18)~~ (17) communicating to the client, the client's guardian, and the client's family as appropriate the final finding of an OCA investigation in which the client was named as an alleged victim;

~~(18)~~ (19) attending legal proceedings involving the client, including guardianship proceedings, as warranted by the circumstances;

~~(20)~~ (19) monitoring semi-annually the hot water in homes ~~where anti-scald devices have been installed~~, using a thermometer to ensure the water at the faucet ~~where the device is located~~ does not exceed 114 degrees, ~~and does not exceed 120 degrees when a tank device is used~~;

~~(21)~~ (20) at least ~~twice a year~~ bi-annually, every five to seven months, ~~verifying~~ verify that appropriate records are being kept with regard to an individual's personal finances; and

~~(22)~~ (21) annually provide each client or guardian a copy of Form 15GR007E, Notice of Grievance Rights: Hissom Class Members.

(f) **Advocacy services for Hissom class members in a private intermediate care facility for the mentally retarded (ICF/MR).** Advocacy and monitoring services for class members who reside in a private ICF/MR in Oklahoma are contained in this subsection.

(1) The assigned OCA advocate personally visits a client living in a private ICF/MR at least ~~semi-annually~~ quarterly, and more frequently as warranted.

(2) The OCA advocate maintains a helping relationship with the client, assessing the realization of desired and targeted outcomes, and initiating change through referral or grievance as needed. During contacts with the client, the advocate inquires about individual satisfaction with current supports and provides information regarding options available to clients for community supports.

(3) The OCA advocate, ~~annually~~ at least bi-annually, contacts the guardian of the client if one has been appointed. The OCA advocate also contacts the guardian in response to an expression by the client of dissatisfaction with the current residential arrangements. These contacts reaffirm the availability of service options to clients for support in community settings. Contacts with the guardian occur in person, by phone, or by mail as the circumstances warrant.

(4) The OCA advocate contacts the private ICF/MR case manager, generally a Qualified Mental Retardation Professional, responsible for yearly care planning for the client. The advocate informs the facility case manager of the advocate's intent to attend yearly planning meetings. The advocate asks to be notified in advance of yearly planning meetings and emergency meetings. The advocate checks periodically to ensure meetings have not been held without notice to the advocate.

(5) The OCA advocate participates in annual planning meetings at the private ICF/MR. The advocate provides advocacy assistance regarding expressed desires of the individual. The advocate brings to the attention of the ~~care~~ care team concerns expressed by the client, ~~or~~ or guardian, ~~or other family members~~. The advocate participates in interim meetings addressing any significant change in residence, work, health, or important relationships.

(6) The OCA advocate develops a working knowledge of the facility's grievance procedure as well as other

problem resolution processes and resources for change, for example, the Long-Term Care Ombudsman Program and licensing agencies. The advocate uses these services, either directly or through referral, as needed for the benefit of the individual.

(7) The OCA advocate assesses the welfare of the client and determines if advocacy assistance is needed which OCA can provide. The advocate provides assistance, either directly or through referral, with resolving concerns identified by the client or by others on behalf of the client. This includes contacting the OKDHS Aging Services Division, long-term care ombudsman. The advocate also informs the Long-Term Care Ombudsman Office of concerns involving ~~non-clients~~ other individuals living in an ICF/MR which come to the attention of the OCA advocate.

(8) Service reviews are not completed.

(9) ~~The ICF/MR case manager is responsible for needed assessments, including the guardianship assessment. The DDS case manager can assist during the guardianship assessment.~~ The OCA advocate requests a guardianship capacity assessment on behalf of the client when there has been a substantial change in circumstances regarding the individual's need for a guardian.

(10) The OCA advocate provides information and encouragement to consider community residential settings.

(g) **Advocacy services for Hissom class members who are in custody.** Advocacy and monitoring services for class members who are in custody of the Department of Corrections or a county sheriff, except those who are detained pre-trial in a facility, are contained in this subsection. The assigned OCA advocate contacts the client at least semi-annually. The advocate assesses the welfare of the client and determines if advocacy assistance is needed that the advocate can provide. The advocate provides assistance, either directly or through referral, with resolving concerns identified by the client or by others on behalf of the client. Advocacy assistance is provided with regard to enforcing the rights of clients under the Americans with Disabilities Act and other state and federal laws to the extent they are applicable to persons who are in custody. When the client has less than a year remaining to serve in custody, the OCA advocate provides advocacy assistance with the DDS case manager to commence transition planning. The advocate participates in and monitors transition planning, representing the client's interests.

(h) **Services for Hissom class members who decline DDS services.** Pursuant to OAC 340:100-3-11, class members and their legal representatives have the right to refuse services from OKDHS. The OCA advocate for a class member who has declined DDS services, contacts the individual periodically bi-annually and remains available to assist with advocacy regarding non-specialized assistance when desired by the individual. At least one of the contacts is face-to-face when feasible.

**340:2-3-75. Advocacy services for clients with a special advocacy need**

(a) **Application.** This Section describes advocacy services the Office of Client Advocacy (OCA) provides to Developmental ~~Disability~~ Disabilities Services Division (DDSD) clients who are not otherwise eligible for ~~OCA's OCA~~ advocacy services but who have a special short-term need for advocacy assistance.

(b) **Requests for services.** Any DDSD client or the client's guardian, case manager, or next of kin can request short-term advocacy services for the client by contacting the advocate general or designee. Written requests which explain the nature of the advocacy need are encouraged, but verbal requests are accepted. Factors considered in granting requests include:

- (1) whether the advocacy need is a matter within ~~OCA's~~ OCA jurisdiction;
- (2) the existence of other resources to meet the client's need; and
- (3) the urgency of the need.

(c) **Advocacy provided.** When a request for short-term advocacy has been granted, the assigned advocate provides the support and advocacy appropriate given the nature of the problem and any imminent harm.

(1) The advocate, in consultation with his or her supervisor, prepares a time-limited plan for achieving the goals of the advocacy need.

(2) Short-term advocacy assistance is provided for up to three months. ~~The~~ When necessary, the OCA ombuds advocacy programs administrator ~~can~~ may ~~extend this for an additional three month period~~ the special advocacy assignment.

[OAR Docket #09-995; filed 5-20-09]

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)**

[OAR Docket #09-996]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 2. Temporary Assistance For Needy Families (TANF) Work Program

340:10-2-8 [AMENDED]

(Reference APA WF 09-01)

**AUTHORITY:**

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 230.50, 230.52, 230.62, 230.64, and 230.65 of Title 56 of the Oklahoma Statutes; the Deficit Reduction Act of 2005; and Parts 261.2, 261.60, 261.61 and 262.2 of Title 45 of the Code of Federal Regulations (CFR).

**DATES:**

**Comment period:**

February 17, 2009 through March 19, 2009

**Public hearing:**

None requested

**Adoption:**

March 24, 2009

# Permanent Final Adoptions

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March 24, 2009

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April 27, 2009

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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 16, 2009.

**Final adoption:**

May 16, 2009

**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 2. Temporary Assistance For Needy Families (TANF) Work Program

340:10-2-8 [AMENDED]

(Reference APA WF 09-01)

**Gubernatorial approval:**

February 24, 2009

**Register publication:**

26 Ok Reg 767

**Docket number:**

09-478

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Subchapter 2 of Chapter 10 rules are amended to: (1) increase the daily participation allowance paid to Temporary Assistance for Needy Families (TANF) recipients when they participate in most TANF Work activities; and (2) add clarifying language.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:**

## **SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM**

### **340:10-2-8. Temporary Assistance for Needy Families (TANF) Work support services**

(a) **Scope.** The worker provides or arranges payments and services for the participant to ensure successful completion of ~~his or her~~ the participant's employability plan to become self-supporting.

- (1) Payments are authorized for items or services directly related to employment as an outcome.
- (2) When support services are available and part of the employability plan, the participant's failure to cooperate in obtaining the support services constitutes a failure to participate in the TANF Work program.
- (3) Items and services covered by the participant's medical card are not paid for by the support service fund.
- (4) The only support services available to an applicant are the participant allowance and work activity payment.

(5) Payments are not authorized for reimbursement of expenses already paid by client or others.

(b) **Flexible funds.** The intent of flexible funds is to provide a participant with the necessary support services needed to accomplish his or her employment goals.

- (1) Flexible funds are not available to the applicant.
- (2) To be eligible for flexible funds, the participant must:

- (A) otherwise be ready to participate in a required work activity for the minimum number of hours;
- (B) have a guaranteed offer of employment; or
- (C) be employed.

(3) Payments for the services through flexible funds are not an automatic entitlement to the participant.

(4) Flexible funds are not used for fines including traffic fines or any cost related to a criminal offense such as legal fees or court costs.

(5) Human services center (HSC) staff has final authority to determine authorizations.

(6) One-time payments of specific services are allowed after the service is rendered.

(7) Ongoing maintenance payments are not allowed.

(8) Relatives of the client are not eligible for payment. See OAC 340:10-9-1 for degree of relationship.

(c) **Other support services.**

(1) **Work activity payments.** ~~To be eligible for the work~~ Work activity payment, the person must be payments are issued to persons participating in or ready to participate in or be in a required assigned work activity and in activities when they have need of a small amount of cash to purchase specific items to aid them in participating in their assigned work activities such as a tank of gas, ~~or health, beauty clothing,~~ or personal items. The maximum amount approved cannot exceed \$40 per month.

(2) **Participant allowances.** ~~Allowances~~ Daily cash allowances, up to a maximum of ~~\$40~~ \$13 for each day, are made to participants in assigned work activities which are scheduled, structured, and supervised.

(A) Lunch hours and travel time are not included as actual hours of attendance.

(B) For persons in Job Search, travel time between job interviews and job applications is included as actual hours of attendance.

(C) The participant makes appropriate daily entries on Form 08TW013E, Time and Progress Report, to document actual hours in attendance and submits it to the worker by the time frame shown on the form.

(D) The daily allowance paid is:

- (i) ~~\$7~~ \$8 each day when the work activity equals four hours or less; or
- (ii) ~~\$40~~ \$13 each day when the work activity equals more than four hours.

(3) **Oklahoma State Bureau of Investigations (OSBI) background checks.** OSBI background checks may be requested for a participant who is placed in job skills training that requires an OSBI background check as a prerequisite for employment. The job skills training can include vocational training, hands-on work experience,

or public or private sector work experience. The participant is advised of the requirement and Form 08AD060E, Request for Release of Information, is completed.

(4) **Child care.** Child care arrangements are made for each child(ren) in the home who is under age 13, mentally or physically incapable of self care, or under court supervision. The plans for child care are included on Form 08TW002E, TANF Work/Personal Responsibility Agreement. When the person begins active participation in TANF Work activities, child care services are documented.

(5) **Transportation contracts.** Transportation contracts are initiated to provide transportation for TANF recipients who have no means of transportation to access required TANF Work training activities. To initiate a transportation contract, HSC staff contact the Family Support Services Division TANF Section.

(6) **Disability Advocacy Program (DAP).** DAP is available to assist a TANF Work participant or a child(ren) receiving a TANF benefit, who has an application for disability pending with the Social Security Administration (SSA) or who the Oklahoma Department of Human Services (OKDHS) determines has a potentially meritorious claim for such benefits.

(A) The worker makes a referral to the OKDHS contracted law firm to assist the recipient(s) with the:

- (i) application;
- (ii) reconsideration;
- (iii) Administrative Law Judge hearing; and
- (iv) review by the SSA Appeals Council.

(B) The evaluation of merit determines if the appropriate SSA test for disability would be met if evidence was available to prove all conditions claimed by the TANF recipient. If the evaluation of merit determines there is:

- (i) sufficient evidence, the law firm represents the TANF recipient.

(I) Statewide this representation consists of assisting the recipient with the application through an unfavorable decision by the SSA Appeals Council.

(II) In counties in which representation by a lawyer or experienced non-lawyer advocate is not available without advance payment, the contracted law firm assists with the pending application for disability through an unfavorable decision by the SSA Appeals Council; or

- (ii) insufficient evidence to prove conditions claimed by the TANF recipient, no further services are provided by DAP. Representation by the law firm ceases at any time the law firm determines there is insufficient evidence to support the TANF recipient's claim for disability benefits.

*[OAR Docket #09-996; filed 5-20-09]*

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

*[OAR Docket #09-1042]*

**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 1. Introduction  
340:105-10-3 [AMENDED]  
Part 3. State Agency  
340:105-10-12 through 105-10-13 [AMENDED]  
Part 5. Area Agencies on Aging  
340:105-10-32 [AMENDED]  
340:105-10-36 through 105-10-38 [AMENDED]  
340:105-10-40 [AMENDED]  
Part 7. Program Standards for Services Funded Under Title III  
340:105-10-50.1 [AMENDED]  
340:105-10-54 [AMENDED]  
340:105-10-71 [AMENDED]  
340:105-10-75 [AMENDED]  
340:105-10-90.1 [AMENDED]  
Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects  
340:105-10-96 [AMENDED]  
340:105-10-101 [AMENDED]  
**(Reference APA WF 08-06)**

**AUTHORITY:**  
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Older Americans Act, as amended in 2006; Oklahoma State Council on Aging By-laws; and 21 O.S. § 1247.

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**SUPERSEDED EMERGENCY ACTIONS:**  
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Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended  
Part 1. Introduction  
340:105-10-3 [AMENDED]  
Part 3. State Agency  
340:105-10-12 through 105-10-13 [AMENDED]  
Part 5. Area Agencies on Aging  
340:105-10-32 [AMENDED]  
340:105-10-36 through 105-10-38 [AMENDED]  
340:105-10-40 [AMENDED]  
Part 7. Program Standards for Services Funded Under Title III  
340:105-10-50.1 [AMENDED]  
340:105-10-54 [AMENDED]  
340:105-10-71 [AMENDED]

# Permanent Final Adoptions

340:105-10-75 [AMENDED]  
340:105-10-90.1 [AMENDED]  
Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects  
340:105-10-96 [AMENDED]  
340:105-10-101 [AMENDED]  
(Reference APA WF 08-06)

**Gubernatorial approval:**

May 8, 2008

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08-960

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed revisions to Subchapter 10 of Chapter 105 amend the rules to: (1) comply with the Older Americans Act, as amended in 2006 (Public Law 109-365), including definitions of terms, eligibility for the National Family Caregiver Support Program (NFCSP), clarification of services available, and clarification of the target population to be served; (2) include recent amendments to the State Council on Aging By-laws increasing the number of members from 29 to 31 and add to the list of entities eligible for membership; and (3) comply with Section 1247 of Title 21 of the Oklahoma Statutes (21 O.S. § 1247) requiring public facilities be smoke free.

**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, 2009:**

## SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

### PART 1. INTRODUCTION

#### 340:105-10-3. Definitions

(a) **Definitions.** The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**"Abuse"** means the willful:

- (A) infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish; or
- (B) deprivation by a person, including a caregiver, of goods or services necessary to avoid physical harm, mental anguish, or mental illness.

**"Act"** means the Older Americans Act (OAA) of 1965 as amended.

**"Activities of daily living (ADL)"** means:

- (A) eating;
- (B) dressing;
- (C) bathing;
- (D) toileting;
- (E) transferring in and out of bed or chair; and
- (F) walking.

**"Aging and Disability Resource Center"** means an entity established by the State as part of the state system of coordinated long-term care to provide:

- (A) comprehensive information on the full range of available public and private long-term care programs, options, service providers, and resources within a community, including information on the availability of integrated long-term care;
- (B) personal counseling to assist a person assess existing or anticipated long-term care needs; and
- (C) access to publicly-supported long-term care programs for which a person may be eligible, by serving as a convenient point of entry for such programs.

**"Area Agency on Aging (AAA)"** means an agency designated under the OAA, Section 305(a)(2)(A) or the State Agency performing the functions of an AAA under the OAA, Section 305(b)(5).

**"Assistive device"** means an assistive technology device that has the same meaning given in Section 3 of the Assistive Technology Act of 1998 [29 U.S.C. 3002].

**"At risk for institutional placement"** means that an older person is unable to perform at least two activities of daily living without substantial assistance such as verbal reminding, physical cuing, or supervision and is determined by the State to be in need of placement in a long-term care facility.

**"CFR"** means Code of Federal Regulations in the Federal Register published by the United States (U.S.) Department of Health and Human Services, Office of Human Development, and Administration on Aging (AoA).

**"Caregiver"** means an adult family member, or another person, who is an informal provider of in-home and community care to a person 60 years of age or older.

**"Case management service"** means a service provided to an older person, at the direction of the older person or a family member of the older person:

- (A) by a person who is trained or experienced in the case management skills required to deliver the services and coordination described in (B) of this paragraph;
- (B) to assess the needs, and arrange, coordinate, and monitor an optimum package of services to meet the needs of the older person; and
- (C) including services and coordination, such as:
  - (i) comprehensive assessment of the older person's physical, psychological, and social needs;
  - (ii) development and implementation of a service plan with the older person to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older person, including coordination of the resources and services with:
    - (I) ~~any~~ other plans existing for various formal services, such as hospital discharge plans; and
    - (II) the information and assistance services funded by Title III of OAA;

- (iii) monitoring formal and informal service delivery to ensure services specified in the plan are provided;
- (iv) periodic reassessment and revision of the status of the older person with:
  - (I) the older person; or
  - (II) if necessary, a primary caregiver or family member of the older person; and
- (v) advocacy on behalf of the older person for needed services or resources in accordance with the wishes of the older person.

**"Child"** means a person who is not older than 18 years of age.

**"Civic engagement"** means a person or a collective action designed to address a public concern or an unmet human, educational, health care, environmental, or public safety need.

**"Comprehensive and coordinated system"** means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

- (A) facilitate accessibility to and utilization of all supportive services and nutrition services provided within the geographic area served by such system by any public or private agency or organization;
- (B) develop and make the most efficient use of supportive services and nutrition services in meeting the needs of older persons;
- (C) use available resources efficiently and with a minimum of duplication; and
- (D) encourage and assist public and private entities having unrealized potential for meeting the service needs of older persons to assist the older persons on a voluntary basis.

**"Construction,"** with respect to multipurpose senior centers, means building a new facility, including the costs of land acquisition and architectural and engineering fees or making modifications to or in connection with an existing facility in excess of double the square footage of the original facility and all physical improvements.

**"Department"** means U.S. Department of Health and Human Services (DHHS).

**"Direct services"** means any activity performed to provide services directly to an older person by the staff of a service provider, AAA, or State Agency in a single planning and service area.

**"Disability"** means a mental or physical impairment, or a combination of mental and physical impairments, resulting in substantial functional limitations in one or more areas of the major life activities of:

- (A) self-care;
- (B) receptive and expressive language;
- (C) learning;
- (D) mobility;
- (E) self-direction;
- (F) capacity for independent living;
- (G) economic self-sufficiency;
- (H) cognitive functioning; and
- (I) emotional adjustment.

**"Disease prevention and health promotion services"** means providing:

- (A) health risk assessments;
- (B) routine health screening, such as hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density, oral health, and nutrition screening;
- (C) nutritional counseling and educational services for older persons and their primary caregivers;
- (D) evidence-based health promotion programs, including programs ~~relating-related~~ to prevention and ~~reduction~~ mitigation of effects of chronic ~~disabling conditions~~ disease, such as:
  - (i) osteoporosis;
  - (ii) hypertension;
  - (iii) obesity;
  - (iv) diabetes;
  - (v) cardiovascular disease;
  - (vi) oral or dental care, disease;
  - (vii) alcohol and substance abuse reduction;
  - (viii) smoking cessation;
  - (ix) weight loss and control, ~~and~~;
  - (x) stress management;
  - (xi) falls prevention;
  - (xii) physical activity; and
  - (xiii) improved nutrition;

(E) programs regarding physical fitness, group exercise, and music, art, and dance movement therapy, including programs for multigenerational participation provided by:

- (i) an institution of higher education;
- (ii) a local educational agency, as defined in Section 1471 of the Elementary and Secondary Education Act of 1965; or
- (iii) a community-based organization;

(F) home injury control services, including screening of high risk home environments and provision of educational programs on injury prevention, such as fall and fracture prevention;

(G) screening for the prevention of depression, coordination of community mental health services, provision of educational activities, and referral to psychiatric and psychological services;

(H) educational programs on the availability, benefits, and appropriate use of preventive health services covered under Title XVIII of the Social Security Act;

(I) medication management screening and education to prevent incorrect medication and adverse drug reactions;

(J) information concerning diagnosis, prevention, treatment, and rehabilitation concerning age related diseases and chronic disabling conditions, including:

- (i) osteoporosis;
- (ii) cardiovascular diseases;
- (iii) diabetes; and
- (iv) Alzheimer's disease and related disorders with neurological and organic brain dysfunction;

(K) gerontological counseling; and

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(L) counseling regarding social services and follow-up health services based on any of the services described in (A) through (K) of this subsection.

**"Elder abuse"** means abuse of an older person.

**"Eldercare (National Campaign)"** means the AoA sponsored program to establish and promote public and private partnerships addressing the needs of the growing population of older persons and their caregivers.

**"Elder justice"** means efforts to:

(A) prevent, detect, treat, intervene in, and respond to elder abuse, neglect, and exploitation;

(B) protect older persons with diminished capacity while maximizing their autonomy; and

(C) recognize a person's rights, including the right to be free of abuse, neglect, and exploitation.

**"Ethnicity status."** See "Race or ethnicity status."

**"Exploitation"** means the fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an older person for monetary or personal benefit, profit, or gain, or that results in depriving an older person of rightful access to, or use of, benefits, resources, belongings, or assets. Within this definition, a caregiver is a person who has the responsibility for the care of an older person, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law and is a family member or other person providing, on behalf of the person or of a public or private agency, organization, or institution, compensated or uncompensated care to an older person.

**"Fiduciary"** means a person or entity with the legal responsibility to make decisions on behalf of and for the benefit of another person and to act in good faith and with fairness and includes a trustee, a guardian, a conservator, an executor, an agent under a financial power of attorney or health care power of attorney, or a representative payee.

**"Focal point"** means a facility established to encourage the maximum collocation and coordination of services for older persons.

**"Frail"** means a condition of functionally impaired determined because the older person:

(A) is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cueing, or supervision; or

(B) due to a cognitive or other mental impairment, requires substantial supervision because the person behaves in a manner posing a serious health or safety hazard to self or another person.

**"Grandparent or older person who is a relative caregiver"** means a grandparent, ~~or a stepgrandparent, or relative~~ of a child or a relative of a child by blood, ~~or marriage, or adoption~~ who is ~~60~~ 55 years of age or older and:

(A) lives with the child;

(B) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and

(C) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

**"Grantee agency"** means an agency that receives funds granted or awarded by the sponsoring agency. The AAAs are grantees of the State Agency and the service providers are grantees of the AAAs.

**"Grantor agency"** means an agency that grants or awards funds to another entity. The State Agency is the grantor agency for the AAAs and the AAAs are the grantor agencies for the service providers.

**"Greatest economic need"** means the need resulting from an income level at or below the poverty line.

**"Greatest social need"** means the need caused by non-economic factors, including physical and mental disabilities; language barriers; and cultural, geographical, or social isolation, including that caused by racial or ethnic status that restricts the person's ability to perform normal daily tasks or threatens the person's capacity to live independently.

**"Hispanic-serving institution"** means the same as in Section 502 of the Higher Education Act of 1965 [20 U.S.C. 1101a].

**"Impairment in activities of daily living"** means the inability to perform one or more of the six ADL without personal assistance, stand-by assistance, supervision, or cues.

**"Impairment in instrumental activities of daily living"** means the inability to perform one or more of the eight instrumental activities of daily living (IADL) without personal assistance, stand-by assistance, supervision, or cues.

**"Informal care"** means care not provided as part of a public or private formal service program.

**"Information and assistance (I & A)"** means a service for older persons that:

(A) provides older persons current information on services available within their communities including information relating to assistive technology;

(B) links older persons with the opportunities and services available within their communities; ~~and~~

(C) establishes adequate follow-up procedures to the maximum extent practicable; ~~and~~

(D) serves the entire community of older persons, particularly those with greatest social and economic need and those at risk for institutional placement.

**"In-home service"** means:

(A) services of homemakers and home health aides;

(B) visiting and telephone reassurance;

(C) chore maintenance;

(D) in-home respite care for families, including adult day care as a respite service for families;

(E) minor modification of homes necessary to facilitate the ability of older persons to remain at home, and not available under other programs. Not more than \$250 per client may be expended annually for such modification; and

(F) personal care services.

**"Instrumental activities of daily living (IADL)"** means:

- (A) preparing meals;
- (B) shopping for personal items;
- (C) managing medication;
- (D) managing money;
- (E) using the telephone;
- (F) doing heavy housework;
- (G) doing light housework; and
- (H) making use of available transportation without assistance.

**"Integrated long-term care"** means items and services that consist of:

- (A) with respect to long-term care:
  - (i) items or services provided under a State plan for medical assistance under the SoonerCare program established under Title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], including nursing facility services, home and community-based services, personal care services, and case management services provided under the plan; and
  - (ii) any other supports, items, or services that are available under any federally funded long-term care program;
- (B) with respect to other health care, items and services covered under:
  - (i) the Medicare program established under Title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.];
  - (ii) the State plan for medical assistance under the SoonerCare program; or
  - (iii) any other federally funded health care program; and
- (C) includes such items or services that are provided under a public or private managed care plan or through any other service provider.

**"Legal assistance"** means legal advice and representation by an attorney to an older person who has economic or social needs and includes, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney and counseling or representation by a non-lawyer where permitted by law.

**"Living alone"** means a one person household, using the census definition of household, where the householder lives by himself or herself in an owned or rented place of residence in a non-institutional setting, including board and care facilities, assisted living units, and group homes.

**"Low income minority elderly"** means a minority older person with annual income at or below the federally established poverty line.

**"Low income non-minority elderly"** means an older person who is not a minority with an annual income at or below the federally established poverty line.

**"Means testing"** means the use of an older person's income or resource to deny or limit the person's receipt of services.

**"Minority elderly"** means a person age 60 or older who is:

- (A) American Indian or Alaskan Native;
- (B) Asian;

- (C) Black or African American;
- (D) Hispanic or Latino; or
- (E) Native Hawaiian or Other Pacific Islander.

**"Multipurpose senior center"** means a community facility for the organization and provision of a broad spectrum of services, to include the provision of health, such as mental health, social, nutritional, and educational services and facilities for recreational activities for older persons.

**"NAPIS"** means the National Aging Program Information System.

**"Neglect"** means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an older person or self-neglect.

**"Nonprofit"** means an agency, institution, or organization owned or operated by one or more corporations or associations having no part of the net earnings or benefit of any private shareholder or individual.

**"OAA"** means the Older Americans Act of 1965, as amended.

**"OKDHS"** means Oklahoma Department of Human Services.

**"Older person" or "older individual"** means anyone 60 years of age or older.

**"Periodic,"** as used in the OAA with respect to evaluations of and public hearings on activities carried out under State and Area Plans, means, at a minimum, once each fiscal year.

**"Planning and service area (PSA)"** means an area designated by the State Agency under Section 305(a)(1)(E) of the OAA, as amended, for the purposes of developing and coordinating service systems.

**"Poverty"** means the income level defined each year by the Office of Management and Budget (OMB), and adjusted by the DHHS Secretary in accordance with subsection 673(2) of the Community Services Block Grant Act. The annual DHHS Poverty Guidelines provide dollar thresholds representing poverty levels for households of various sizes.

**"Poverty line"** means the official poverty line as defined by OMB in accordance with Section 673(2) of the Community Services Block Grant Act, per Section 9902(2) of Title 42 of the U.S. Code.

**"Project"** as used in Section 306(a)(1) of the OAA with respect to the provision of supportive and nutrition services, means an entity awarded a subgrant or contract from an AAA to provide services under the Area Plan.

**"Race or ethnicity status"** reflects the requirements of OMB for obtaining information from persons regarding their self-identification of race and ethnicity.

- (A) Race includes:
  - (i) American Indian or Alaskan Native: a person having origins in any of the original peoples of North America, including Central America, and who maintains tribal affiliation or community attachment;
  - (ii) Asian: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including Cambodia,

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China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(iii) **Black or African American:** a person having origins in any of the black racial groups of Africa;

(iv) **Native Hawaiian or Other Pacific Islander:** a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and

(v) **White:** a person having origins in any of the peoples of Europe, the Middle East, or North Africa.

(B) **Ethnicity includes:**

(i) **Hispanic or Latino:** a person of Cuban, Mexican, Puerto Rican, Central or South American, or other Spanish culture or origin, regardless of race; and

(ii) **Not Hispanic or Latino.**

**"Rural"** means an area not defined as urban by AoA.

**"Rural counties"** means counties not considered urban as defined by AoA.

**"Rural elderly"** means older persons not considered living in urban counties as defined by AoA.

**"SUOA"** means Special Unit on Aging, a unit of OKDHS Aging Services Division.

**"Self-directed care"** means an approach to providing services, including programs, benefits, supports, and technology under the OAA intended to assist a person with activities of daily living, in which:

(A) services, including the amount, duration, scope, provider, and location of such services, are planned, budgeted, and purchased under the direction and control of the person;

(B) a person is provided with information and assistance as are necessary and appropriate to make informed decisions about care options;

(C) the needs, capabilities, and preferences of a person with respect to such services are assessed by the AAA, or other agency designated by the AAA, involved;

(D) based on the assessment, the AAA, or other agency designated by the AAA, develops together with the person and the person's family, caregiver, or legal representative:

(i) a plan of services for the person that specifies the services the person will be responsible for directing;

(ii) a determination of the role of family members, and others the person wants to participate, in providing services under the plan; and

(iii) a budget for such services; and

(E) the AAA or State Agency provides for oversight of self-directed receipt of services, including steps to ensure the quality of services provided and the appropriate use of funds under the OAA.

**"Self-neglect"** means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including:

(A) obtaining essential food, clothing, shelter, and medical care;

(B) obtaining goods and services necessary to maintain physical health, mental health, or general safety; or

(C) managing one's own financial affairs.

**"Service provider,"** as used in Section 306(a)(1) of the OAA with respect to the provision of supportive and nutrition services, means an entity awarded a subgrant or contract from an AAA to provide services under the Area Plan.

**"Severe disability,"** as used to carry out the provisions of the OAA, means a severe chronic disability attributable to mental or physical impairment of a person that:

(A) is likely to continue indefinitely; and

(B) results in substantial functional limitation in three or more of the major life activities of:

(i) self-care;

(ii) receptive and expressive language;

(iii) learning;

(iv) mobility;

(v) self-direction;

(vi) capacity for independent living; and

(vii) economic self-sufficiency.

**"Sponsoring agency"** means a multipurpose or umbrella organization of a grantee.

**"State Agency"** means the agency designated by the state under Section 305(a)(1) of the OAA, as amended. In Oklahoma, the State Agency is OKDHS ASD.

**"State system of long-term care"** means the federal, state, and local programs and activities administered by a state that provide, support, or facilitate access to long-term care for persons in the state.

**"Subgrantee"** means an agency that subcontracts with a grantee agency. Subgrantee usually refers to the service provider, but it is possible for a service provider to subcontract with another entity.

**"Taxonomy"** means the uniform set of service definitions and service unit measures adopted by AoA for national reporting on programs and activities under Title III of the OAA.

**"Unit of general purpose local government"** means:

(A) a political subdivision of the state having general authority and not limited to only one function or combination of related functions; or

(B) an Indian tribal organization.

**"Urban"** means areas defined by AoA comprised of an:

(A) urbanized area, a central place and its adjacent densely settled territories with a combined minimum population of 50,000; or

(B) incorporated place or census designated place with 20,000 or more inhabitants.

**"Urban counties"** means urban areas as defined by AoA.

Counties in Oklahoma considered urban are:

(A) Canadian;

(B) Cleveland;

(C) Comanche;

(D) Creek;

- (E) Garfield;
- (F) Logan;
- (G) McClain;
- (H) Oklahoma;
- (I) Osage;
- (J) Pottawatomie;
- (K) Rogers;
- (L) Sequoyah;
- (M) Tulsa; and
- (N) Wagoner.

(b) **Authority.** The authority for this Section is OMB Notice of Action 0985-0008.

**PART 3. STATE AGENCY**

**340:105-10-12. State Council on Aging**

(a) **Policy.** The State of Oklahoma has a State Council on Aging that meets the requirements of the Older Americans Act (OAA), and the Aging Services Division's (ASD's) need for statewide representation from older Oklahomans and service providers.

(b) **Authority.** The authority for this Section is Section 305 of the OAA of 1965, as amended and Oklahoma State Council on Aging Bylaws.

(c) **Procedures.** The State Council on Aging is composed of ~~29~~ 31 members who are residents of the state and who have demonstrated an interest in, knowledge of, and accomplishments regarding the concerns of older persons. At least 18 of the members are 60 years of age or older.

- (1) Members of the State Council on Aging include:
  - (A) one member appointed by the Governor;
  - (B) one member appointed by the President Pro Tempore of the State Senate;
  - (C) one member appointed by the Speaker of the House of Representatives; and
  - (D) 26 members appointed by the Oklahoma Department of Human Services (OKDHS) Director and include:
    - (i) five members who are 60 years of age or older who are participating consumers or volunteers working regularly in aging programs and are chosen from Area Agency on Aging (AAA) advisory council nominees. Each of the AAA advisory councils submit one nominee for consideration from their respective planning and service areas. The consumer members chosen include residents of rural counties and represent citizens from all economic levels;
    - (ii) one member from nominees is submitted by entities to include:
      - (I) ~~Oklahoma Association of Area Agencies on Aging Association;~~
      - (II) Oklahoma State Department of Health;
      - (III) Oklahoma State Department of Mental Health, gerontological representative;
      - (IV) ~~Older American Volunteer Program~~ Oklahoma Senior Corps Directors Association;

- (V) Oklahoma State Nutrition Directors Association;
- (VI) Urban League, alternating by term between Oklahoma City and Tulsa chapters;
- (VII) Oklahoma Indian Council on Aging;
- (VIII) ~~Oklahoma American Association of Retired Persons (AARP);~~
- (IX) Oklahoma Federation of Chapters of the National Association of Retired Federal Employees;
- (X) Adult Day Services Association of Oklahoma;
- (XI) Oklahoma Alliance on Aging;
- (XII) Oklahoma Retired Educators Association; ~~and~~
- (XIII) Silver Haired Legislature Alumni; and
- (XIV) Oklahoma Health Care Authority; and

(iii) ~~eight~~ nine at-large members nominated and appointed by the OKDHS Director to ensure ethnic, geographical, and demographical balance in the State Council on Aging.

- (2) Duties of the State Council on Aging include:
  - (A) informing entities of the needs, conditions, and concerns of older Oklahomans to include the:
    - (i) Oklahoma Commission for Human Services;
    - (ii) OKDHS Director and the Aging Services Division (ASD) director;
    - (iii) State of Oklahoma Governor's Office;
    - (iv) Oklahoma State Legislature;
    - (v) United States Oklahoma Congressional Delegates;
    - (vi) state agencies;
    - (vii) federal agencies; and
    - (viii) general public;
  - (B) reviewing and commenting on all policies, budget appropriations, planning regulations, and legislation that could benefit or adversely impact older Oklahomans, and advocating for concerns and issues of older Oklahomans, maintaining high visibility and a strong voice;
  - (C) monitoring and evaluating the provision of services to older persons within Oklahoma;
  - (D) conducting public forums on the needs or conditions of older Oklahomans and seeking public input on programs or issues involving older persons; and
  - (E) advising the ASD director on all matters pertaining to:
    - (i) development and implementation of policies, budget appropriations, planning, regulations, and standards;
    - (ii) effective and efficient administration of division programs;
    - (iii) development of training and educational programs; and
    - (iv) administration of other functions of ASD.

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## 340:105-10-13. State Plan on Aging

(a) **Policy.** In order to receive Older Americans Act (OAA) funding, the State Agency must have developed and approved a State Plan on Aging. This plan must be on file with the Administration on Aging and must be available for public review. At a minimum, the plan must include:

- (1) identification by the ~~state~~ State of the sole state agency that has been designated to develop and administer the plan;
- (2) statewide program objectives to implement the requirements under Title III of the OAA and any objectives established by the federal Assistant Secretary for Aging through the rulemaking process;
- (3) a resource allocation plan, budget, indicating the proposed use of all Title III funds administered by the State Agency and the distribution of Title III funds to each planning and service area (PSA);
- (4) identification of the geographic boundaries of each ~~planning and service area~~ PSA and of Area Agencies on Aging;
- (5) prior federal fiscal year information related to:
  - (A) number of low income minority older persons;
  - (B) methods used to attempt to satisfy the service needs of such minority older persons; and
  - (C) methods used to attempt to satisfy the service needs of older persons who reside in rural areas;
- (6) all assurances and provisions as outlined in the OAA and regulations ensure:
  - (A) preference is given to older persons in greatest ~~social and economic~~ and social need and to older persons at risk for institutional placement with particular attention given to those ~~individuals~~ older persons residing in rural areas, low-income minority older persons, and older persons with limited English proficiency in the provision of services under the plan;
  - (B) all services under the OAA are provided without use of any means tests;
  - (C) all services provided under Title III meet any existing state and local health and safety licensing requirements for the provision of those services;
  - (D) older persons are provided opportunities to voluntarily contribute to the cost of services; and
  - (E) other such assurances as are needed for compliance with the OAA, regulations, other applicable federal law, state statutes, and state policy; and
- (7) listing of State Council on Aging membership and responsibilities.

(b) **Authority.** The authority for this Section is Section 307 of the OAA of 1965, as amended and Title 45 of the Code of Federal Regulations, Part 1321.17.

(c) **Cross references.** See OAC 340:105-10-14.

## PART 5. AREA AGENCIES ON AGING

### 340:105-10-32. Area Agency on Aging advisory council

(a) **Policy.** Each Area Agency on Aging (AAA) establishes and maintains an advisory council. The council carries out

advisory functions which further the AAA's mission of developing and coordinating community-based systems of services for all older persons in the planning and service area. ~~The composition of the council is described in (1) and (2).~~

(1) The advisory council is separate and distinct from the AAA governing board and composed of:

- (A) more than 50 percent older persons, including minority ~~individuals~~ persons who are participants or who are eligible to participate in Title III programs, and family caregivers of such persons;
- (B) representatives of older persons;
- (C) representatives of health care provider organizations, including providers of veterans' health care, if appropriate;
- (D) representatives of supportive services providers;
- (E) persons with leadership experience in the private and voluntary sectors;
- (F) local elected officials; and
- (G) the general public.

(2) The advisory council may not be composed of:

- (A) State Agency staff or governing board members;
- (B) AAA staff or governing board members;
- (C) Title III project staff or governing board members; or
- (D) any other ~~individuals~~ persons that may give an appearance of a potential conflict of interest.

(b) **Authority.** The authority for this Section is Title 45 of the Code of Federal Regulations, Part 1321.57.

(c) **Procedures.**

(1) ~~The responsibilities of the advisory council are to advise is responsible for advising the AAA relative in regard to:~~

- (A) developing and administering the Area Plan;
- (B) conducting public hearings;
- (C) representing the interests of older persons; and
- (D) reviewing and commenting on all community policies, programs, and actions which affect older persons with the intent of assuring maximum coordination and responsiveness to older persons.

(2) ~~The responsibilities of the AAA relative to is responsible for supporting the efforts of the advisory council include. The AAA:~~

- (A) ~~scheduling~~ schedules meetings of the full council at least quarterly and ~~providing~~ provides staff assistance to same;
- (B) ~~keeping~~ keeps the council informed of all matters relating to Area Plan development and administration;
- (C) ~~maintaining~~ maintains close contact with advisory council officers;
- (D) ~~assisting~~ assists the council in developing by-laws. The bylaws, at a minimum, address the:
  - (i) size and composition of the council;
  - (ii) tenure and selection procedures for members;
  - (iii) frequency of meetings; and

- (iv) functions of the council;
- (E) ~~providing~~ provides reimbursement for travel and other allowable expenses to council members, as appropriate;
- (F) ~~submitting~~ submits the Area Plan and subsequent amendments to the council for review and comment before they are submitted to the State Agency for approval; and
- (G) ~~conducting~~ conducts annual training for advisory council members to provide orientation to the rights and responsibilities of advisory council members.

(d) **Cross references.** See OAC 340:105-10-31(a)(1).

**340:105-10-36. Area Plan administration (~~Title III compliance monitoring~~)**

- (a) **Policy.** The Area Agency on Aging ~~shall have~~ (AAA) has responsibility for carrying out all activities under the Area Plan on Aging.
- (b) **Authority.** The authority for ~~OAC 340:105-10-36 this Section~~ is Section 306 and Section 212(b)(1) of the Older Americans Act, as amended, and ~~45 CFR~~ Parts 1321.61 and 1321.53 of Title 45 of the Code of Federal Regulations.
- (c) **Procedures.** The Area Agency ~~carries out its responsibilities under the Area Plan on Aging via the following activities~~ AAA:

- (1) ~~Developing~~ develops and ~~monitoring~~ monitors a management plan for the Area Plan on Aging which includes:
  - (A) ~~Overall Plan~~ overall plan goals;
  - (B) ~~Measurable~~ measurable objectives which outline what will be done to reach the goal;
  - (C) ~~Action~~ action steps ~~which that~~ describe how each objective will be accomplished, ~~i.e.~~ such as specific tasks;
  - (D) ~~Staff~~ staff assignments of responsibility for each objective; and
  - (E) ~~Target~~ target dates for the completion of action steps;
- (2) ~~Submitting~~ submits all required program and fiscal reports related to Area Plan activities to the State Agency ~~on Aging;~~
- (3) ~~Developing~~ develops a Title III ~~grant application (Request For Proposal)~~ request for proposal (RFP) package and ~~providing~~ provide technical assistance on the applications to prospective grantees;
- (4) ~~Reviewing~~ reviews and ~~approving all~~ approves Title III ~~grant applications~~ RFPs, except for-profit applications that must be reviewed and approved by the State Agency;
- (5) ~~Monitoring~~ monitors the program and fiscal reports of Title III projects in the planning and service area (PSA);
- (6) ~~Conducting~~ conducts on-site quarterly assessments with each Title III project and ~~forwarding~~ forwards follow-up written reports to each project;
- (7) ~~Providing~~ provides technical assistance to the Title III projects as appropriate; and

(8) ~~Developing~~ develops a policy and procedures manual for Title III projects in the ~~planning and service area~~ PSA.

(d) **Cross references.** See OAC 340:105-10-31(a)(3), 340:105-10-33, and 340:105-10-34.

**340:105-10-37. Coordination and resource development**

(a) **Policy.** The Area Agency on Aging (AAA) performs activities which maximize the availability of all services to older persons in the planning and service area (PSA), and reduce duplication of effort. Particular effort is made to coordinate with:

- (1) organizations providing ~~day child~~ child care services for children, assistance to older ~~individuals~~ persons caring for relatives who are children, and respite for families to provide opportunities for older ~~individuals~~ persons to aid or assist on a voluntary basis;
- (2) organizations established for the benefit of victims of Alzheimer's disease;
- (3) ~~community health centers when Title III funds are being expended for mental health services~~ the State Agency and the Oklahoma Department of Mental Health and Substance Abuse Services to:
  - (A) increase public awareness of mental health disorders;
  - (B) remove barriers to diagnosis and treatment; and
  - (C) coordinate mental health services, including mental health screenings, provided with funds expended by the AAA with mental health services provided by community health centers and by other public agencies and nonprofit private organizations;
- (4) job training and partnership programs;
- (5) Title II programs of the Domestic Volunteer Service Act of 1973;
- (6) Titles XVI, XVIII, XIX, and XX programs of the Social Security Act;
- (7) federal housing programs, United States Housing Act of 1937 or Section 202 of the Housing Act of 1959;
- (8) Title I programs of the Housing and Community Development Act of 1974;
- (9) adult education programs, Title I of the Higher Education Act of 1965 or Adult Education Act;
- (10) transportation programs, Section 5310 of the Transportation Equity Act;
- (11) public health programs, Title XIX of the Public Health Service Act;
- (12) energy assistance programs, Low-Income Home Energy Assistance Act of 1981;
- (13) weatherization assistance for low income persons, Part A of the Energy Conservation in Existing Buildings Act of 1976; ~~and~~
- (14) programs funded by the Community Services Block Grant Act; and
- (15) trained volunteers providing direct services to older persons and persons with disabilities working when possible with organizations that have experience in providing training, placement, and stipends for volunteers or participants in community services settings such as organizations

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carrying out federal service programs administered by the Corporation for National and Community Service.

(b) **Authority.** The authority for this Section is Section 306(a)(6) of the Older Americans Act of 1965, as amended and ~~Title 45 of the Code of Federal Regulations, Part 1321.53 of Title 45 of the Code of Federal Regulations.~~

(c) **Procedures.** The AAA ensures maximum availability of services to older persons in the PSA, and reduces duplication of effort for all agencies and organizations serving older persons ~~by.~~ The AAA staff:

(1) ~~identifying~~ identify federal, state, and local programs which impact or could impact the older persons in the PSA and ~~providing~~ provide information in order to justify the allocation of funds for aging programs;

(2) ~~making~~ make application for alternative sources of funding where appropriate, such as grant writing;

(3) ~~participating~~ participate in interagency organizations developed for purposes of information sharing, joint planning, and service delivery;

(4) ~~establishing~~ establish public and private coalitions to address the growing needs of older persons in the PSA;

(5) ~~entering~~ enter into cooperative written agreements with local agencies and organizations in order to clearly outline respective responsibilities and expected outcomes;

(6) ~~extending~~ extend opportunities for participation in AAA sponsored training to:

(A) local health and social services agencies who serve or advocate for ~~the elderly~~ older persons;

~~(7) extending opportunities for participation in AAA sponsored training to~~

(B) businesses; and

(C) other private entities; and

~~(8) participating~~ participate in training sponsored by other local agencies, organizations, and businesses which improve the skills of AAA staff or otherwise further the interests or needs of older persons in the PSA.

(d) **Cross references.** See OAC 340:105-10-31(a)(4).

## 340:105-10-38. Targeting resources to older persons in greatest economic or social need

(a) **Policy.** The Area Agency on Aging (AAA) takes a leadership role in assisting communities throughout the planning and service area (PSA) to target resources from all appropriate sources to meet the needs of older persons with greatest economic or social need, with particular attention to low income minority individuals. In addition to low income minority older persons, the groups of older persons targeted for special consideration under this Section include older:

(1) persons residing in rural or isolated areas;

(2) persons with severe disabilities;

(3) persons with limited English ~~speaking ability~~ proficiency;

~~(4) persons at risk for institutional placement;~~

~~(45) persons with Alzheimer's disease or and related disorders with neurological and organic brain dysfunction and the caretakers of such individuals persons;~~ and

~~(56) Native Americans.~~

(b) **Authority.** The authority for this Section is Section 306(a)(1) and (4) of the Older Americans Act of 1965, as amended, and Part 1321.61(c) of Title 45 of the Code Of Federal Regulations, ~~Part 1321.61(e).~~

(c) **Procedures.** The AAA carries out its mandate to target resources to older ~~individuals~~ persons with greatest economic or social need, with particular emphasis on low income minority ~~individuals persons~~ and older ~~individuals persons~~ persons residing in rural areas ~~by.~~ The AAA:

(1) ~~locating~~ locates services in areas where older persons in greatest economic or social need reside or congregate;

(2) ~~funding~~ funds and ~~advocating~~ advocates for specialized services which meet the unique needs of those in greatest economic or social need;

(3) ~~including~~ includes representatives of older persons in greatest economic or social need in the planning of services for these groups ~~via.~~ The AAA:

(A) ~~appointing~~ appoints representatives from the target groups to the AAA advisory council;

(B) ~~requiring~~ requires Title III projects to appoint representatives from the target groups to the project advisory councils;

(C) ~~including~~ includes leaders of the targeted groups in the annual needs assessment process;

(D) ~~including~~ includes sources of minority, ~~disabled~~ disability, and bilingual professionals in recruitment efforts for AAA staff positions, such as recruitment announcements in publications with large minority and ~~disabled~~ readership with disabilities, or recruitment announcements at minority colleges and universities; and

(E) ~~maintaining~~ maintains written agreements with minority and disability entities;

(4) ~~providing~~ provides Title III services to low income minority older persons according to their need, to the maximum extent possible. At a minimum, the AAA must:

(A) determine the numbers and the specialized needs of low income minority older persons in the PSA through its annual needs assessment activities;

(B) require Title III grantees to outline specific objectives to serve the low income minority older persons in each PSA; and

(C) monitor program reports to ensure that low income minority older persons are receiving services in at least as great a proportion as their numbers bear to the total population of older persons in the PSA;

(5) ~~providing~~ provides sufficient outreach services to the targeted groups; and

(6) ~~providing~~ provides appropriate training for AAA and Title III project staff to improve their ability to outreach and serve the targeted groups.

(d) **Cross references.** See OAC 340:105-10-31(a)(5), 340:105-10-33, 340:105-10-51(a)(3),

340:105-10-52(a)(1)(A),

340:105-10-58(a),

340:105-10-60(c), and 340:105-10-62(c).

**340:105-10-40. Funding local sponsors for the provision of direct Title III services**

(a) **Policy.** The Area Agency on Aging (AAA) awards all Title III of the Older Americans Act (OAA) of 1965 service funds by grant or contract to community services provider agencies and organizations, except where a direct service waiver(s) has been granted by the State Agency, per OAC 340:105-10-41, for the purpose of developing or enhancing a comprehensive and coordinated community-based system of services for older persons in the planning and service area (PSA). OAC 340:105-10-50.1 lists the services that may be funded under Title III.

(b) **Authority.** The authority for this Section is Section 306(a) and Section 212(b)(1) of the OAA of 1965, as amended, and Section 1321.63(b) of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The AAA staff, advisory council, and board of directors follow the procedures in this Section prior to awarding Title III funds.

- (1) AAA staff:
  - (A) conducts a needs assessment and identifies priority needs in the PSA;
  - (B) evaluates the current service system and identifies any gaps in the system;
  - (C) establishes a funding formula that describes the systematic procedure the AAA follows in allocating funds for services within the PSA, per OAC 340:105-10-100;
  - (D) develops the request for proposal (RFP) packages for all Title III services to be funded, per OAC 340:105-10-101;
  - ~~(E) submits RFP packages to the State Agency for approval at least 30 days prior to the target date for the announcement;~~
  - ~~(F)~~ publicly announces the RFP and distributes RFP packages to potential grantees;
  - ~~(G)~~ reviews proposals for required documents and provides feedback and technical assistance, as appropriate, to potential grantees; and
  - ~~(H)~~ rates each proposal using approved review criteria;
- (2) AAA advisory council evaluates and rates all proposals; ~~and~~.
- (3) AAA board of directors, or a subcommittee:
  - (A) reviews and evaluates all proposals, except for-profit applications that must be reviewed and approved by the State Agency; and
  - (B) considers the ratings of the AAA staff and advisory council, and the review findings of the board of directors, and awards funds for the proposals that best meet RFP specifications.

(d) **Cross references.** See OAC 340:105-10-31(a)(7), 340:105-10-41, 340:105-10-50.1, 340:105-10-100, and 340:105-10-101.

**PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III**

**340:105-10-50.1. Title III services taxonomy**

(a) **Rule.** Parts B, C, D, and E of Title III authorize the development of a variety of services to meet the needs of older persons. A comprehensive listing of services that may be funded, service definitions, and service units are included in (1) through (15) of this paragraph.

- (1) Personal care - one hour; provides personal assistance, stand-by assistance, supervision, or cues.
- (2) Homemaker - one hour; provides assistance preparing meals, shopping for personal items, managing money, using the telephone, or doing light housework.
- (3) Chore - one hour; provides assistance with heavy housework, yard work, or sidewalk maintenance.
- (4) Home delivered meal - one meal; provides a qualified person at ~~his or her~~ the person's place of residence a meal that:

- (A) complies with the most recent Dietary Guidelines for Americans, published by the Secretary of ~~the United States Department of Health and Human Services (DHHS)~~ and the Secretary of Agriculture;
- (B) provides, if one meal is served, a minimum of 33 and 1/3 percent of the current ~~daily recommended dietary allowances (RDA)~~ and dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;
- (C) provides, if two meals are served together, a minimum of 66 and 2/3 percent of the ~~current daily RDA. Although there is no requirement regarding the percentage of the current daily RDA an individual meal must provide, a second meal is balanced and proportional in calories and nutrients allowances~~;
- (D) provides, if three meals are served together, 100 percent of the ~~current daily RDA allowances. Although there is no requirement regarding the percentage of the current daily RDA an individual meal must provide, a second and third meal is balanced and proportional in calories and nutrients.~~

(5) Adult day care or adult day health - one hour; provides personal care for dependent adults in a supervised, protective, and congregate setting during some portion of a day. Services offered in conjunction with adult day care or adult day health typically include social and recreational activities, training, counseling, and services such as rehabilitation, medications assistance, and home health aide services for adult day health.

(6) Case management - one hour; provides assistance either in the form of access or care coordination in circumstances where the older person is experiencing diminished functioning capacities, personal conditions, or other characteristics requiring the provision of services by formal service providers or family caregivers. Case management activities include:

- (A) assessing needs;
- (B) developing care plans;
- (C) authorizing and coordinating services among providers; and

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- (D) providing follow-up and reassessment, as required.
- (7) Congregate meal - one meal; provides a qualified person in a congregate or group setting, a meal that:
- (A) complies with the most recent Dietary Guidelines for Americans, published by the Secretary of ~~DHHS~~ and the Secretary of Agriculture;
  - (B) provides, if one meal is served, a minimum of 33 and 1/3 percent of the ~~current daily RDA and DRI~~ as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences;
  - (C) provides, if two meals are served together, a minimum of 66 and 2/3 percent of the ~~current daily RDA. Although there is no requirement regarding the percentage of the current daily RDA an individual meal must provide, a second meal is balanced and proportional in calories and nutrients allowances;~~ and
  - (D) provides, if three meals are served together, 100 percent of the ~~current daily RDA allowances. Although there is no requirement regarding the percentage of the current daily RDA an individual meal must provide, a second and third meal is balanced and proportional in calories and nutrients.~~
- (8) Nutrition counseling - one session per participant; provides individualized guidance to a person who is at nutritional risk because of health or nutrition history, dietary intake, medications use, or chronic illnesses, or to caregivers. Counseling is provided one-on-one by a registered dietician and addresses the options and methods for improving nutrition status.
- (9) Assisted transportation - one one-way trip; provides assistance and transportation, including escort, to a person who has difficulties, physical or cognitive, using regular vehicular transportation.
- (10) Transportation - one one-way trip; provides transportation using a vehicle for a person who requires help in going from one location to another. Does not include any other activity.
- (11) Legal assistance - one hour; provides legal advice, counseling, and representation by an attorney or other person acting under the supervision of an attorney.
- (12) Nutrition education - one session per participant; a program promoting better health by providing accurate and culturally sensitive nutrition, physical fitness, or health information, as it relates to nutrition, information, and instruction to participants, caregivers, or both, in a group or individual setting overseen by a dietitian or person of comparable expertise.
- (13) Information and assistance - one contact; a one-on-one contact between a service provider and an older client or caregiver. Activities involving contact with multiple current or potential clients or caregivers, such as publications, publicity campaigns, and other mass media activities, are not counted as a unit of service. Internet Web site hits are counted only if information is requested and supplied. This service:
- (A) provides older persons with current information on services available within their communities;
  - (B) links older persons with the opportunities and services available within their communities; and
  - (C) establishes adequate follow-up procedures, to the maximum extent practicable.
- (14) Outreach - one contact; provides persons with intervention initiated by an agency or organization for the purpose of identifying potential clients or their caregivers and encouraging their use of existing services and benefits. Outreach is a one-on-one contact between a service provider and an older client or caregiver. Activities involving contact with multiple current or potential clients or caregivers, such as publications, publicity campaigns, and other mass media activities, are not counted as a unit of service.
- (15) Funded "Other" category.
- (A) Advocacy or representation - one hour; provides action taken on behalf of an older person to secure ~~his or her~~ the person's rights or benefits. Advocacy or representation includes receiving, investigating, and working to resolve disputes or complaints. It does not include services provided by an attorney or person under the supervision of an attorney.
  - (B) Education or training - one session; provides formal and informal opportunities for older persons to acquire knowledge, experience, or skills. Includes individual or group events designed to increase awareness.
  - (C) Health promotion - one event; provides health promotion or disease prevention information, instruction, or activities, such as exercise, to participants, caregivers, or both, in a group or individual setting. Examples include:
    - (i) individual health screenings, such as blood pressure screenings. The event is documented by a participant sign-in sheet at the time of the screening; or
    - (ii) a health promotion program in an individual or group setting. The program is counted as one event.
  - (D) Home repair - one job; provides minor repairs, modifications, or maintenance on a home owned and occupied by an eligible participant, up to \$250 annually per participant.
  - (E) Coordination of services - unit to be determined by Aging Services Division (ASD); provides for the administration or delivery of a service for which direct cost is not funded by Title III. The AAA contacts ASD regarding use of this category.
  - (F) National Family Caregiver Support Program service categories are:
    - (i) information services - one activity; provides caregivers information on resources and services available to the public or persons within their communities. Information services are for activities directed to large audiences of current or

potential caregivers, such as disseminating publications, conducting media campaigns, and other similar activities;

(ii) access assistance - one contact; assists caregivers in obtaining access to the services and resources available within their communities. To the maximum extent practicable, access assistance ensures persons receive the services needed by establishing adequate follow-up procedures. Internet Web site hits are counted only if information is requested and supplied;

(iii) counseling - one session; assists caregivers in the areas of health, nutrition, and financial literacy, and in making decisions and solving problems relating to their caregiver roles. This includes counseling to ~~individuals~~ persons, support groups, and caregiver training of individual caregivers and families;

(iv) respite care - one hour; provides temporary, substitute supports or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers. When the specific service units purchased via a direct payment, such as cash or voucher, can be tracked or estimated, the service unit is reported by hour; otherwise, the unit of service is one payment. Respite care is:

(I) in-home respite, such as personal care, homemaker, and other in-home respite;

(II) respite provided by attendance of the care recipient at a senior center or other nonresidential program; or

(III) institution respite provided by placing the care recipient in an institutional setting, such as a nursing home for a short period of time as a respite to the caregiver or summer camp as a respite for grandparents caring for children; and

(v) supplemental services - provides services on a limited basis to complement the care provided by caregivers. The unit and service are determined by ASD. The AAA contacts ASD regarding use of this category.

(b) **Authority.** The authority for this Section is the Office of Management and Budget Notice of Action 0985-0008 and Sections 339 and 371 through 373 of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The AAA:

(1) incorporates provisions of the rule into its policies and procedures manual;

(2) provides technical assistance to prospective service project applicants regarding the rule in the development of services; and

(3) utilizes the rule as an indicator in the evaluation of service project proposals.

(d) **Cross references.** See OAC 340:105-10-40 and 340:105-10-51.

**340:105-10-54. Supportive services**

(a) **Policy.** The Area Agency on Aging (AAA) makes grants to local agencies or organizations for the provision of supportive services to older persons. Providers of any such service must comply with all standards outlined in this Subchapter relating to the service(s) provided. Supportive services, for purposes of this Section, include:

(1) health, including mental health, education and training, welfare, informational, recreational, homemaker, counseling, or referral services;

(2) transportation services to facilitate access to supportive services or nutrition services, and services provided by an AAA in conjunction with local transportation service providers, public transportation agencies, and other local government agencies that result in increased provision of such transportation services for older persons;

(3) services designed to encourage and assist older persons to use the facilities and services, including information and assistance services, and language translation services to assist older persons with limited English speaking ability to obtain services;

(4) services designed to:

(A) assist older persons obtain adequate housing, including minor residential repair and renovation projects, up to \$250 annually per client, designed to enable older persons maintain their homes in conformity with minimum housing standards;

(B) adapt homes to meet the needs of older persons who have physical disabilities;

(C) prevent unlawful entry into residences of older persons, through the installation of security devices and structural modifications or alterations of such residences; or

(D) assist older persons in obtaining housing for which assistance is provided under programs of the Department of Housing and Urban Development;

(5) services designed to assist older persons avoid institutionalization and assist persons in long-term care institutions who are able to return to their communities, including:

(A) client assessments, case management, and development and coordination of community services;

(B) supportive activities to meet the special needs of caregivers, including caregivers who provide in-home services to frail older persons; and

(C) in-home services and other community services, including home health, homemaker, and chore services to assist older persons to live independently in a home environment;

(6) services designed to provide to older persons legal assistance and other counseling services and assistance, including:

(A) tax counseling and assistance, financial counseling, and counseling regarding appropriate health and life insurance coverage;

(B) representation of persons who are wards, or are allegedly incapacitated, and in guardianship proceedings of older persons who seek to become guardians,

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- if other adequate representation is unavailable in the proceedings;
- (C) provision, to older persons who provide uncompensated care to their adult children with disabilities, of counseling to assist such older persons with permanency planning for such children;
- (7) services designed to enable older persons to attain and maintain physical and mental well-being through programs of regular physical activity, exercise, music therapy, art therapy, and dance movement therapy;
- (8) services designed to provide health screening, including mental health screening, to detect or prevent illnesses, or both, that occur most frequently in older persons;
- (9) services designed to provide for older persons, pre-retirement counseling and assistance in planning for and assessing future post-retirement needs with regard to public and private insurance, public benefits, lifestyle changes, relocation, legal matters, leisure time, and other appropriate matters;
- (10) services of an ombudsman at the state level to receive, investigate, and act on complaints by older persons who are residents of long-term care facilities and to advocate for the well-being of such persons;
- (11) provision of services and assistive devices, including provision of assistive technology services and assistive technology devices, designed to meet the unique needs of older persons ~~who are disabled with disabilities~~ and older persons who provide uncompensated care to their adult children with disabilities;
- (12) services to encourage the employment of older workers, including job and second career counseling, and where appropriate, job development, referral, and placement, and including the coordination of the services with programs administered by or receiving assistance from the Department of Labor, including programs carried out under the Workforce Investment Act of 1998, Section 2801 of Title 29 of the United States Code ~~2801~~;
- (13) crime prevention services and victim assistance programs for older persons;
- (14) a program, to be known as Senior Opportunities and Services, designed to identify and meet the needs of older persons who are poor, 60 years of age or older, in one or more of the areas of:
- (A) development and provision of new volunteer services;
- (B) effective referral to existing health, including mental health, employment, housing, legal, consumer, transportation, and other services;
- (C) stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs; and
- (D) other services as the Assistant Secretary for Aging of the Administration on Aging may determine are necessary or especially appropriate to meet the needs of older persons who are poor and ensure them greater self-sufficiency;
- (15) services for the prevention of abuse of older persons in accordance with Section 307(a)(12) of the Older Americans Act (OAA) of 1965, as amended;
- (16) in-service training and state leadership for legal assistance activities;
- (17) health and nutrition education services, including information concerning prevention, diagnosis, treatment, and rehabilitation of age related diseases and chronic disabling conditions;
- (18) services designed to enable mentally impaired older persons to attain and maintain emotional well-being and independent living through a coordinated system of support services;
- (19) services designed to support family members and other persons providing voluntary care to older persons who need long-term care services;
- (20) services designed to provide information and training for persons who are or may become guardians or representative payees of older persons, including information on the powers and duties of guardians and representative payees and alternatives to guardianships;
- (21) services to encourage and facilitate regular interaction between ~~school-age children~~ students and older persons, including services for older persons with limited English proficiency and visits in long-term care facilities, multipurpose senior centers, and other settings;
- (22) in-home services defined by the State Agency in the State Plan submitted under Section 307 of the OAA, taking into consideration the age, economic need, and noneconomic and nonhealth factors contributing to the frail condition and need for service of the persons described in this paragraph, and in-home services defined by an AAA in the Area Plan submitted under Section 306 of the OAA; ~~and~~
- (23) services designed to support States, AAAs, and local service providers in carrying out and coordinating activities for older persons with respect to mental health services, including outreach for, education concerning, and screening for such services, and referral to such services for treatment;
- (24) activities to promote and disseminate information about life-long learning programs, including opportunities for distance learning; and
- ~~(2325)~~ any other services necessary for the general welfare of older persons, if the services meet standards prescribed by the Assistant Secretary for Aging and are necessary for the general welfare of older persons.
- (b) **Authority.** The authority for this Section is Section 321 of the OAA of 1965, as amended.
- (c) **Procedures.** The AAA:
- (1) incorporates the provisions in this Section into the Title III policies and procedures manual;
- (2) provides technical assistance to prospective service project applicants regarding the policy in the development of Title III-B services; and
- (3) utilizes the policy as an indicator in the evaluation of Title III-B service project proposals.

(d) **Cross references.** See OAC 340:105-10-40, 340:105-10-50.1 and 340:105-10-51.

**340:105-10-71. Congregate meals service facilities**

(a) **Policy.** Each congregate meals service provider secures and maintains adequate facilities for the preparation and delivery of the meals service, nutrition education, and funded supportive services.

(b) **Authority.** The authority for this Section is Part 1321.11(a) of Title 45 of the Code of Federal regulations, Part 1321.11(a) and Section 1247 of Title 21 of the Oklahoma Statutes, as amended (21 O.S. § 1247).

(c) **Procedures.**

(1) The grantee agency locates congregate meals service sites in areas accessible to the target group of eligible ~~individuals~~ persons in a community and, where possible, within walking distance for concentrations of such ~~individuals~~ persons.

(2) The grantee agency arranges for all applicable health, fire, safety, and sanitation inspections for project offices and congregate meals sites in the manner described in (A) and (B) of this paragraph.

(A) The fire and safety inspections are conducted annually by local fire officials or other designated local official in the absence of a local fire marshal using established local standards.

(B) In the absence of local standards, standards developed and adopted by the Oklahoma Department of Human Services (OKDHS) with the cooperation of the State Fire Marshal and the Oklahoma State Department of Health are applicable.

(C) Standards are based upon the use and occupancy of the site by Title III funded projects and are adequate to protect the health and safety of participants.

(D) County health department sanitation inspections are completed at least annually.

(E) All inspection reports are on file with the grantee agency.

(F) Grantee agency responds as directed by the inspecting agency to all cited deficiencies.

(3) The Area Agency on Aging annually conducts evaluations for Americans with Disabilities Act (ADA) compliance at all project offices and congregate meals sites. ~~The grantee agency develops a plan of action for any identified deficiencies.~~

~~(4) The grantee agency clearly designates no smoking areas by posting appropriate signs and removing ashtrays. At a minimum, areas designated as no smoking include ensures that project facilities comply with Section 21 O.S. § 1247, as amended, that mandates all public facilities be smoke free and post such designation as required by law.~~

- ~~(A) meeting rooms;~~
- ~~(B) classrooms;~~
- ~~(C) restrooms;~~
- ~~(D) elevators;~~
- ~~(E) food preparation areas;~~
- ~~(F) food serving areas; and~~

~~(G) dining areas.~~

~~(54)~~ The project arranges for the separation of dining and food preparation areas at sites where food is prepared and served in the same facility.

~~(65)~~ Where feasible, the project provides ample space and time for the provision of supportive services: per [OAC 340:105-10-54].

~~(76)~~ The project provides appropriate furnishings for older persons, including sturdy tables and chairs, and arranges the furnishings to provide adequate aisle space for persons using mobility aids such as walkers and wheelchairs.

~~(87)~~ The project provides table settings that are approved by the project advisory council. If disposable dinnerware is used, it is of sturdy quality to prevent spillage, leakage, and breakage.

~~(98)~~ The project posts in conspicuous locations information regarding:

- (A) the rights of eligible persons to equal opportunity and access to services;
- (B) the full cost of the meal to be paid by ineligible persons, such as visitors under 60 years of age, who are served meals;
- (C) the suggested contribution for eligible participants toward the cost of the meal, as determined by the project or site advisory council. All participant contributions are for the cost of the meal and are not solicited for other items such as utilities and coffee;
- (D) menus for a minimum of one week in advance;
- (E) grievance procedures for participants;
- (F) an evacuation plan;
- (G) a toll free information and assistance telephone number;
- (H) a current health inspection certificate from the local health department; ~~and~~
- (I) ~~no smoking signs,~~ as appropriate Smoke Free Facility; and
- (J) a summary of the site or project, if applicable, emergency management plan including at a minimum the location of the nearest emergency shelter(s) available to participants.

(d) **Cross references.** See OAC 340:105-10-50.1(a)(7), 340:105-10-51, 340:105-10-54, 340:105-10-68 through 340:105-10-70, 340:105-10-72 through 340:105-10-80, and 340:105-10-86.

**340:105-10-75. Congregate meals planning**

(a) **Policy.** The congregate meals project conducts appropriate meal planning for the congregate meals service with the consultation of persons competent in the field of nutrition, food service, and the needs of older persons.

(b) **Authority.** The authority for this Section is Section 339 of the Older Americans Act of 1965, as amended and Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures. Menus:**

(1) are prepared or approved by a registered dietitian (RD) who considers the special needs of older persons. The RD ensures that each meal served contains at least:

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- (A) one-third of the ~~current daily recommended~~ dietary ~~allowances~~ reference intakes as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences; and
  - (B) 600 calories. The recommended level is 750 to 850 calories;
- (2) are planned on a quarterly basis with a six week cycle repeated once each quarter. Nutritional adequacy is documented with computer analysis by the RD.
- (A) Maintenance of optimal nutritional status through menu planning is reflected in menus moderate in fat, salt, and simple sugars and high in fiber.
  - (B) Form 02AG018E, Project Menu Plan - Nutrition Program for the Elderly, is submitted quarterly to the area agency on aging (AAA) and is available to the State Agency RD for random review upon request;
- (3) are signed by the RD and posted at the nutrition site;
- (4) reflect:
- (A) special diets to meet the medical needs of eligible participants. When special diets are provided to meet the medical needs of eligible participants:
    - (i) a valid written physician's order is on file for each participant receiving a special diet. The physician's order indicates the participant is restricted to the special diet and the duration of the special diet. If the participant is consuming a liquid supplement in addition to a meal, the supplement is not reimbursed through the Nutrition Services Incentive Program as a separate meal; and
    - (ii) special diets are planned and prepared under the supervision of the RD; and
  - (B) where feasible, religious, ethnic, cultural, or regional dietary requirements or preferences of a major portion of the group of participants at a congregate meals site;
- (5) are served as planned unless the RD reviews and approves an appropriate substitution. A complete menu move from one day to another does not constitute a substitution. When substitutions are made, the project maintains and submits to the State Agency at the end of each month the:
- (A) date of substitution;
  - (B) original menu item(s); and
  - (C) substituted menu item(s);
- (6) are based on accurate production forecasting that does not include a margin for oversized portions or second servings. Leftover foods are not taken from the kitchen by staff, participants, or volunteers;
- (7) may include, where feasible, provisions for the celebration of special occasions for participants, for example, birthdays and holidays; and
- (8) allow for food items within the meat, vegetable and fruit, and dessert groups to vary for the same days of the week, from week to week, in order to provide a variety of foods and nutrients.
- (d) **Cross references.** See OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-74, 340:105-10-76 through 340:105-10-80, and 340:105-10-86.

### 340:105-10-90.1. National Family Caregiver Support Program

- (a) **Policy.** The Area Agency on Aging (AAA) awards grants to entities to provide support services, including information and assistance, counseling, support groups, respite, and other home- and community-based services to families caring for their frail older members. The National Family Caregiver Support Program (NFCSP) also recognizes the needs of ~~grandparents a grandparent or step-grandparent who are caregivers~~ is a relative caregiver of grandchildren caregivers and a child or other older persons person who are is a relative caregivers caregiver of children a child who are age is not more than 18 and younger years of age or who is a person with a disability. NFCSP services include:
- (1) information services to caregivers about available services;
  - (2) access assistance to caregivers in gaining access to services;
  - (3) individual counseling, organization of support groups, and training to assist caregivers in areas related to their caregiver roles of:
    - (A) health;
    - (B) nutrition;
    - (C) financial literacy;
    - (D) decision making; and
    - (E) problem solving;
  - (4) respite care to enable caregivers to be temporarily relieved from their caregiving responsibilities; and
  - (5) supplemental services, on a limited basis, to complement the care provided by caregivers.
- (b) **Authority.** The authority for this Section is the Office of Management and Budget Notice of Action 0985-0008 and Sections 371 through 374 of the Older Americans Act of 1965, as amended, Public Law ~~106-504~~ 109-365, Grants for State and Community Programs on Aging.
- (c) **Procedures.** The requirements for implementing this Section are outlined in this subsection. The AAA:
- (1) incorporates the provisions of this Section into the Title III policies and procedures manual;
  - (2) provides technical assistance to prospective and funded Title III projects regarding this rule;
  - (3) monitors Title III project compliance according to OAC 340:105-10-43, except on specific projects where the State Agency has agreed with the AAA to provide a service and monitoring is not required. The project:
    - (A) gathers information on an approved intake form, including, at a minimum:
      - (i) the family caregiver's identifying information;
      - (ii) the caregiver's relationship to the care receiver;
      - (iii) the care receiver's identifying information; and
      - (iv) a written description of the caregiver's current situation, including the care receiver's need for assistance due to inability to perform specific activities of daily living (ADLs) or need for supervision due to Alzheimer's disease or other

- neurological and organic brain dysfunction or disability;
- (B) conducts a reassessment of NFCSP service recipients annually, at a minimum, to evaluate service provision and update participant status;
- (C) ensures the safety and protection of the participants; and
- (D) receives in-service training each fiscal year specifically designed to increase the project's knowledge and understanding of the programs and participants served;
- (4) targets services to caregivers who are older persons in greatest social and economic need and older persons who, giving priority to:
  - (A) family caregivers providing care for persons with Alzheimer's disease and related disorders with neurological and organic brain dysfunction; and
  - (B) grandparents or older persons who are relative caregivers providing care for a person or child with mental retardation or developmental disabilities a severe disability;
- (5) may provide support services to caregivers providing care for frail older family members who are 60 years or older and unable to perform at least two ADLs without substantial human assistance or require substantial supervision due to a cognitive or other mental impairment.
  - ~~(A)~~ ADLs include:
    - ~~(iA)~~ dressing;
    - ~~(iiB)~~ bathing;
    - ~~(iiiC)~~ eating;
    - ~~(ivD)~~ transferring;
    - ~~(vE)~~ toileting; and
    - ~~(viF)~~ walking;.
  - ~~(B)~~ A caregiver is an adult family member or another person who is an informal provider of in-home and community care to an older person.
  - ~~(C)~~ Informal means the care is not provided as part of a public or private formal service program;
- (6) may provide support services on a limited basis to grandparents and older persons who are relative caregivers of a child who is 18 years of age or younger.
  - (A) Child means a person who is not older than 18 years of age or who is a person with a disability.
  - (B) Grandparent or older person who is a relative caregiver means a grandparent or ~~stepgrandparent~~ step-grandparent of a child, or a relative of a child by blood, ~~or~~ marriage, or adoption who is ~~60~~ 55 years of age or older and:
    - (i) lives with the child;
    - (ii) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and
    - (iii) has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally;
- (7) ensures the cost of carrying out the program meets the requirement of a minimum non-federal share of 25

- percent. The non-federal share is provided from state and local sources;
- (8) may not use funds to supplant, replace, or in substitution for, any funds expended under any federal, state, or local law for the same purposes; and
- (9) considers awarding funds to expand successful caregiver activities currently in communities, such as respite providers, support groups, outreach, information and assistance, adult day services, counseling, and case management.
- (d) **Cross references.** See OAC 340:105-10-37, 340:105-10-38, 340:105-10-40, 340:105-10-41, 340:105-10-43, 340:105-10-44, and 340:105-10-50.1(a)(15)(F).

**PART 9. FISCAL AND ADMINISTRATIVE POLICIES FOR AREA AGENCIES ON AGING AND TITLE III PROJECTS**

- 340:105-10-96. Title III-B priority supportive services**
- (a) **Policy.** The Area Agency on Aging (AAA) ensures that an adequate proportion of its federal allotment for Title III-B services is expended for priority services unless the AAA has been granted a waiver on this rule by the State Agency; ~~per {OAC 340:105-10-97}.~~ The Title III-B priority services include:
    - (1) access services:
      - (A) transportation;
      - (B) outreach;
      - (C) information and assistance;
      - (D) assisted transportation; ~~and~~
      - (E) case management; and
      - (F) health services, including mental health services;
    - (2) in-home services:
      - (A) homemaker;
      - (B) chore;
      - (C) personal care; and
      - (D) home repair; and
    - (3) legal assistance services:
      - (A) legal counseling and representation;
      - (B) community education on legal matters; and
      - (C) information and assistance on legal matters.
  - (b) **Authority.** The authority for this Section is Section 306(a)(2) of the Older Americans Act of 1965, as amended.
  - (c) **Procedures.** The AAA develops its annual budget in consultation with the State Agency and incorporates the allocations listed in (1) - (3) of this subsection into the budget. The AAA:
    - (1) ~~The AAA~~ expends at least 30 percent of its federal Title III-B funds overall for the three priority service categories, and not less than five percent of these funds for any single priority service;.
    - (2) ~~The AAA~~ expends at least as much federal funds in any given fiscal year for the priority services categories as the AAA expended for the priority services in the previous fiscal year; unless the AAA allocation of these funds is

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reduced, in which case, the AAA priority services expenditure is reduced proportional to the AAA reduction in Title III-B funds; and

(3) ~~The AAA~~ allocates federal funds to legal assistance services in accordance with minimum funding levels established by the State Agency and issued annually under State memo.

(d) **Cross references.** See OAC 340:105-10-97.

## 340:105-10-101. Request for proposal procedures

(a) **Policy.** All Older Americans Act pass through funds are awarded in an open, competitive, and fair manner via the request for proposal (RFP) process. Awards are made to applicants whose proposals include all components of the service(s) outlined in the RFP and who best meet the specifications of the RFP.

(1) The Area Agency on Aging (AAA) board of directors:

(A) is directly responsible for reviewing proposals and awarding funds. This responsibility may not be delegated;

(B) may not award funds to the AAA or to another subdivision of the sponsoring agency under the auspices of the same board of directors; and

(C) may not award funds to board members or the agencies or organizations they represent.

(2) Awarding funds through the RFP process during the plan year is required when:

(A) funds are allocated to the AAA at the beginning of the fiscal year;

(B) there is significant expansion of a service(s) already funded;

(C) funding a new service(s); or

(D) funding of an existing service is transferred from a defunct or terminated grantee.

(b) **Authority.** The authority for this Section is Section 1321.11 of Title 45 of the Code of Federal Regulations and Section 212(b)(1) of the Older Americans Act of 1965, as amended.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection.

(1) To initiate RFP, the AAA:

(A) develops specifications for each service to be procured that clearly define the service and how units of service are measured. The specifications include the minimum units of services to be provided, the minimum unduplicated number to be served, if required, and geographic service areas as appropriate;

(B) develops an RFP guide and grant application package;

~~(C) submits the RFP guide and grant application package to the State Agency for approval at least 30 days prior to the announcement of availability of funds as outlined in (1)(D) of this subsection;~~

~~(D)~~ announces the availability of funds and documents the announcement in newspapers in the planning and service area (PSA), and concurrently sends a news release to the editor of at least three newspapers

and to existing and potential service providers known to the AAA in the PSA.

(i) The announcement runs at least two times in daily papers or two weeks in weekly papers prior to the closing of the application period and in a sufficient number of papers to ensure complete coverage within the PSA.

(ii) The announcement begins at least 21 calendar days prior to the closing of the application period and is repeated at least once no less than five calendar days prior to the date of the proposers' conference.

(iii) All announcements include:

(I) a listing of services for which funding is available and the geographic areas that must be covered for each service;

(II) the address at which service specifications and proposal guide may be obtained;

(III) the closing date and time for application submittal;

(IV) the name and telephone number of a person to contact for additional information; and

(V) the date, time, and location of the proposers' conference, and notification that attendance at the conference is required in order to be considered for funding;

~~(E) makes State Agency approved RFP guides available for pick up at the AAA office;~~

~~(F)~~ mails copies of the RFP guide upon request;

~~(G)~~ conducts a conference for proposers prior to the deadline for submitting applications and requires applicants to attend the conference in order to be considered for funding. At a minimum, the information discussed during the conference includes:

(i) the RFP guide and all requirements pertaining to submitting an application; and

(ii) all responsibilities associated with the acceptance of Title III funds, including applicable federal and state statute, policy, certifications, and assurances;

~~(H)~~ provides other reasonable technical assistance to applicants who request assistance, in writing, no later than seven calendar days prior to the closing of the application period;

~~(I)~~ informs the State Agency following the close of the proposers' conference if there are no applicants for a service; and

~~(J)~~ at the close of the application period, evaluates and rates all proposals according to standard criteria based on requirements of the RFP guide. The AAA disqualifies incomplete proposals from evaluation and funding.

(2) The AAA advisory council reviews the proposals and makes recommendations on funding to the AAA board of directors. All decisions related to funding recommendations are conducted in accordance with applicable state and federal conflict of interest laws. The advisory

council review is conducted during a scheduled meeting with a quorum present.

- (3) The AAA board of directors:
  - (A) or a subcommittee of the board, reviews all proposals and the recommendations of the AAA staff and advisory council;
  - (B) approves funding of not for profit proposals that best meet or exceed the service specifications and the requirements of the RFP guide. The State Agency shall review and approve all profit-making proposals. All decisions related to granting awards are made in accordance with applicable state and federal conflict of interest laws, and documented through signed resolutions and minutes of meetings. All decisions are acted on as a board with at least a quorum present at a meeting. The AAA board of directors may not delegate its responsibilities related to granting awards;
  - (C) issues notification of grant awards (NGAs) to not for profit applicants who are approved for funding and to profit-making applicants with State Agency approval; and
  - (D) provides an opportunity for appeal to applicants whose proposals for funding are denied, per OAC 340:105-10-102.

(4) If no complete proposals are submitted for a service(s) or if the AAA board of directors determines that no proposals for a service(s) meet the specifications of the RFP, the AAA, with State Agency approval, has the option of:

- (A) reprogramming the funds and issuing a new RFP for a different service(s); or
- (B) requesting authority to provide a direct service as provided in OAC 340:105-10-41; or
- (C) revising the initial specifications for the same service(s) and reissuing a new RFP; and
- (D) initiating community development activities to create a potential provider of the service(s) as specified in the RFP and, in the interim, requesting approval from the State Agency to temporarily provide the service as a direct service.

(5) When an Older Americans Act Title III funded project elects to voluntarily terminate the contract before the end of a grant year, procedures must be followed as outlined on Form 02AG006E, Voluntary Withdrawal of a Title III Project. Form 02AG006E must be acknowledged, signed, and included as part of the original grant application.

(d) **Cross references.** See OAC 340:105-10-40, 340:105-10-102, and 340:105-10-104(c)(7).

*[OAR Docket #09-1042; filed 5-22-09]*

**TITLE 340. DEPARTMENT OF HUMAN SERVICES  
CHAPTER 110. LICENSING SERVICES**

*[OAR Docket #09-1043]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
  - Part 1. Licensing Services - Child Care
    - 340:110-1-4.1. [AMENDED]
    - 340:110-1-5. through 340:110-1-6. [AMENDED]
    - 340:110-1-8. [AMENDED]
    - 340:110-1-8.1. [AMENDED]
    - 340:110-1-8.3. through 340:110-1-9. [AMENDED]
    - 340:110-1-9.2. through 340:110-1-9.4. [AMENDED]
    - 340:110-1-10. through 340:110-1-11. [AMENDED]
    - 340:110-1-13. [AMENDED]
    - 340:110-1-17. [AMENDED]
  - Part 3. Licensing Services - Residential Care and Agencies
    - 340:110-1-43.1. [AMENDED]
    - 340:110-1-44. through 340:110-1-47.2. [AMENDED]
    - 340:110-1-51. through 340:110-1-52. [AMENDED]
    - 340:110-1-54.1. [NEW]
- Subchapter 3. Licensing Standards for Childcare Facilities
  - Part 1. Requirements for Child Care Centers
    - 340:110-3-3. [AMENDED]
    - 340:110-3-5. through 340:110-3-6. [AMENDED]
    - 340:110-3-7.1. [AMENDED]
  - Part 2. Requirement for Part-Day Children's Programs
    - 340:110-3-37. [AMENDED]
    - 340:110-3-39. through 340:110-3-42. [AMENDED]
  - Part 5. Requirements for Family Child Care Homes and Large Family Child Care Homes
    - 340:110-3-82. [AMENDED]
    - 340:110-3-85. [AMENDED]
    - 340:110-3-88. [AMENDED]
    - 340:110-3-89.1. [AMENDED]
  - Part 9. Requirements for Residential Childcare Facilities
    - 340:110-3-146. through 340:110-3-147. [AMENDED]
    - 340:110-3-150. through 340:110-3-154.3. [AMENDED]
    - 340:110-3-154.5. [AMENDED]
    - 340:110-3-157. [AMENDED]
    - 340:110-3-163. through 340:110-3-165. [AMENDED]
    - 340:110-3-165.1. [NEW]
    - 340:110-3-166. through 340:110-3-169. [AMENDED]
  - Part 14. Requirements For School-Age Programs
    - 340:110-3-222. through 340:110-3-226. [AMENDED]
- Subchapter 5. Requirements for Child-Placing Agencies
  - Part 1. Requirements for Child-Placing Agencies
    - 340:110-5-4. [AMENDED]
    - 340:110-5-6. through 340:110-5-8. [AMENDED]
    - 340:110-5-12. [AMENDED]
  - Part 3. Requirements for Adoption Agencies
    - 340:110-5-30. [AMENDED]
  - Part 5. Requirements for Foster Home Agencies
    - 340:110-5-57. [AMENDED]
    - 340:110-5-61.1. [AMENDED]

**(Reference APA WF 08-12 and 09-04)**

**AUTHORITY:**

Commission for Human Services; Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Child Care Facility Licensing Act; Section 401 et seq. of Title 10 of the Oklahoma Statutes; Section 589 of Title 57 of the Oklahoma Statutes; House Bill (HB) 2643; HB 2863; Senate Bill (SB) 1601; and the Adam Walsh Child Protection and Safety Act.

**DATES:**

**Comment period:**

February 14, 2008 through March 4, 2009

**Public hearing:**

None requested

**Adoption:**

March 24, 2009

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**Submitted to Governor:**

March 24, 2009

**Submitted to House:**

March 24, 2009

**Submitted to Senate:**

March 24, 2009

**Gubernatorial approval:**

March 2, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rule(s) resulted in approval on May 16, 2009.

**Final adoption:**

May 16, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:****Superseded rules:**

Subchapter 1. General Provisions

Part 1. Licensing Services - Child Care

340:110-1-4.1. [AMENDED]

340:110-1-5. [AMENDED]

340:110-1-6. [AMENDED]

340:110-1-8. [AMENDED]

340:110-1-8.1. [AMENDED]

340:110-1-8.3. [AMENDED]

340:110-1-9. [AMENDED]

340:110-1-9.2. [AMENDED]

340:110-1-9.3. [AMENDED]

340:110-1-9.4. [AMENDED]

340:110-1-10. [AMENDED]

340:110-1-13. [AMENDED]

340:110-1-17. [AMENDED]

Part 3. Licensing Services - Residential Care and Agencies

340:110-1-43.1. [AMENDED]

340:110-1-44. [AMENDED]

340:110-1-45. [AMENDED]

340:110-1-46. [AMENDED]

340:110-1-47. [AMENDED]

340:110-1-47.1. [AMENDED]

340:110-1-47.2. [AMENDED]

340:110-1-51. [AMENDED]

340:110-1-52. [AMENDED]

340:110-1-54.1. [NEW]

Subchapter 3. Licensing Standards for Childcare Facilities

Part 1. Requirements for Child Care Centers

340:110-3-3. [AMENDED]

340:110-3-5. [AMENDED]

340:110-3-5.1. [AMENDED]

340:110-3-6. [AMENDED]

340:110-3-7.1. [AMENDED]

Part 2. Requirement for Part-Day Children's Programs

340:110-3-37. [AMENDED]

340:110-3-39. [AMENDED]

340:110-3-40. [AMENDED]

340:110-3-41. [AMENDED]

340:110-3-42. [AMENDED]

Part 5. Requirements for Family Child Care Homes and Large Family

Child Care Homes

340:110-3-82. [AMENDED]

340:110-3-85. [AMENDED]

340:110-3-88. [AMENDED]

340:110-3-89.1. [AMENDED]

Part 14. Requirements For School-Age Programs

340:110-3-222. [AMENDED]

340:110-3-223. [AMENDED]

340:110-3-224. [AMENDED]

340:110-3-225. [AMENDED]

340:110-3-226. [AMENDED]

Subchapter 5. Requirements for Child-Placing Agencies

Part 1. Requirements for Child-Placing Agencies

340:110-5-4. [AMENDED]

340:110-5-6. [AMENDED]

340:110-5-7. [AMENDED]

340:110-5-8. [AMENDED]

340:110-5-12. [AMENDED]

Part 3. Requirements for Adoption Agencies

340:110-5-30. [AMENDED]

Part 5. Requirements for Foster Home Agencies

340:110-5-57. [AMENDED]

340:110-5-61.1. [AMENDED]

(Reference APA WF 08-12)

**Gubernatorial approval:**

November 20, 2008

**Register publication:**

26 Ok Reg 415

**Docket number:**

08-1501

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The proposed revisions amend the rules for licensing requirements for child care centers, part-day programs, family child care homes and large family child care homes, school-age programs, residential, children's shelters, residential treatment, and secure care facilities, and child placing agencies. Revisions include Oklahoma Child Care Services policy and procedures relating to background investigations, parent notification regarding liability insurance; and unlicensed facilities. Revisions include requirements increasing the health and safety of programs and residents as it relates to qualifications of staff, health and safety practices, fire safety, supervision of residents, use of restraints and administrative policies of licensed facilities; and clarification of procedure within division policy.

**CONTACT PERSON:**

Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

**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 DEPARTMENT OF HUMAN SERVICES AND AT THE OFFICE OF ADMINISTRATIVE RULES, SECRETARY OF STATE, 418 WILL ROGERS BUILDING, OKLAHOMA CITY. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):**

**SUMMARY:**

340:110-1-4.1 is amended to reflect deletion of division forms. New forms were developed with regard to documentation of liability insurance, background investigations, referrals to CLEET-certified officers, and district attorneys.

340:110-1-5 is amended to reflect clarification of division practice and procedure with regard to in-home caregiving.

340:110-1-6 is amended to reflect clarification of division practice and procedure when facilities are given permission to operate.

340:110-1-8 is amended to reflect a child care facility's compliance with specified requirements for background investigations and liability insurance documentation as it relates to permit and license issuance.

340:110-1-8.1 is amended to reflect clarification of division practice and procedure with regard to background investigations and waivers.

340:110-1-8.3 is amended to reflect clarification of training hours, professional organizations, and other division practice and procedure.

340:110-1-9 is amended to: (1) reflect clarification of division practice and procedure regarding changes in director, primary caregiver, and ownership; and (2) clarify procedures with inactive facilities.

340:110-1-9.2 is amended to reflect clarification of division practice and procedure regarding the preparation of the summary of facts for complaint investigations.

340:110-1-9.3 is amended to reflect revisions to non-compliances that may be considered as serious.

340:110-1-9.4 is amended to reflect revisions of the issuance of an Emergency Order when an unlicensed facility continues to operate. Revisions also include acquiring the assistance of CLEET-certified officers that may issue fines to unlicensed facilities when violation of an Emergency Order occurs.

340:110-1-10 is amended to reflect clarification of division practice and procedure.

340:110-1-11 is amended to reflect clarification of division practice and procedure.

340:110-1-13 is amended to reflect clarification of division practice and procedure regarding unlicensed facilities.

340:110-1-17 is amended to reflect revisions to Child Care Advisory by-laws specifically with term limits for officers/advisory members and the establishment of a membership subcommittee.

340:110-1-43.1 is amended to reflect deletion of division forms. New forms were developed with regard to documentation of liability insurance, background investigations, referrals to CLEET-certified officers, and district attorneys.

340:110-1-44 is amended to reflect new procedures regarding temporary authorization for child care facilities.

340:110-1-45 is amended to reflect clarification of division practice and procedure when facilities are given permission to operate.

340:110-1-46 is amended to reflect a child care facility's compliance with specified requirements for background investigations and liability insurance documentation as it relates to permit and license issuance.

340:110-1-47 is amended to reflect clarification of division practice and procedure regarding the number of required monitoring visits and changes of ownership.

340:110-1-47.1 is amended to reflect clarification of division practice and procedure regarding the preparation of the summary of facts for complaint investigations.

340:110-1-47.2 is amended to reflect revisions to language associated with injunctions.

340:110-1-51 is amended to reflect clarification of division practice and procedure with regard to background investigations and waivers.

340:110-1-52 is amended to reflect revisions regarding procedures of the issuance of an Emergency Order when a facility's license has been denied or revoked and continues to operate. Revisions also include acquiring the assistance of CLEET-certified officers that may issue fines to facilities when violation of an Emergency Order occurs.

340:110-1-54.1 is amended to reflect clarification of division practice and procedure regarding unlicensed facilities.

340:110-3-3 is amended to reflect clarification of needed authorization by OKDHS when providing care for children.

340:110-3-5 is amended to reflect notification regarding changes in liability insurance.

340:110-3-5.1 is amended to reflect procedures regarding documentation for liability insurance.

340:110-3-6 is amended to reflect procedures regarding documentation for liability insurance and background investigations.

340:110-3-7.1 is amended to reflect revisions to procedures regarding background investigations.

340:110-3-37 is amended to reflect clarification of needed authorization by OKDHS when providing care for children.

340:110-3-39 is amended to reflect notification regarding changes in liability insurance.

340:110-3-40 is amended to reflect procedures regarding documentation for liability insurance.

340:110-3-41 is amended to reflect procedures regarding documentation for liability insurance and background investigations.

340:110-3-42 is amended to reflect revisions to procedures regarding background investigations.

340:110-3-82 is amended to reflect clarification of needed authorization by OKDHS when providing care for children.

340:110-3-85 is amended to reflect procedures regarding documentation for background investigations, notification of changes in liability insurance, and revisions to procedures regarding background investigations.

340:110-3-88 is amended to reflect procedures regarding documentation for liability insurance and background investigations.

340:110-3-89.1 is amended to reflect procedures regarding documentation for liability insurance.

340:110-3-146 is amended to reflect new definitions used within the residential requirements.

340:110-3-147 is amended to reflect necessary approvals from OKDHS prior to residents being accepted into care.

340:110-3-150 is amended to reflect clarification of denial or revocation procedures.

340:110-3-151 is amended to reflect correction of citation of statute.

340:110-3-152 is amended to: (1) reflect revisions to administrative policy; (2) notification to licensing; (3) clarification of reporting obligation of child abuse; and (4) neglect of residential child care facilities.

340:110-3-153 is amended to reflect mandated legislative changes regarding minimum liability insurance coverage.

340:110-3-153.1 is amended to reflect revisions to: (1) qualification of executive director and program director; (2) legislative changes regarding criminal background investigations; and (3) staff orientation and training.

340:110-3-153.2 is amended to reflect revisions to clarify supervision of residents.

340:110-3-154 is amended to reflect revisions to admission policies.

340:110-3-154.1 is amended to reflect revisions: (1) regarding the movement of some health and safety requirements to a new section; and (2) training for staff in programs caring for children birth to five years of age.

340:110-3-154.2 is amended to reflect revisions with behavior management regarding physical restraint.

340:110-3-154.3 is amended to reflect revisions for disposing of medication.

340:110-3-154.5 is amended to correct specific citation language.

340:110-3-157 is amended to: (1) reflect revisions regarding the safety of house parent quarters in facilities; (2) and clarify language of requirements.

340:110-3-163 is amended to: (1) reflect revisions regarding prohibited types of fencing; and (2) clarification regarding lighting and windows.

340:110-3-164 is amended to reflect revisions regarding food service, food protection, communicable disease reporting, and sanitation of equipment and utensils.

340:110-3-165 is amended to reflect revisions to general fire safety.

340:110-3-165.1 is a new section created to reflect revisions regarding emergency preparedness for disaster planning and sleep positioning. Other revisions indicate the movement of requirements which previously existed in other sections.

340:110-3-166 is amended to reflect revisions for regimented residential programs regarding qualifications of executive director.

340:110-3-167 is amended to reflect revisions for children's shelters regarding tuberculosis testing, supervision of residents, and admission policies.

340:110-3-168 is amended to reflect revisions for residential treatment facilities regarding supervision of residents, use of portable pools, and seclusion, mechanical and chemical restraints.

340:110-3-169 is amended to reflect revisions for secure care facilities regarding seclusion and mechanical restraint.

340:110-3-222 is amended to reflect clarification of needed authorization by OKDHS when providing care for children.

340:110-3-223 is amended to reflect notification regarding changes in liability insurance.

340:110-3-224 is amended to reflect procedures regarding documentation for liability insurance.

340:110-3-225 is amended to reflect procedures regarding documentation for liability insurance and background investigations.

340:110-3-226 is amended to reflect revisions to procedures regarding background investigations.

340:110-5-4 is amended to reflect clarification of needed authorization by OKDHS when providing care for children.

340:110-5-6 is amended to reflect notification regarding changes in liability insurance.

340:110-5-7 is amended to reflect minimum insurance coverage.

340:110-5-8 is amended to reflect revisions to procedures regarding background investigations.

340:110-5-12 is amended to reflect procedures regarding documentation for background investigations.

340:110-5-30 is amended to reflect applicable statutes for background investigations affecting adoptive families.

340:110-5-57 is amended to reflect revisions to procedures regarding background investigations for foster families.

340:110-5-61.1 is amended to reflect revisions to background investigations.

[OAR Docket #09-1043; filed 5-22-09]

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

[OAR Docket #09-1057]

**RULEMAKING ACTION:**  
PERMANENT final adoption

# Permanent Final Adoptions

## RULES:

Subchapter 1. Office of the Executive Director  
Part 3. Office of the Advocate General  
377:3-1-28. General grievance procedures [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).

## DATES:

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July 1, 2009

## SUPERSEDED EMERGENCY ACTIONS.

N/A

## INCORPORATIONS BY REFERENCE:

N/A

## ANALYSIS:

Subchapter 1 is being changed to allow the Division Director to be the final level of appeal.

## CONTACT PERSON:

Teresa Wakolee, Policy Supervisor, (405) 530-2854

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 1. OFFICE OF THE EXECUTIVE DIRECTOR

## PART 3. OFFICE OF THE ADVOCATE GENERAL

### 377:3-1-28. General Grievance Procedure

#### (a) Informal grievances.

(1) Informal grievances are issues relating to daily life at the juvenile's placement, which can be resolved at the facility or local level. Informal grievances include, but are not limited to:

- (A) grooming and hygiene;
- (B) clothing;
- (C) cottage cleanliness;
- (D) food;
- (E) disrespect not involving threats of harm;
- (F) restrictions; or
- (G) routine problems with the JSU; i.e., complaints against a JSU worker.

(2) A juvenile shall try to informally resolve his or her grievance by writing a brief description of the problem and the name of the person or group with whom the juvenile wants to discuss the problem. The juvenile may put the written information in a designated grievance box or give the grievance to any staff member.

(3) The grievance must be numbered and logged in a grievance log on the day the grievance is received and distributed to the appropriate staff for processing and possible resolution.

(4) The assigned staff shall review each grievance and attempt to resolve the grievance with the juvenile.

(5) If the grievance is not resolved within (3) three working days, the juvenile may appeal to the supervisor.

(6) The supervisor shall have (5) five days from receipt of the grievance to resolve the grievance.

(7) The grievance log must also indicate the disposition of the grievance and the date of the resolution or appeal. OJA Form OJA-AG-2 may be used to facilitate the grievance resolution process.

#### (b) Formal Grievances.

(1) Formal grievances are those grievances, which are appeals of informal grievances or those which cannot otherwise be resolved at the facility or local level. Issues which cannot be resolved at the facility or local level include, but are not limited to:

- (A) placement;
- (B) treatment;
- (C) psychological services;
- (D) social services;
- (E) educational services;
- (F) recreation; or
- (G) abuse, neglect, or caretaker misconduct.

(2) Grievances which contain allegations of abuse, neglect, or caretaker misconduct shall be processed in accordance with 377:3-1-25 and 377:3-1-26.

(3) Formal grievances may be filed with any staff member but shall be routed to the Advocate General for appropriate distribution and resolution by OJA State Office as set forth in paragraph (c) of this section. Form OJA-AG-3 may be used to facilitate the formal grievance process.

(c) **Grievances received by Advocate General.** Upon receipt of an appeal of an informal grievance or formal grievance, the Advocate General's Office shall post the date of receipt. The Advocate General shall review the grievance and the accompanying documentation to determine what additional information is necessary for disposition of the grievance within five (5) working days and set deadlines for receipt of required information. If the Advocate General finds that an appeal or formal grievance was prematurely filed, the Advocate General shall send a reply containing suggestions regarding the proper procedure to the person that sent the grievance. The Advocate General shall review the applicable OJA rules, policy, and/or Oklahoma law to determine if the appeal or formal grievance is appropriate and provide an opinion regarding possible resolution. ~~The Advocate General shall prepare a cover worksheet~~

or memorandum for the appeal or formal grievance and forward a copy to the Chief of Staff/designee for response. The response shall be completed within seven (7) working days (extension may be granted by the Advocate General where a formal, legal opinion or policy decision is necessary). Upon receipt of the proposed resolution, the Advocate General shall forward a copy to the juvenile and/or to other appropriate person named in the grievance and to the appropriate advocate defender or grievance coordinator.

(d) **Appeal to the Executive Director/Division Director/final decision.** If the juvenile affected by the appeal does not accept the proposed resolution as submitted by the Chief of Staff, the juvenile may appeal through the Advocate General to the Executive Director of OJA. The appeal to the Executive Director must be filed within ten (10) days of the date the proposed resolution is received by the juvenile. The Advocate General shall prepare the appeal and route it to the Executive Director who shall render a final, written decision within ten (10) days of receipt of the appeal, unless otherwise agreed to by both parties. The decision shall be delivered to the Advocate General's Office who shall distribute it as established by procedure. The Advocate General shall prepare a cover worksheet or memorandum for the appeal or formal grievance and forward a copy to the Division Director/designee for response. The response shall be completed within ten (10) working days (extension may be granted by the Advocate General where a formal, legal opinion or policy decision is necessary). Upon receipt of the proposed resolution, the Advocate General shall forward a copy to the juvenile and/or to other appropriate person named in the grievance and to the appropriate advocate defender or grievance coordinator. A copy of the resolution shall be inserted in the juvenile's master file. Resolutions, which will change or create OJA rules, are submitted to the appropriate division responsible for drafting new or revised rules. The Advocate General shall ensure that resolutions containing directives for specific action are completed.

(e) **Board notification.** All matters referred to the Executive Director/Division Director for final decision shall be placed on the agenda for the next, regularly scheduled meeting of the Board of Juvenile Affairs upon authorization of the Executive Director. If the Executive Director denies the request the OJA Board shall be informed. The Executive Director shall review any such grievance with the Board during Executive Session. At that time, the Advocate General will be allowed to voice concerns, the wishes of the juvenile, or such other matters as are relevant to the Board's understanding of the issues presented in the appeal.

(f) **Review by juvenile.** The grievance coordinator, advocate defender, or Advocate General (whoever filed the last grievance), shall review the Executive Director's/Division Director's resolution with the juvenile and notify the juvenile that his or her administrative remedies have been exhausted. If the juvenile does not accept the resolution, a copy of the grievance, appeals, and proposed resolutions shall be forwarded to the Office of Juvenile Systems Oversight.

(g) **Grievances originated by the Advocate General.** The Advocate General may, on behalf of all or part of the juveniles

committed to OJA, originate a grievance at the State Office level concerning:

- (1) the substance or application of any written or un-written policy, rule, or regulation of:
  - (A) OJA;
  - (B) an agent of OJA; or
  - (C) an OJA contractor; or
- (2) any decision, behavior, or action of
  - (A) an OJA employee;
  - (B) an agent of OJA;
  - (C) an OJA-contractor; or
  - (D) any other person committed to OJA.

(h) The Advocate General may write the grievance by way of a detailed memorandum.

[OAR Docket #09-1057; filed 5-26-09]

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

[OAR Docket #09-1058]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 13. Office of Public Integrity  
Part 3. Requirements for Secure Juvenile Detention Centers  
377:3-13-43. Staff requirements [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:**

Subchapter 13 is being changed to clarify which type of first aid/CPR training is needed and how often recertification is required for staff at secure detention centers.

**CONTACT PERSON:**

Teresa Wakolee, Policy Supervisor, (405) 530-2854

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN,  
THE FOLLOWING RULES ARE CONSIDERED**

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FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:

## SUBCHAPTER 13. OFFICE OF PUBLIC INTEGRITY

### PART 3. REQUIREMENTS FOR SECURE JUVENILE DETENTION CENTERS

#### 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) nsexual 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—of employment, by a detention facility, all direct-care staff shall have successfully completed a specific course of instruction in first aid training from an instructor certified by the American Red Cross or its equivalent—as established by the Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), and presented by a certified instructor, or by a certified instructor in an equivalent professionally recognized first aid training program. There shall be a certificate or card issued to the employee and this card must be signed by the certified instructor attesting to the employee's successful completion of the professionally recognized first aid training program. The Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), or its equivalent, first aid course of instruction, presented by a certified instructor shall be updated within the

employee's third year of employment and each succeeding three-year increment. The first aid training may count towards the employee's required annual training hours. First aid training is updated every three years and may be counted toward the hours of training required.

(F) Within 90 days of employment by a detention facility, All all direct-care staff shall be certified in have successfully completed a specific course of instruction in cardiopulmonary resuscitation (CPR) within 90 days after employment and recertified annually. CPR certification shall be counted toward the training requirements, as established by the Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), or its equivalent. This training must be presented by a certified instructor, or by a certified instructor in an equivalent professionally recognized CPR training program. There shall be a certificate or card issued to the employee and this card must be signed by the certified instructor attesting to the employee's successful completion of the professionally recognized CPR training program. The Red Cross, American Safety and Health Institute (ASHI), American Heart Association (AHA), or its equivalent CPR course of instruction shall be presented by a certified instructor, and shall be updated on an annual basis. The CPR training may count towards the employee's required annual training hours.

(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~~ 6 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

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- (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 a large facility (20 beds or more) are specified in writing by the governing body of the facility and includes, at a minimum:
      - (i) bachelor's degree from an accredited college/university in an appropriate discipline;
      - (ii) two (2) years of experience working with juveniles; and
      - (iii) 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.
- (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~~ background check conducted;
    - (B) is qualified and capable of satisfactorily performing assigned job responsibilities; and
    - (C) does not pose a known risk to juveniles.
  - (d) Support staff. Support staff shall be able to read and write; demonstrate knowledge and skills necessary to the job assignments; and meet the requirements for direct-care staff if responsible for direct care of juveniles for any part of the day.
    - ~~(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 #09-1058; filed 5-26-09]

## TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 5. OFFICE OF THE PAROLE BOARD

[OAR Docket #09-1059]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Pre-release Planning [AMENDED]  
377:5-3-1. Pre-release planning

- 377:5-3-2. Scheduling of the Targeted Review Date~~tentative release date~~ [AMENDED]
- 377:5-3-4. Review of the Targeted Review Date~~tentative release date~~ [AMENDED]
- Subchapter 5. Hearings [AMENDED]
- 377:5-5-1. Definitions [AMENDED]
- 377:5-5-2. Parole Hearing [AMENDED]
- 377:5-5-3. Parole Revocation Hearing [AMENDED]
- 377:5-5-4. Administrative Transfer Hearings (community)[AMENDED]
- 377:5-5-5. Conduct of Parole Revocation and Administrative 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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Failure of the Legislature to disapprove resulted in approval on May 22, 2009.

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**SUPERSEDED EMERGENCY ACTIONS.**

N/A

**INCORPORATIONS BY REFERENCE:**

N/A

**ANALYSIS:**

The Office of Juvenile Affairs parole rules are being changed to modify the parole process.

**CONTACT PERSON:**

Teresa Wakolee, Policy Supervisor, (405) 530-2854

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 3. PRE-RELEASE PLANNING**

**377:5-3-1. Pre-release planning**

Title 10 O.S., Section 7302-6.1(A)(3) and 7306-2.11 gives OJA authority to place a juvenile on parole whenever OJA determines that such release shall not be detrimental to society and that the juvenile is ~~probably~~ ready to be returned to the community or has reasonably completed a plan of rehabilitation.

**377:5-3-2. Scheduling of the ~~tentative release date~~ targeted review date**

(a) **Institutional Treatment Plan.** Within 30 days of institutional admission, an Institutional Treatment Plan shall be prepared and signed by the Institutional Supervisor, Youth and Juvenile Justice Specialist (JJS) Worker.

(b) **Scheduling.** Within 45 days of institutional admission a ~~tentative release date~~ targeted review date shall be set for the juvenile. A meeting shall be held with the juvenile for the purpose of scheduling the ~~tentative release date~~ targeted review date. At the meeting the criteria for release shall be explained to the juvenile.

(c) **Persons Present.** The juvenile, the Advocate Defender, and the Institutional JJS shall be present at the meeting.

(d) **Guidelines for ~~tentative release date~~ targeted review date.** The ~~tentative release date~~ targeted review date is determined by the juvenile's delinquent classification and date of placement in the institution. The dates are given in (1) - (32) of this paragraph:

- (1) Class I's ~~and~~, Class II's, and Class III's - twelve months
- (2) ~~Class III's~~ nine months
- (32) Class IV's- ~~six months~~ nine months

(e) **Accelerated ~~tentative release date~~ targeted review date.** During the course of the juvenile's stay at the institution, the juvenile's institutional worker and/or local JSU worker can recommend the juvenile's ~~tentative release date~~ targeted review date be rescheduled to an earlier date than the date previously scheduled.

(f) **Criteria for release.** Release from an institution is not guaranteed by the fact that a ~~tentative release date~~ targeted review date has been scheduled. The juvenile must comply with the clearly established treatment goals of the individual treatment plan. Release will be subject to terms and conditions established by OJA, whenever OJA determines that such release will not be detrimental to society and that the juvenile is ready to be returned to the community.

**377:5-3-4. ~~Review of the tentative release date~~ Targeted review date**

(a) **General Provisions.** ~~Review shall be held in the month of the scheduled tentative release date.~~ The purpose of the review is to assess the juvenile's progress toward the successful completion of his or her individual treatment plan. The review shall provide the juvenile with the opportunity to verbally express any treatment concerns that he or she might have.

(b) **Persons Present.** The juvenile, the Advocate Defender, the JJS, and the JSU worker shall participate in the review.

(c) **Notice.** The juvenile shall receive notice of the review at least 48 hours in advance.

(d) **Recommendations.**

- (1) At the conclusion of the review, the institutional staff and JSU worker may recommend to the Parole Board that the juvenile be paroled. If parole is recommended, the recommendation shall be submitted to the Parole Board for release consideration. If the Parole Board rejects the recommendation, the matter shall be scheduled for a parole hearing in accordance with 377:5-5-2 (a).

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- (2) The institutional staff and/or the JSU worker may or may not recommend parole. If parole is not recommended by either or both, the matter shall be scheduled for a parole hearing in accordance with 377:5-5-2 (b).
- (3) The juvenile shall be advised of the recommendation and the reasons for the recommendation at the conclusion of the review.
- (e) **Waiver.** A juvenile may waive his/her Parole Hearing. The Advocate Defender and JJS shall be present and sign the waiver. The waiver shall be sent to the Parole Board and copies placed in the juvenile's file.

## SUBCHAPTER 5. HEARINGS

### 377:5-5-1. Definitions

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

**"Administrative Transfer Hearing (community)"** A hearing by which the supervised community placement (SCP) status of a delinquent juvenile may be terminated.

**"Hearing Examiner"** A Hearing Officer or Panel of Parole Board members who preside over parole hearings.

**"Hearing Officer"** Hearing Officers shall be appointed by the OJA Chief of Staff.

**"Parole Board Member Members"** Parole Board Members shall be appointed by the OJA Chief of Staff/designee and his two appointees.

**"Parole Hearing"** A ~~An formal~~ evidentiary hearing provided to a juvenile when OJA staff do not recommend parole during the month of ~~tentative release~~ targeted review or when a staff recommendation for parole is rejected by the Parole Board.

**"Parole Revocation Hearing"** An ~~administrative~~ evidentiary hearing by which the parole status of a juvenile may be revoked. A juvenile's parole may be revoked for violation of the terms and conditions of parole.

~~"Tentative Release Date"~~ **"Targeted Review Date"** An actual fixed month and year for ~~tentative release~~ targeted review.

### 377:5-5-2. Parole Hearing

- (a) If the Parole Board has rejected a staff recommendation for parole, a 3-member panel of the Parole Board shall preside over the parole hearing, as the Hearing Examiner.
- (b) If parole has not been recommended by the JSU and/or institutional staff, a Hearing Officer shall preside over the parole hearing, as the Hearing Examiner.
- (c) **Notice.** The juvenile, parent, guardian, or legal custodian and Advocate Defender shall have at least 14 calendar days notice of the hearing.
- (d) **Conduct of Parole Hearings.** The parole hearing shall be conducted in an orderly manner and with a concern for privacy with ample opportunity for the juvenile to express his/her views. The Hearing Examiner shall explain the purpose of the parole hearing and the issues to be addressed to the juvenile.

(1) OJA staff shall provide written documentation and other information, which supports their recommendation at least seven (7) days (excluding weekends and holidays) prior to a Parole Hearing. The information shall include, but is not limited to:

- (A) the number and severity of committing offense(s) and any previous offense(s);
- (B) the institutional adjustment of the juvenile including any serious negative behavior; i.e., major rule violations;
- (C) the existence of a workable parole placement and an adequate program in the community;
- (D) the juvenile's adjustment on any weekend passes or other community release;
- (E) the review of the juvenile's progress;
- (F) the existence of any pending charges and the possibility of any recommitment on these charges;
- (G) the juvenile's willingness to cooperate with parole supervision; and
- (H) relevant conditions in the community.

(2) The juvenile may have access to information, which is submitted to the Hearing Examiner unless the Examiner considers the information harmful to the juvenile.

(3) The juvenile shall be given an opportunity to verbalize and present documentation why he/she should be granted parole and be allowed to question the Hearing Examiner and staff present about any of the documents used in the hearing.

(4) The Hearing Examiner shall consider any documentation submitted and may ask the juvenile, OJA staff, and other parties involved in the care of the juvenile questions relevant to granting or denying parole. If, in the opinion of the Hearing Examiner, a case requires an examination and opinion by a Psychiatrist or Psychologist, Certified members of the appropriate profession are available for such examination and opinions. The Hearing Examiner may access the juvenile's master file as a reference source during the hearing.

(5) When the Hearing Examiner has considered all written and oral evidence, the Hearing Examiner shall prepare a written statement of the specific factors and reasons, which support the granting or denying of parole. The Hearing Examiner shall address the parole release criteria as well as any specific concerns.

(6) A Hearing Officer or Panel may defer its decision on any case for just cause for a period not to exceed 30 days (excluding weekends and holidays). In these cases, the juvenile shall receive written notice of the reasons for the deferral with the date and time when the Parole Hearing shall resume. The hearing shall resume prior to the expiration of 30 days (excluding weekends and holidays).

(7) **Presiding official is Hearing Officer.**

(A) At the close of the hearing, if a Hearing Officer has presided over the Parole Hearing as provided in Rule 377:5-5-2(b), he/she shall advise the juvenile of his or her recommendation to be submitted to the Parole Board and the reasons supporting the recommendation.

(B) The Hearing Officer shall issue a written recommendation to grant or deny parole to the Parole Board within three (3) days (excluding weekends and holidays).

(C) The Parole Board shall review all records and make decision to grant or deny parole within ten (10) days (excluding weekends and holidays) of receiving the recommendation.

(D) The decision and the reasons for the decision of the Parole Board shall be made available in writing to the appropriate staff and to the juvenile within 14 calendar days (excluding weekends and holidays) of the Hearing.

(8) **Presiding official is a Panel**

(A) At the close of the hearing, if a Panel has presided over the Parole Hearing as provided in Rule 377:5-5-2(a), the panel shall advise the juvenile of the outcome of its decision to grant or deny parole and the reasons therefor.

(B) The Panel shall prepare a written decision granting or denying parole within ten (10) days (excluding weekends and holidays) of the hearing.

(C) The Panel's decision shall be made available in writing to the appropriate staff and to the juvenile within three (3) calendar days (excluding weekends and holidays) of the issuance of the decision.

(9) **The parole hearing shall be recorded.** A summary of the proceedings and the Hearing Examiner's recommendation or decision shall be kept in the juvenile's case record.

(10) The Parole Board or the Panel shall inform a juvenile of his or her rights to appeal decisions granting or denying parole.

(e) **Persons present.** Persons attending the hearing are limited to those persons necessary for the orderly and fair conduct of the hearing.

(1) A representative of the Office of Advocate General or designee shall be present at all parole hearings.

(2) The parent, guardian or legal custodian shall be provided prior notice of all Parole hearings.

(3) The JSU and Institutional workers shall be present when requested by the Hearing Examiner.

(4) The Hearing Examiner shall decide whether additional persons may be present at the parole hearing.

(f) **Appeals of parole decisions.** A juvenile, his or her parent, guardian, legal custodian, attorney or a representative of the Advocate General's Office, or a designee may appeal a decision of the Parole Board or that of a Panel as provided in 377:5-5-2(a) in the following manner:

(1) A written notice of appeal, stating the reasons therefor shall be submitted to the Office of Juvenile Affairs, ~~Office of the Chief of Staff~~ Office of the Executive Director, within seven (7) days (excluding weekends and holidays) of the receipt of the decision granting or denying parole.

(2) The ~~Office of the Chief of Staff~~ Executive Director shall consider all appeals and render a decision to sustain or deny an appeal within seven (7) days (excluding

weekends and holidays). The ~~Office of the Chief of Staff~~ Executive Director shall notify the juvenile, Advocate General's Office and any individual who filed on behalf of the juvenile, of his/her decision to sustain or deny the appeal.

(g) **Effective date of parole.** The decision of the Parole Board or the Panel's decision, if not appealed, is final within seven (7) days (excluding weekends and holidays) of the hearing.

(h) **Subsequent hearings.** If parole is denied, a parole hearing must be conducted every ~~six (6)~~ twelve (12) months in accordance with rules set forth in this section.

**377:5-5-3. Parole Revocation Hearing**

(a) **Parole violations.** When alleged violations of parole occur, the JSU worker and supervisor shall consider specific factors when deciding whether to request a revocation of a juvenile's parole. Factors include the:

- (1) seriousness of the juvenile's offense;
- (2) overall adjustment of the juvenile; and
- (3) demonstrated lack of amenability to treatment.

(b) **Pre-revocation conference.** The first step toward revocation is the pre-revocation conference. The District Supervisor or designee shall meet with the juvenile, the parent, guardian, legal custodian, placement provider (if applicable), and the JSU worker to:

- (1) advise the juvenile and the parent(s), guardian(s) or legal custodian(s) of their constitutional and legal rights as documented;
- (2) discuss the alleged parole violations;
- (3) document the violations on the Application to Revoke Parole form; and
- (4) distribute copies to the juvenile, the parent(s), guardian(s), legal custodian(s) or placement provider.

(c) **Result of pre-revocation hearing.** The juvenile may choose to have a hearing before a Hearing Officer or waive the hearing by signing a Waiver of Parole Revocation form.

(d) **Revocation hearing.** If the decision is to have a hearing, the JSU worker shall file the Application to Revoke Parole with the Parole ~~Supervisor~~ Administrator and request that the hearing date be scheduled. The hearing shall be held in the county where the alleged violation occurred [10 O.S., §7302-6.1 (B) 2].

(e) **Due process.** Parole revocation hearings are held in accordance with 10 O.S., §7302-6.1(B) and OJA rules set forth in this section.

(f) **Waiver of a revocation hearing.** The juvenile may waive a revocation hearing anytime prior to the presentation of evidence by completing and presenting a waiver to the Hearing Officer or other representative of OJA.

(g) **Conducting Interstate Compact Revocation.** For juveniles on parole placed in the State of Oklahoma through the Interstate Compact on Juveniles (ICJ), a Hearing Officer shall perform a fact-finding hearing and determine if the juvenile has violated the terms of his/her parole conditions while residing in the State of Oklahoma.

(h) **General provisions.**

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- (1) The Parole ~~Supervisor~~ Administrator shall designate a Hearing Officer to preside over the parole revocation hearing.
- (2) As provided in 10 O.S. §7302-6.1, if legal counsel for the juvenile has not otherwise been obtained, the JSU worker shall file an application for an Order Appointing Counsel with the District Court wherein the alleged violations occurred.
- (3) Upon the JSU worker's filing an application, the Hearing Officer shall schedule a revocation hearing within a reasonable period of time.
- (4) Notice of the hearing, including the date, time, and place of the hearing, and a copy of the Application to Revoke Parole shall be mailed by the Hearing Officer to the juvenile, the parent, guardian or legal custodian, the judge in the county wherein the alleged violations occurred, and the juvenile's legal counsel, if one has been retained or appointed.
- (5) Hearings shall be conducted in accordance with 377:5-5-5.

## **377:5-5-4. Administrative Transfer Hearing (community)**

- (a) An Administrative Transfer Hearing is an administrative process by which the Parole Board may terminate the Supervised Community Placement (SCP) status of a juvenile. The juvenile may be placed in an institutional setting. The Parole Board shall base a decision to revoke SCP on the seriousness of the offense and the overall adjustment of the juvenile.
- (b) **General provisions.** (Pre-administrative Conference)
  - (1) **Supervised Community Placement.** When alleged SCP violations occur, the JSU worker and supervisor shall consider specific factors when deciding whether to request an Administrative Transfer Hearing. Factors include the:
    - (A) seriousness of the juvenile's offense;
    - (B) overall adjustment of the juvenile; and
    - (C) demonstrated lack of amenability to treatment.
  - (2) **Pre-Administrative Transfer Hearing conference.** The first step toward a transfer hearing is the pre-administrative transfer hearing conference. The District Supervisor or designee shall meet with the juvenile, the parent, guardian, legal custodian, placement provider (if applicable), and the JSU worker to:
    - (A) advise the juvenile and the parent, guardian or legal custodian of their constitutional and legal rights as documented;
    - (B) discuss the alleged violations of the SCP rules;
    - (C) document the alleged SCP violations on the Application for Administrative Transfer; and,
    - (D) distribute copies to the juvenile, the parent, guardian, legal custodian and/or placement provider.
- (c) **Result of Pre-Administrative Transfer Hearing Conference.** The juvenile may choose to have a hearing before a Hearing Officer or waive the hearing by signing a Waiver of Administrative Transfer Hearing.
- (d) **Administrative Transfer Hearing.** If the decision is to have a hearing, the JSU worker shall file the application for

Administrative Transfer Hearing with the Parole ~~Supervisor~~ Administrator and request that a hearing date be scheduled. The hearing shall be held in the county where the alleged violation occurred [10 O.S., §7302-6.1 (B)2].

- (e) **Due process.** Administrative Transfer hearings are held in accordance with 10 O.S., §7302-6.1(B) and OJA rules set forth in this section.
- (f) **Waiver of an Administrative Transfer Hearing.** The juvenile may waive an Administrative Transfer hearing anytime prior to the presentation of evidence by completing and presenting a waiver to the Hearing Officer or other representative of OJA.
- (g) **Conduct of the hearing.**
  - (1) After receiving an application for an administrative transfer hearing, the Parole ~~Supervisor-Administrator~~ shall designate a Hearing Officer to preside over an administrative transfer hearing.
  - (2) As provided in 10 O.S. §7302-6.1, if legal counsel for the juvenile has not otherwise been obtained, the JSU worker shall file an application for an Order Appointing Counsel with the District Court wherein the alleged violations occurred.
  - (3) Upon the JSU worker's filing an application, the Hearing Officer shall schedule an Administrative Transfer Hearing within a reasonable period of time.
  - (4) Notice of the hearing, including the date, time, and place of the hearing, and a copy of the Application for Administrative Transfer Hearing shall be mailed to the juvenile, the parent, guardian or legal custodian, the judge in the county wherein the alleged violations occurred, and the juvenile's legal counsel, if one has been retained or appointed.
  - (5) The hearing shall be conducted in accordance with 377:5-5-5.

## **377:5-5-5. Conduct of Parole Revocation and Administrative Transfer Hearings**

- (a) **Conduct of the hearings.** The Hearing Officer shall conduct the hearing to obtain accurate information upon which an informed decision can be reached.
  - (1) At the beginning of the hearing, the Hearing Officer shall ascertain that:
    - (A) notice of the hearing, including the time, date and location of the hearing, and a copy of the Application to Revoke Parole or for Administrative Transfer Hearing (ATH), were given to the juvenile, the parent, guardian or legal custodian, and legal counsel at least 24 hours before the hearing; and
    - (B) legal counsel is present to represent the juvenile and has been given an opportunity to prepare a defense.
  - (2) Only an attorney who is licensed to practice law in the State of Oklahoma shall be permitted to represent a juvenile.
  - (3) Persons attending the hearing are limited to those persons necessary for the orderly and fair conduct of the hearing. Hearings are conducted with a concern for privacy.

- (4) Requests for continuances from any of the parties may be granted only at the discretion of the Hearing Officer. Due consideration shall be given to:
- (A) the timeliness of the request;
  - (B) the justification;
  - (C) convenience to the interested parties;
  - (D) problems with continued detention; and
  - (E) the Hearing Officer's schedule.
- (5) The Hearing Officer may exclude any participant from the hearing for good cause. The Hearing Officer shall state the reasons for exclusion on the record at the time it is made. However, the attorney for the juvenile and the representative of the agency shall be present continuously while the hearing is in progress.
- (6) The Hearing Officer may recess the hearing at the request of either party or at his/her own initiative for a brief period of time as necessary to facilitate the hearing process. The Hearing Officer shall state for the record:
- (A) the reasons for the recess;
  - (B) the time the recess began; and
  - (C) the time the recess ended.
- (7) The first presenter shall be a representative of OJA. The presenter shall carry the burden of proof that the juvenile violated conditions of parole or supervised community placement.
- (8) The juvenile and legal counsel shall be present while evidence is being presented. The juvenile's parent, guardian or legal custodian may be present at all times the juvenile is present, unless they are the adverse parties by the nature of the violations alleged.
- (9) Either party or the Hearing Officer may invoke the "Rule of Sequestration". When the "Rule" is invoked, the Hearing Officer shall instruct all witnesses that they are to be sequestered from the hearing room, called in the order in which they are expected to testify, and are not to discuss their testimony with other witnesses.
- (10) Harassment or intimidation of witnesses is not permitted.
- (11) The application may be dismissed at the request of the OJA representative prior to the Hearing Officer's recommendation to sustain or deny the application.
- (12) Prior to commencement of the hearing, no one shall be permitted to discuss with the Hearing Officer any facts related to issues of the hearing.
- (b) **Evidence.** The Hearing Officer shall screen all evidence for its material value to the issues of the hearing.
- (1) Hearsay evidence is considered only in light of its reliability, relevancy, necessity, and probative value. Generally, the more the information is removed from its source, the less weight it should be given. The Hearing Officer may not base a decision substantially upon hearsay evidence.
  - (2) Relevant evidence is admissible. Evidence is relevant if it has a tendency to prove or disprove any disputed fact issue before the Hearing Officer.
  - (3) The Hearing Officer shall take official notice of any fact that the courts may judicially notice and of those matters within the Hearing Officer's particular field of expertise, including policies and procedures of the agency.
- (4) Written material may be introduced during the course of the hearing by either the juvenile's legal counsel or the representative of the OJA.
- (c) **Fact-finding standards and hearing sequence.**
- (1) A Hearing Officer must find by a preponderance of the evidence that:
    - (A) the allegations are true; and
    - (B) revocation or transfer is warranted under the circumstances.
  - (2) A preponderance of the evidence means that the evidence indicates that the facts to be proved are:
    - (A) credible; and
    - (B) more probable than not.
  - (3) Upon the conclusion of the hearing, the Hearing Officer may recommend that the Application to Revoke Parole or for Administrative Transfer be sustained based upon a preponderance of the evidence. The Hearing Officer shall advise the juvenile and legal counsel of the recommendation and the appeal process.
  - (4) The Hearing Officer shall prepare a written recommendation within three (3) working days (excluding weekends and holidays) of the hearing as to whether the juvenile's parole should be revoked or placement should be administratively transferred. The report must include the allegation(s), the finding(s) of fact, and mitigating circumstances, if any. The Hearing Officer shall submit the report to the juvenile, the juvenile's legal counsel, parent, guardian or legal custodian, and Parole Board.
- (d) **Parole Board review.** The Parole Board shall review the recommendation of the Hearing Officer and the entire record of the hearing and either affirm grant or deny the application to revoke parole or administrative transfer in writing.
- (e) **Distribution.** The Parole Board shall send written copies of the final decision to the juvenile, the juvenile's parent, guardian or legal custodian, legal counsel, the JSU, and the court in the county wherein the violations occurred within ten (10) working days (excluding weekends and holidays) following the hearing.
- (f) **Appeal.** A juvenile may appeal the decision of the Parole Board to the ~~Chief of Staff~~ Executive Director who has final review authority. The appeal must be filed by the juvenile within ten (10) days (excluding weekends and holidays) after receipt of the Parole Board's decision. The ~~Chief of Staff~~ Executive Director shall inform all involved parties of the appeal decision within ten (10) days (excluding weekends and holidays).
- (g) **Recordings.** Recordings of revocation hearings shall be preserved for six (6) months from the date of the hearing or as otherwise required by law.
- (h) **Expungement.** If the Application for Revocation of Parole or Administrative Transfer is denied by the Parole Board or the ~~Chief of Staff~~ Executive Director, OJA shall expunge all

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materials related to the alleged offense from the juvenile's case record.

[OAR Docket #09-1059; filed 5-26-09]

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

[OAR Docket #09-1060]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
377:35-1-2. Definitions [AMENDED]  
Subchapter 3. Security and Control  
377:35-3-7. Contraband [AMENDED]  
377:35-3-8. Searches and control of contraband/evidence [AMENDED]  
377:35-3-10. Escape policies and procedures [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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N/A

### ANALYSIS:

OJA is changing the definition of contraband and adding a definition for Facility-prohibited items. There is a change in the institutional search process. A requirement was added for reporting critical incidents timely.

### 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 377:35-1-2. Definitions

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

**"Contraband"** is any item introduced or found in the facility the mere presence of which constitutes a violation of criminal law.

**"Facility-prohibited item"** is any item which possession thereof is a violation of agency, institutional, or unit rules, but the mere presence of the item does not violate criminal law.

**"Contraband"** means any object or substance, including clothing or other articles depicting sex, drug, alcohol, violence, or gang affiliation the possession of which is:

(A) illegal; or

(B) dangerous to the physical well being of the resident, the institution, or other residents of the institution.

**"Escape"** means to break free or run away from an institution or other authorized location.

**"Intensive Treatment Program Transfer Hearing (institutions)"** ~~The process by which a juvenile may be transferred from a medium secure facility to the Intensive Treatment Program (ITP). An ITP hearing is an administrative hearing to establish a finding(s) of fact on rule violations and/or to determine whether the juvenile is dangerous and poses a threat in the current institutional placement.~~

## SUBCHAPTER 3. SECURITY AND CONTROL

### 377:35-3-7. Contraband and Facility Prohibited Items

(a) ~~Upon discovery of any contraband, the institutional staff member shall make a log notation including the name of: Contraband is any item introduced or found in the facility the mere presence of which constitutes a violation of criminal law.~~

(1) ~~the item or substance; Upon discovery of any contraband, the institutional staff member shall make a log notation including the name and/or description of:~~

(A) ~~the item or substance;~~

(2) ~~the person who provided the substance, if known; and~~

(3) ~~the juvenile's name.~~

(b) ~~When a staff member finds contraband, the staff member shall notify the intended recipient, if known, in writing.~~

(1) ~~If the contraband is found at the institution a statutorily defined controlled or dangerous item, the Institutional superintendent Superintendent shall confiscate and store the item pending disposition by appropriate authorities. until the Office of Public Integrity (OPI) Criminal Investigator takes custody of the item. The Institutional superintendent Superintendent shall provide written notification of the violation of federal and state statutes to the:~~

(A) ~~Division Administrator Director~~ of Institutional Services; and

(B) ~~appropriate authorities~~ OPI Criminal Investigator.

(23) The Director of the Office of Public Integrity shall approve the disposition of contraband. Contraband shall be maintained until (60) sixty days after the conclusion of all legal and disciplinary actions. All contraband shall be disposed of in accordance with state and federal guidelines.

(b) A facility-prohibited item is any item which possession thereof is a violation of agency, institutional, or unit rules, but the mere presence of the item does not violate criminal law.

(21) Staff shall enter ~~other contraband~~ the facility-prohibited item that was confiscated from the juvenile, on the juvenile's personal property inventory unless the item is a perishable item. If possession does not violate the law, exclusive ownership can be established, staff shall return the confiscated item to the juvenile upon release. After being properly documented, all perishable items shall be immediately destroyed.

(2) When a ~~contraband~~ facility-prohibited item is found and illegal or the owner is unidentifiable, the staff member shall immediately inventory and store the non-perishable item. Upon approval of the Institutional Superintendent, Staff staff shall may destroy the ~~contraband~~ facility-prohibited item after six months, if no further legal or administrative action is pending.

(3) A juvenile may challenge the confiscation of ~~contraband~~ a facility-prohibited item through the established grievance procedure.

**377:35-3-8. Searches and control of contraband/evidence**

The control of contraband and weapons shall be valid basis for authorization of searches. Searches shall be conducted in a manner, which avoids undue or unnecessary force, embarrassment, or indignity. Each institution shall have written policy and procedure that govern searches and control of contraband/evidence, and will include, but not be limited to:

- (1) Search authorization requirements will include the title of approving authority and the designee authority.
- (2) Training requirements will encompass all aspects of searches and control of contraband, specific training time and annual requirements.
- (3) Control of contraband will include items deemed illegal by statute or disallowed by the agency/facility.
- (4) Staffing requirements: All property searches will be conducted with a minimum of two trained staff members, except in emergency situations. Body searches, with the exception of pat-downs, will be conducted by a trained staff member of the same sex, and a witness. Pat searches may be conducted by one trained staff member of the same sex, and a witness.
- (5) The Juvenile whose property is being searched shall be present when the search is conducted, except in an emergency. The juvenile may request the presence of the Advocate Defender or a supervisory staff person.
- (6) Searches for contraband will include:
  - (A) Body searches: Which include pat searches, disrobement searches, and cavity searches.

(i) Staff members shall strive to preserve the dignity and integrity of the juvenile.

(ii) ~~Body searches will only be conducted upon a reasonable suspicion that the juvenile is carrying contraband. Only staff members who have been appropriately trained will be authorized to conduct the search.~~

(iii) ~~The superintendent or designee must authorize any search requiring a juvenile to disrobe. The search is justifiable only when there is a reasonable belief that the juvenile is carrying contraband. The search will be conducted only by staff members who have been appropriately trained. The Executive Director shall develop an agency policy providing guidelines for institutional searches, which shall be submitted to the OJA Board. Any changes made to the search policy shall be provided to the OJA Board at the next regularly scheduled meeting.~~

(iv) ~~Searches will be conducted by staff members of the same sex. The search will be conducted out of the sight of other juveniles. The juvenile may request the presence of the advocate defender or a supervisory staff person. The Institutional Superintendents, through a local procedure, will provide instruction and direction as to under what circumstances and how a juvenile can be searched.~~

(v) Cavity searches will only be conducted with the approval of the Institutional Superintendent or designee. Cavity searches will be conducted only when there is a strong reason to believe that the juvenile is carrying contraband in a body cavity. The juvenile will be sent to the local hospital emergency room, unless there is a physician at the facility, where experienced medical personnel will perform the search.

(B) Property searches: Which include juvenile living quarters and juvenile personal property.

(C) Search of the facility: Which will include all areas of the facility, excluding the juvenile living quarters and personal property.

(D) Search of visitors/employees: Which include personal belongings, and body searches; **consequences for a visitor's refusal to submit to a search will be denial of visit; employees who refuse to submit to a search may be subject to disciplinary action.**

(E) Use of canines: Which will include employees, visitors, juveniles, facility grounds, parking lots, vehicles, juvenile living quarters, buildings, and offices.

(7) Storage and disposal of contraband/evidence will include specific storage area, containers, and accessibility.

(8) Drug identification shall be conducted to confirm suspect illegal substances.

(9) Contraband/evidence tags/chain of custody, and logs will include format, intended use, and length of time retained.

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(10) Reporting requirements: Staff will document all non-routine searches. Non-Routine searches include, but are not limited to, searches of a juvenile or juvenile's cubical for contraband when the juvenile is suspected of possessing contraband. Routine searches include pat-down search when leaving the kitchen or maintenance area after completing a work assignment, pat-down searches after visitation, etc. The report will include the scope of the search, detailing any item confiscated. The juvenile-owner shall be given a receipt for any item confiscated. If the confiscated contraband is determined to be a statutorily defined controlled or dangerous item, the Institutional Superintendent/Facility Head/Designee will contact the appropriate law enforcement authorities, and notify the Chief of Staff/Designee.

(11) Policies regarding searches and control of contraband/evidence shall be reviewed annually and updated as necessary.

## 377:35-3-10. Escape policies and procedures

### (a) Institution responsibility.

(1) After determining that a juvenile has escaped, the Institutional superintendent ~~Superintendent~~ or AOD shall place the juvenile on escape status and immediately notify:

- (A) local law enforcement;
- (B) the parents or guardian (if possible);
- (C) the JSU worker;
- (D) the Division Director ~~Administrator~~ of Institutional Services; and
- (E) the Director of Media and Community Relations.

(2) No later than the next regular work day after a juvenile has escaped, the institutional staff, as designated by the Institutional Superintendent, shall provide written notification to the:

- (A) Division Director ~~Administrator~~ of Institutional Services;
- (B) parents or guardian;
- (C) JSU worker; and
- (D) committing court.

(3) The Institutional superintendent ~~Superintendent~~ or the AOD shall request local law enforcement officials to assist in the immediate apprehension of the juvenile.

(4) Institutional staff shall notify the parties listed in (1) and (2) of this subsection when the juvenile is ~~not apprehended in his/her local community but is returned to the institution.~~

(5) The Institutional Superintendent shall ensure the facility summary Critical Incident Report is completed and submitted to the Division Director within three working days of the escape.

(b) **Return of escapes.** When a juvenile who has escaped is apprehended within 30 10 days of the escape, the institutional staff member shall return the juvenile to the institution. If the juvenile is apprehended after 30 10 days, the JSU worker shall initiate the placement process through the Placement Unit.

(1) Official notification of the return of a juvenile from escape status shall be reported to all persons listed in (a)(1) of this section.

(2) The assigned medical personnel shall complete a physical examination of each juvenile returning from escape status.

(3) The Institutional Superintendent or AOD shall authorize use of a crisis management center for a juvenile returning from escape status on an individual basis.

[OAR Docket #09-1060; filed 5-26-09]

## TITLE 380. DEPARTMENT OF LABOR CHAPTER 20. WELDING RULES

[OAR Docket #09-990]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

380:20-1-3 [AMENDED]

380:20-1-14 [AMENDED]

380:20-1-15 [NEW]

### AUTHORITY:

Department of Labor; 59 O.S. Section 1624 et seq.; Oklahoma Welding Act

### DATES:

#### Comment period:

January 15, 2009 through February 20, 2009

#### Public hearing:

February 20, 2009

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March 16, 2009

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#### Submitted to House:

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#### Gubernatorial approval:

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#### Final adoption:

May 8, 2009

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July 1, 2009

### SUPERSEDED EMERGENCY ACTIONS:

#### Superseded rules:

380:20-1-3 [AMENDED]

380:20-1-14 [AMENDED]

380:20-1-15 [NEW]

#### Gubernatorial approval:

October 17, 2008

#### Register publication:

26 Ok Reg 198

#### Docket number:

08-1309

### INCORPORATIONS BY REFERENCE:

#### Incorporated standards:

The rules incorporate by reference American Welding Society (AWS) D1.1 and D1.3, latest edition and most current addenda.

#### Incorporating rules:

380:20-1-3

380:20-1-14

380:20-1-15

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**ANALYSIS:**

The purpose of these proposed rules is to establish administrative rules as required by the newly enacted legislation, Senate Bill 1529, codified at Oklahoma Statutes Title 59, Section 1634. Title 59 O.S. '1634 adopts the American Welding Society D1.1 and D1.3 as the structural steel welding codes for the state and requires the Oklahoma Department of Labor to certify welders performing these types of weldments. These rules address the certification requirements applicable to the qualification and certification of welders performing structural welding; identify national standards applicable to structural welders; and provide definitions. These rules will supersede existing emergency rules.

**CONTACT PERSON:**

Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**380:20-1-3. Welding inspectors**

(a) The intent of Title 59 O.S. Section 1627 is that the welding inspector be physically present during the welders fusing of the test materials and that he witness the test fused material from fit up through fusion, preparation of coupons and ultimate destructive test or to the on-site nondestructive examination personnel. Therefore the welding inspectors test report must contain the following statement: "I certify that I personally witnessed all phases of the welding performance test of the above named welder and that the above data reflects a true report of the test results."

(b) The following definitions shall apply to this chapter;

- (1) "ASME" means the American Society of Mechanical Engineers, Three Park Avenue, New York, NY, 10016-5990;
- (2) "API" means the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005-4070;
- (3) "ASTM" means American Society of Testing and Materials, 100 Bar Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959;
- (4) "AWS" means the American Welding Society, 550 N.W. LeJeune Road, Miami, Florida 33126;
- (5) "Certificate," or "Certification Card" means the document issued to an applicant upon successful examination;
- (6) "Destructive" means to bend or pull the weld test coupon to see if it cracks or breaks;
- (7) "NDE" means a nondestructive examination;
- (8) "Welding Inspector" means any person certified as a welding inspector in accordance with Section 1628 of this Act, or any person in possession of one or more of the following certifications issued by the American Welding Society:
  - (A) Senior Certified Welding Inspector ("SCWI");
  - (B) Certified Welding Inspector ("CWI");
  - (C) Certified Associate Welding Inspector ("CAWI");

(C) Certified Associate Welding Inspector ("CAWI")

(9) "Welding Procedure Specification" ("WPS") means a written document providing direction to the welder for making production welds in accordance with Code requirements by identifying all essential, supplemental essential, and non-essential variables.

(10) "Structure" means any commercial or industrial building intended for human occupancy where any part of the building is fabricated, constructed, altered, repaired or enlarged using weldable material found in AWS D1.1 or D1.3 in the welding process.

(11) "Continuity log" means a written record that verifies a welder has maintained their certification in every qualified process by producing sound welds at least every six (6) months as may be required by the applicable ASME, API or AWS code(s).

(c) The welding inspector shall forward all welder test results properly certified showing under which qualified procedure the welder tested (as permitted by this Act) to the Department of Labor. Upon receipt of the completed application affidavit, the test results and the twenty-five dollar (\$25.00) application affidavit fee, pursuant to 380:20-1-2(2)(C), the certification card will be mailed to the welder.

(d) All welding inspector certifications will specify with which weld-test facility the inspector is associated.

(e) Title 59 O.S. Section 1638 refers to an owner-user inspector and a certified AWS inspector as being exempt from the Act under certain conditions.

(1) For the purpose of clarifying Title 59 O.S. Section 1638, an owner-user is defined as a firm, company or organization which owns the piping which is being constructed, modified or repaired by full time company employees of the firm. This excludes high pressure steam (in excess of 15 P.S.I.) power piping (boiler external piping) falling within the scope of Section I of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers and the Oklahoma Boiler and Pressure Vessel Law, Title 40 O.S. Section 141.1, et seq.

(2) For the purpose of clarifying Title 59 O.S. Section 1638, an owner-user inspector is defined as an inspector working as a paid company employee inspecting welds and qualifying welders to weld only those welds on owner piping facilities. The Department of Labor will recognize owner-user inspectors for purposes of certifying their welder's qualifications only. (Any inspection required by virtue of the Oklahoma Boiler Code such as boiler repair and high-pressure steam lines shall be performed in accordance with the provisions of the Boiler and Pressure Vessel Law, Title 40 O.S. Section 141.1 et seq.)

(f) A certified welding inspector may witness welder performance qualification in the field, provided the field testing facility is equipped with the proper test equipment (destructive or NDE devices).

(g) Except for owner-user situations and organizations in possession of a valid Certificate of Authorization issued by the ASME or the National Board of Boiler and Pressure Vessel Inspector, no certified welding inspector or certified testing

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facility shall be affiliated with any parent or subsidiary company which builds, constructs, erects or repairs piping systems designed in accordance with the provisions of any of the Codes identified in this Act, 40 O.S. 1624, et seq.

(h) For the purpose of welder certification, no welding inspector or testing facility certified by the Department of Labor shall certify any welders in their own employ or any welders in the employment of any parent organization unless done by an employee of an owner-user organization as per 380:20-1-3(e)(2), or an organization in possession of a valid Certificate of Authorization from the ASME or the National Board of Boiler and Pressure Vessel Inspectors.

(i) For the purpose of certifying welders by the Department of Labor, all certified welding inspectors and certified test facilities shall qualify, observe and test welders under one of the procedures and specifications referred to as:

- (1) D.P.-1 or;
- (2) D.P.-2 or;
- (3) Any welding procedure certified in accordance with Section IX of the ASME Boiler and Pressure Vessel Code sanctioned by the welder's employer; or
- (4) Any welding procedures certified in accordance with API Standard 1104 sanctioned by the welder's employer; or
- (5) Any appropriate AWS standard welding procedure.

(j) The welder must successfully qualify in all respects to the selected procedure and all new test results forwarded to the Department of Labor shall so specify the welding process or processes used, and the position or positions in which welded. Test results shall remain valid for one year from the date the test weldment was performed.

## **380:20-1-14. Welding procedure specifications for butt weld**

### (a) **Specifications.**

- (1) Number Okla. D.P.-1 (without backing ring)
- (2) Number Okla. D.P.-2 (with backing ring)

### (b) **Process.**

- (1) S.M.A.W.- Shielded Metal Arc Welding
- (2) G.M.A.W. - Gas Metal-Arc Welding
- (3) G.T.A.W. - Gas Tungsten-Arc Welding
- (4) O.F.G.W. - Oxyfuel Gas Welding

(c) **Base Material.** The base material shall conform to the specifications of the following:

- (1) ASME Boiler & Pressure Vessel Code, (~~ASME Sect. II Part A, Ferrous & Part B, Nonferrous Sect. IX QW 422 P numbers~~) as applicable
- (2) A.P.I. STD 1104 ~~1.4 Materials (1.42 A through E)~~ as applicable
- (3) AWS Part A, ~~10.2 through 10.2.5~~ as conforming to ~~A.S.T.M. requirements~~ as applicable

(d) **Forgings.** Filler metal; The filler metal shall conform to the applicable code requirements of specifications under which the welder is being qualified, and restricted to the particular welding process being utilized. Applicable codes: ASME Section IX, current Edition and addenda, ~~and~~ ASME B31.1, current Edition and addenda, ~~and~~ API 1104, current Edition and addenda, and AWS D1.1, current Edition and addenda.

(e) **Position.** The welding shall be done in test position 2G and 5G or 5G or 6G, as described in Section IX of the ASME Boiler and Pressure Vessel Code or positions described in AWS D1.1 or D1.3.

(f) **Preparation of base material.** The edges or surfaces of the parts to be joined by welding shall be prepared by being machined, ground or gas cut to form groove design joints, as shown on the attached appendices and shall be cleaned of all oil and grease and excessive amounts of scale or rust. Fillet design joints shall not be used for welder certification.

(g) **Nature of electric current.** The current shall be DC, the base metal to be on the negative side of the line.

(h) **Welding technique.** The welding technique, electrode size and mean voltages and currents for each electrode shall be substantially as shown on attached appendices.

(i) **Appearance of welding layers.** The welding current and manner of depositing the weld material shall have the appearance shown on the attached appendices. There shall be practically no undercutting on the side walls or the welding groove or the adjoining material.

(j) **Cleaning.** All slag or flux remaining on any bead of welding shall be removed before laying down the next successive bead.

(k) **Defects.** Any cracks or blow holes that appear on the surface shall be removed by chipping, grinding or gas gouging before depositing the next successive bead of welding.

(l) **Heat treatment.** The heat treating or stress relieving of completed welds, when required, shall be performed in accordance with the requirements of the specific code under which the work is conducted.

## **380:20-1-15. Welding procedure specifications for structural steel welding**

The welding procedure specifications for structural steel welding is that which is found in AWS D1.1 and/or D1.3.

*[OAR Docket #09-990; filed 5-20-09]*

## **TITLE 380. OKLAHOMA DEPARTMENT OF LABOR CHAPTER 25. BOILER AND PRESSURE VESSEL RULES**

*[OAR Docket #09-991]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Administration  
380:25-3-7 [AMENDED]

### **AUTHORITY:**

Department of Labor; 40 O.S. §141.3, Boiler and Pressure Vessel Safety Act

### **DATES:**

#### **Comment period:**

January 15, 2009 through February 18, 2009

#### **Public hearing:**

February 18, 2009

#### **Adoption:**

March 16, 2009

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March 16, 2009

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March 16, 2009

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March 16, 2009

**Gubernatorial approval:**

April 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 8, 2009

**Final adoption:**

May 8, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The purpose of the proposed amendment to OAC 380:25-3-7 is to create a late fee and re-inspection fee for insurance companies who fail to submit required reports to the Bureau of Boiler Inspection within thirty days from the date of inspection.

**CONTACT PERSON:**

Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 3. ADMINISTRATION**

**380:25-3-7. Inspection reports to be submitted by inspectors (excludes owner/user agencies under the scope of API)**

(a) Inspectors shall submit to the Chief Boiler Inspector an inspection report on form NB-5 for each non-standard boiler or pressure vessel.

(b) Subsequent inspections of both standard and non-standard boilers and pressure vessels shall be reported on Forms NB-6 or NB-7 of the National Board Inspection Code.

(c) Inspection reports as required in Section 380:25-3-7(a)&(b), shall be submitted within thirty days from date of inspection.

(1) If the insurance company special inspectors have made the required inspection but have not submitted the report to the Bureau of Boiler Inspection within thirty (30) days, the insurance company may be charged a fee equal to that contained in Section 141.16(A)(2)(f) for each month or part thereof they are late.

(2) If insurance company special inspectors do not file their inspection reports with the Bureau of Boiler Inspection within ninety (90) days from the date the inspection is due, the Bureau of Boiler Inspection may make the required inspection and charge the insurance company an inspection fee equal to that contained in Section 141.16(A)(2)(g).

(d) In lieu of forms NB-5, -6, or -7, referred to in this section, reasonable facsimiles approved in advance by the Chief Boiler Inspector may be used.

(e) In addition, vessel heating surface or BTU (British Thermal Units) input or other data which will determine the maximum output of the unit and the relieving capacity of all safety, relief, or safety relief valves will be shown on all reports.

(f) All reports of inspection of hot water supply heaters covered by the Act shall be submitted on forms approved by the Commissioner.

*[OAR Docket #09-991; filed 5-20-09]*

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

*[OAR Docket #09-1067]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions  
380:30-1-7 [AMENDED]
- Subchapter 3. Wage Claim Procedures  
380:30-3-4 [AMENDED]
- 380:30-3-5 [AMENDED]

**AUTHORITY:**

Department of Labor; 40 O.S. §165.7, Protection of Labor

**DATES:**

**Comment period:**

February 17, 2009 through March 23, 2009

**Public hearing:**

March 23, 2009

**Adoption:**

March 25, 2009

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March 31, 2009

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**Gubernatorial approval:**

May 6, 2009

**Legislative approval:**

Failure to the Legislature to disapprove the rules resulted in approval on May 22, 2009

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May 22, 2009

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July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The purpose of the proposed amendment to OAC 380:30-1-7 is to clarify the requirements for a valid payroll deduction agreement. Under the current rule, the payroll deduction agreement must be signed by the employer and the employee. Many employers are not aware that the employer's signature is required and many payroll deduction agreements have been invalidated as a result. Although the current rule does not state when the payroll deduction agreement must be signed, the Oklahoma Department of Labor has been requiring the agreement be signed before the deduction is made. The proposed amendment to this section will eliminate the requirement that the employer sign the agreement and specify that the agreement must be signed before the payroll deduction is made. The main purpose of the payroll deduction agreement is to protect the employee by ensuring that the employee is aware of the deduction before it is taken. The proposed amendment will still protect the interests of the employee while also ensuring that these

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otherwise valid employment agreements are upheld. The purpose of the proposed amendments to OAC 380:30-3-4 and OAC 380:30-3-5 is to allow more time for the consideration of submitted motions and to specify the time when response motions are due. Currently, motions must be filed at least ten (10) days before the administrative hearing and no time frame is set for the submission of response motions. This causes confusion when motions are filed by a party during the wage claim process or when a claim has been appealed to an administrative hearing. The current rule also does not allow enough time for the administrative law judge to consider the issues raised in the motion before the hearing. The proposed rule requires motions to be filed thirty (30) days before the administrative hearing and response motions will be due fifteen (15) days thereafter. Motions for stay of proceedings may still be filed at any time after the filing of the wage claim and any response to such motion will now be due within twenty (20) days thereafter.

## CONTACT PERSON:

Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 380:30-1-7. Work without pay and deductions

- (a) No employer shall require or permit an employee, as a condition of securing or retaining employment, to work without monetary compensation.
- (b) The term "deductions," as used in 40 O.S. § 165.1 et seq., is defined as any and all sum(s) of money withheld by the employer from an employee's wages. The scope of the term includes, but is not limited to, amounts withheld for FICA, Federal and State income tax, Medicare, and garnishments.
- (c) No employer shall deduct any amount from an employee's wages, unless legislation or a court order mandates such, or unless such deduction is made pursuant to the provisions of this section.
- (d) It is permissible for an employer and employee to voluntarily enter into a payroll deduction agreement, including deductions for the following purposes:
- (1) To allow the employee to repay a loan or advance which the employer made to the employee during the course of and within the scope of employment, or to allow for recovery of payroll overpayment as provided in this subchapter;
  - (2) To compensate the employer for the value of the employer's merchandise or uniforms purchased by the employee;
  - (3) To provide payment for medical, accident, disability, or retirement benefits, or insurance premiums, not including workers' compensation or unemployment;
  - (4) To provide for contributions to a deferred compensation plan or other investment plan provided by the employer as a benefit to the employee;
  - (5) To compensate the employer for breakage or loss of merchandise, inventory shortage, or cash shortage caused by the employee; where the employee was the sole party

responsible for the cash or items damaged or lost, at the time the damage or loss occurred.

(e) Any payroll deduction agreement made pursuant to subsection (d) must be in writing, and signed by the ~~employer and employee~~ before any deduction authorized by such agreement is taken. For purposes of these rules, the words "loan" and "advance" mean a transfer of money with a provision for repayment.

(f) Pursuant to the authority granted in 40 O.S. § 1 and § 165.7, the Commissioner shall have the authority to investigate, hold hearings, subpoena witnesses, administer oaths, take testimony, and/or order production of any document or financial statement in relation to any violation of this rule. The Commissioner may issue Cease and Desist Orders to compel compliance with this rule.

## SUBCHAPTER 3. WAGE CLAIM PROCEDURES

### 380:30-3-4. Procedures prior to hearing

(a) Upon receipt of a request for a hearing after issuance of an Order of Determination, the claim shall be transferred to the Legal Division of the Department, which shall set a date and time for the hearing and notify the parties as required by law, or as instructed by the parties. The parties may file whatever motions, pleadings, briefs, or other papers they deem appropriate, including but not limited to motions to dismiss and motions for summary judgment. Dispositive motions may be ruled upon either at hearing or prior thereto, with or without benefit of oral argument, by the Commissioner. Unless good cause is shown, ~~Motions~~ motions and briefs shall be filed at least ~~ten (10) days~~ thirty (30) days prior to the hearing of the Claim; shall be served upon the opposing party, counsel, and the Department in a timely manner; and shall not exceed 25 pages in length, exclusive of exhibits or attachments. Any response to a motion or brief shall be filed within fifteen (15) days thereafter, unless good cause is shown. All pleadings and papers shall be styled in the following manner: "BEFORE THE DEPARTMENT OF LABOR, STATE OF OKLAHOMA, IN RE: (Respondent), Claim No., (Name of Claimant)."

(b) Subpoenas will be issued by the Commissioner upon request of either party. The party requesting the subpoena shall be responsible for service in a timely manner, in accordance with the Administrative Procedures Act, 75 O.S. § 315, and the Oklahoma Pleading Code, 12 O.S. § 2004.1. All subpoenas issued by the Department shall allow at least ten (10) days for compliance. Subpoenas duces tecum shall set the date of compliance either at or before the pre-hearing conference, if any. Otherwise, the date for compliance shall be at least ten (10) days prior to the hearing.

(c) Subject to the provisions of the Administrative Procedures Act, parties may obtain discovery in any manner provided for under the Oklahoma Discovery Code, 12 O.S. § 3225 et seq., and in accordance with the rules and provisions contained therein. Discovery shall be completed no later than ten (10) days before hearing.

(d) The Commissioner reserves the authority to dismiss a claim set for hearing at any time for lack of jurisdiction over the parties or subject matter of the claim.

(e) Unless for good cause shown, no request for continuance of any hearing shall be considered unless the same is presented in writing to the Commissioner at least three (3) days prior to the scheduled docket date. Continued cases shall be placed on the next available hearing docket, but no earlier than 30 days after the original scheduled date without written consent of both parties. No case shall be continued more than twice unless good cause is shown.

**380:30-3-5. Motions for stay of proceedings**

The Commissioner may grant a stay of the proceeding upon motion of either party, or upon the Commissioner's own motion, if the outcome of a case currently pending in any court of record in this State would affect the rights of the parties of the result in a pending Wage Claim filed with the Department. Either party may move to stay the proceedings at any time after the filing of the affected Wage Claim. Any response to a motion for stay of proceedings shall be filed within twenty (20) days thereafter. The moving party shall have the burden of proof.

*[OAR Docket #09-1067; filed 5-26-09]*

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

*[OAR Docket #09-1069]*

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
380:40-1-2 [AMENDED]  
380:40-1-7 [AMENDED]  
380:40-1-20 [AMENDED]  
380:40-1-21 [AMENDED]  
380:40-1-23 [AMENDED]

**AUTHORITY:**  
Department of Labor; 40 O.S. §407, Oklahoma Occupational Health and Safety Standards Act

**DATES:**  
**Comment period:**  
February 17, 2009 through March 25, 2009

**Public hearing:**  
March 25, 2009

**Adoption:**  
March 31, 2009

**Submitted to Governor:**  
March 31, 2009

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March 31, 2009

**Submitted to Senate:**  
March 31, 2009

**Gubernatorial approval:**  
May 6, 2009

**Legislative approval:**  
Failure to the Legislature to disapprove the rules resulted in approval on May 22, 2009

**Final adoption:**  
May 22, 2009

**Effective:**  
July 1, 2009  
**SUPERSEDED EMERGENCY ACTIONS:**  
n/a

**INCORPORATIONS BY REFERENCE:**  
**Incorporated standards:**

The rules incorporate by reference the Occupational Safety and Health Administration's Hazard Communication Standard, as set forth in 29 CFR 1910.1200.

**Incorporating rules:**  
380:40-1-2

**Availability:**  
8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays, at Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**ANALYSIS:**  
The purpose of the proposed amendment to OAC 380:40-1-2 is to adopt the Hazard Communication Standard in 29 CFR 1910.1200, subject to the exception that the information and training required under 29 CFR 1910.1200(h) is required annually. The federal Hazard Communication Standard in 29 CFR 1910.1200 is substantially similar to the Oklahoma Hazard Communication Standard in OAC 380:45. Public employers are currently required to provide annual training under OAC 380:45. Therefore, the proposed amendment to this section is not anticipated to place additional requirements on public employers and is intended to simplify compliance. The Oklahoma Department of Labor intends to revoke the Oklahoma Hazard Communication Standard in OAC 380:45 in a separate rulemaking action upon approval of this rulemaking action. OAC 380:40-1-7 is amended to change the size of the required notice from 8 1/2 by 14 inches (legal size paper) to 8 1/2 by 11 inches (letter size paper). This change is intended to assist compliance with this section. The title to OAC 380:40-1-20 is amended to clarify that this section only applies to public employers. This change is only intended to avoid confusion and no additional requirements are placed on employers. OAC 380:40-1-21 is amended to include the definition of "fire department." This definition is already in OAC 380:45 and has been moved to this section for clarity. The purpose of the proposed amendment to OAC 380:40-1-23(e) is to clarify that all requirements of the recognition or incentive program must be met before an employer will be eligible. This is no change from the current interpretation of this section. The amendment is made only for clarity. OAC 380:40-1-23(f) is amended to refer to the specific Oklahoma statute providing for the tax exemption, rather than the Senate Bill which was enacted to create the tax exemption.

**CONTACT PERSON:**  
Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**380:40-1-2. Applicable national standards**

(a) The Federal Occupational Safety and Health Standards for General Industry (29 CFR 1910) and the Construction Industry (29 CFR 1926) shall be automatically adopted by incorporation as currently published and as hereafter may be revised in the Code of Federal Regulations subject to the following exceptions:

- (1) That the definition of an "employer" as set forth in 29 CFR 1910.2(c) is deleted and the term is hereby defined in accordance with the definition in Title 40 O.S. Section 402(1) for "employer"
- (2) That the Hazard Communication Standard as set forth in 29 CFR 1910.1200 is ~~deleted and the Hazard Communication Standard adopted in the Oklahoma~~

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~~Department of Labor Rules shall apply, adopted by incorporation except the information and training required under 29 CFR 1910.1200(h) is required annually. The definition of "employer" and "employee" as set forth in 29 CFR 1910.1200(c) is deleted and the term is defined in accordance with the definition in Title 40 O.S. Section 402(1) for "employer" and "employee".~~

(3) The definition of "action level" in the General Industry Standard for asbestos (29 CFR 1910.1001(b)) is deleted.

(4) The section on permissible exposure limit (PEL) in the General Industry Standard for asbestos (29 CFR 1910.1001(c)) is deleted and hereby replaced with: Permissible exposure limit (PEL). The employer shall ensure that no employee is exposed to an airborne concentration of asbestos in excess of 0.01 fibers per cubic centimeter of air.

(5) For purposes of compliance with 29 CFR 1910.134(g)(4), it is permissible for the employer to enlist the aid of firefighters from other municipal jurisdictions, or political subdivisions, in order to ensure that enough personnel are present at the site to fulfill the requirements of the "two in, two out" rule. The employer must insure that the firefighters from the other municipal jurisdictions, or political subdivisions are in compliance with 29 CFR 1910.134.

(b) The currently published National Fire Protection Association (NFPA 1971) Standard Protective Ensemble for Structural Fire Fighting, referenced in the Federal Occupational Safety and Health Standards for General Industry (29 CFR 1910) shall be automatically adopted by incorporation as published and as may hereafter be revised in the NFPA Standards.

### **380:40-1-7. Posting of notice**

(a) Each employer shall post and keep posted a notice or notices, to be furnished by the PEOSH Unit of the Oklahoma Department of Labor, informing employees of the protections and obligations provided for in the 40 O.S. § 401 et seq. and that for assistance and information, including copies of specific safety and health standards, employees should contact the Oklahoma Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

(b) Reproductions or facsimiles of such State posters shall constitute compliance with the posting requirements where such reproductions or facsimiles of such State posters shall constitute compliance with the posting requirements where such reproductions or facsimiles are at least 8  $\frac{1}{2}$  inches by ~~11~~ 11 inches, and the printing size is at least 10 pt. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, not less than ~~36~~ 32 pt.

(c) "Establishment" means a single physical location where agency business is conducted or where services or operations

are performed. Where distinctly separate activities are performed at a single physical location, each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment. Where employer are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, the notice or notices required by this section shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as technicians, engineers, etc., notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of paragraph (a) of this section.

(d) Any employer failing to comply with the provisions of this section shall be subject to citation in accordance with the provisions of 40 O.S. § 410(D).

### **380:40-1-20. Consultation procedures for public sector**

(a) Experiences with OSHA consultation in the private sector have shown that employers who make a management commitment to safety and health and involve employees in the development and implementation of a safety and health program show far greater results toward the long term reduction of accidents, injuries and illnesses in the workplace. The Oklahoma Department of Labor recognizes that voluntary compliance and a pro-active approach to safety and health with emphasis on a holistic safety and health program is more effective than traditional enforcement methods. Therefore, it is the intent of the PEOSH unit to not only enforce safety standards and regulations, but to assist public employers with voluntarily implementing effective safety and health programs.

(b) PEOSH Inspectors, at the request of the employer, may conduct on-site consultation visits for the purposes of providing information, literature and guidance to the employer on requirement or safety and health standards, implementation of safety and health program elements, record keeping assistance and written program requirements. However, if during a consultation visit, a PEOSH Inspector identifies violation(s) of the referenced federal standards, national consensus standards, or state law, a citation shall be issued in accordance with section 380:40-1-16.

### **380:40-1-21. Authority over volunteers**

Volunteer fire departments that exist as a subdivision of a larger municipal organization are within Oklahoma Department of Labor jurisdiction if that larger municipal organization employs one or more paid workers. In such cases, the inspection and enforcement jurisdiction of ODOL extends to all duties performed by any worker or volunteer on behalf of the Volunteer Fire Department. For purposes of this Chapter, "fire department" means any duly constituted fire department operating under the authority of Title 11 article XXIX fire departments or Title 19 Chapter 21 fire protection districts meeting the definition of employer. Industrial fire brigades are excluded from this definition. However, fire departments

and industrial fire brigades are covered by regulations of other agencies.

**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~~ the requirements of the applicable recognition and/or incentive program, 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~~ Title 68 O.S. § 2358 provides 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 fo 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.);

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- (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 #09-1069; filed 5-26-09]

## TITLE 380. DEPARTMENT OF LABOR CHAPTER 70. ELEVATOR SAFETY ACT

[OAR Docket #09-989]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
380:70-1-2 [AMENDED]  
Subchapter 3. Administration  
380:70-3-4 [AMENDED]  
Subchapter 5. Licenses  
380:70-5-1 [AMENDED]  
380:70-5-3 [AMENDED]

### AUTHORITY:

Department of Labor; 59 O.S. §§ 3023 and 3024, Elevator Safety Act

### DATES:

#### Comment period:

February 2, 2009 through March 4, 2009

#### Public hearing:

March 4, 2009

#### Adoption:

March 18, 2009

#### Submitted to Governor:

March 19, 2009

#### Submitted to House:

March 19, 2009

#### Submitted to Senate:

March 19, 2009

#### Gubernatorial approval:

April 21, 2009

#### Legislative approval:

Failure to the Legislature to disapprove the rules resulted in approval on May 14, 2009

#### Final adoption:

May 14, 2009

#### Effective:

July 1, 2009

### SUPERSEDED EMERGENCY ACTIONS:

n/a

### INCORPORATIONS BY REFERENCE:

n/a

### ANALYSIS:

One purpose of the proposed rules is to create a limited elevator contractor license in OAC 380:70-5-1 to allow facilities that have a maintenance program for elevators or conveyances using mechanics trained in elevator or conveyance maintenance employed by the facility to continue to perform minor repairs to the facility's elevators. Additionally, OAC 380:70-5-3 is amended to implement the provisions of SB 1529 which amended 59 O.S. '3023 to allow for inspections by licensed third party inspectors. The proposed rules increase the required experience to two years and require a training session and exam before an elevator inspector license will be issued. The rules also address possible conflicts of interest by prohibiting an elevator inspector from also holding an elevator contractor or mechanic license. The provision prohibiting elevator inspectors from having any financial interest in a business or operation which manufactures, installs, repairs, modifies or services elevators, escalators, or other such conveyances is clarified by adding that no inspector may be employed by these parties. The purpose of the proposed amendment

to OAC 380:70-1-2 is to establish additional definitions and to reflect the new address of the Oklahoma Department of Labor. The amendment to OAC 380:70-3-4 is to clarify that OAC 380:70 will control when in conflict with adopted standards.

### CONTACT PERSON:

Tiffany J. Wythe, Assistant General Counsel, Oklahoma Department of Labor, 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105, (405) 521-6100.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 380:70-1-2. Definitions

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

**"Acceptance Test"** means a test or a group of tests required by the applicable standard that are performed prior to a conveyance being placed into service or after an approved alteration.

**"The Act"** means the Oklahoma Elevator Safety Act, Title 59 of the Oklahoma Statutes, Sections 3020 et seq. and the Administrative Rules contained in this Chapter.

**"Alteration"** means any change, including major repair, made to an existing elevator, escalator, moving walkway or conveyance, its hoistway, enclosure, doors, and controls, other than the repair or replacement of damaged, worn, or broken parts necessary for normal operation. The changing of the speed governor shall be considered an alteration.

**"Annually"** means a period of twelve (12) calendar months.

**"ANSI"** means the American National Standards Institute, 1819 L Street NW, 6<sup>th</sup> Floor, Washington, D.C., 20036.

**"ASME"** means the American Society of Mechanical Engineers, 3 Park Avenue, New York, NY, 10016-5990.

**"ASSE"** means the American Society of Safety Engineers, 1800 E. Oakton St., Des Plaines, IL., 60018.

**"AWS"** means the American Welding Society, 550 N.W. LeJune Road, Miami, Florida 33126.

**"Chief Elevator Inspector"** means the Chief Elevator Inspector appointed under the Act.

**"Commissioner"** means the Commissioner of Labor or his/her authorized representative.

**"Certificate of Operation"** means a document issued by the Commissioner of Labor, affixed to an elevator or conveyance that indicates it has been inspected, tested and found to be in compliance for operation as required by the Act.

**"Conveyance"** means any elevator, escalator, moving walkway, wheelchair lift or other such device subject to the provisions of the Act.

**"Department"** means the Elevator Inspection Bureau of the Safety Standards Division of the Oklahoma Department of Labor, 4001 North Lincoln Blvd. Oklahoma City, Oklahoma,

~~73105-5212~~ 3017 N. Stiles, Suite 100, Oklahoma City, OK 73105.

**"Deputy Inspector"** means an inspector appointed by the Chief Elevator Inspector subject to the approval of the Commissioner under the provisions of the Act.

**"Elevator"** means any device for lifting or moving people, cargo, or freight within, or adjacent and connected to, a structure or excavation, and includes any escalator, power driven stairway, moving walkway or stairway chair lift. It does not mean any of the following:

- (A) Amusement ride or device subject to inspection and regulation under the provisions of Section 460 et seq. of Title 40 of the Oklahoma Statutes;
- (B) Mining equipment subject to inspection and regulation by the Department of Mines;
- (C) Aircraft, railroad car, boat, barge, ship, truck, or other self-propelled vehicle or component thereof;
- (D) Any boiler grate stoker or other similar firing mechanism subject to inspection under the provisions of the Oklahoma Boiler and Pressure Vessel Safety Act; or
- (E) A dumbwaiter, conveyor, chain or bucket hoist, construction hoist or similar devices used for the primary purpose of elevating or lowering materials. This list is not exhaustive.

**"Elevator Apprentice"** means an unlicensed person registered with the Department of Labor who works under the direct supervision of a licensed elevator mechanic, licensed elevator contractor, or licensed elevator inspector.

**"Existing Installation"** means any elevator, escalator, moving walkway or other conveyance subject to the provisions of this Act in operation before the effective date of this Act.

**"Freight Elevator"** means an elevator used for carrying freight and on which only the operator and the person(s) necessary for loading and unloading are permitted to ride.

**"Installation Permit"** means a document issued by the Commissioner to a licensed elevator contractor upon receipt of an application to install or construct an elevator or conveyance which indicates Department approval of the proposed installation or construction project.

**"ICC"** means the International Code Council, 5360 Workman Mill Road, Whittier, California, 90601-2298.

**"Maintenance"** means a process of routine examination, lubrication, cleaning, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with the applicable Code requirements.

**"May"** means that an action or requirement is optional and non-mandatory.

**"Mobility Restricted"** means a person or persons unable to move freely without the aid of mechanical assistance such as walkers, wheelchairs, crutches or canes, and/or an inability to move freely because of a physical or mental disability, handicap or restriction.

**"New Installation/New Construction"** means a completely new elevator or conveyance installation or construction occurring on or after the effective date of this Act.

**"NFPA"** means The National Fire Protection Association, Inc., One Batterymarch Park, Quincy, Massachusetts, 02169-7471.

**"Night Time Inspection"** means any inspection that does not occur during "reasonable hours."

**"Occurrence"** means any event involving an elevator, escalator, moving walkway, wheel chair lift or other conveyance subject to the provisions of this Act, that the operation of which has caused personal injury or property damage.

**"Owner-Occupied Private Residence"** means a separate dwelling, or a separate apartment in a multiple dwelling/complex, which is occupied by the legal owner and/or his/her family.

**"Periodic Test"** means a group of tests performed at common time intervals required by the authority having jurisdiction.

**"Professional Engineer"** means a mechanical engineer registered as such in one or more states, or the equivalent certification registration if from another country.

**"Reasonable Hours"** means that period of time beginning one hour prior to normal advertised business hours and ending one hour after normal advertised business hours. For facilities normally open twenty-four (24) hours, reasonable hours shall be that period of time beginning at 7:00 a.m. and ending at 6:00 p.m.

**"Red Tag"** means a document issued by a licensed elevator inspector and attached to an elevator or conveyance declaring that any further operation of the elevator or conveyance shall constitute a violation of the Oklahoma Elevator Safety Act.

**"Repair"** means reconditioning or renewal of parts, components, and/or subsystems, not constituting an alteration, necessary to keep equipment in compliance with applicable Code requirements and for which a permit is not required.

**"Responsible Party"** means that person(s) so named and designated on an elevator contractors license required to have met and maintain training credentials and knowledge necessary to satisfy the requirements of the Act.

**"Shall"** means that an action or requirement as stated in this Chapter is mandatory.

**"Special Inspector"** means an inspector, licensed by the Department, who is regularly employed by an insurance company providing liability insurance on an elevator, escalator, moving walkway, chairlift or conveyance subject to the provisions of the Act.

**"State Special"** means the designation applied to an elevator or conveyance subject to the provisions of this Act that is of special or unique construction and cannot be constructed, installed and/or operated in accordance with the applicable ASME Code and the provisions of this Act.

**"Temporarily Dormant"** means an elevator or conveyance whose power supply has been disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the "OFF" position.

**"Temporary Certificate of Operation"** means a document issued by a licensed elevator inspector granting the temporary continued operation of a non-compliant elevator or conveyance for a period not to exceed thirty (30) days so that

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repairs can be performed; or to a licensed elevator contractor for the temporary continued operation of an elevator or personnel hoist for a specified period of time not to exceed the length of the applicable construction project.

"**Triennially**" means a period of thirty-six (36) calendar months.

## SUBCHAPTER 3. ADMINISTRATION

### **380:70-3-4. National standards, adoption and availability**

(a) The following American National Standards are hereby adopted:

- (1) Safety Code for Elevators and Escalators, ASME A17.1, latest edition and most current addenda.
- (2) Safety Code for Existing Elevators and Escalators, ASME A17.3, latest edition and most current addenda.
- (3) Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1, latest edition and most current addenda.
- (4) Safety Standard for Belt Manlifts, ASME A90.1, latest edition and most current addenda.
- (5) Safety Requirements for Personnel Hoists and Employee Elevators, ASSE A10.4, latest edition.
- (6) The National Electrical Code, NFPA 70, latest edition.
- (7) The International Building Code, latest edition.

(b) Standards referenced in this chapter are available for public viewing in the office of the Chief Elevator Inspector and may be purchased from the American Society of Mechanical Engineers, the National Fire Protection Association, the American Society of Safety Engineers, and the International Code Council.

(c) Compliance with the provisions of the Elevator Safety Act does not relieve an owner, operator, or licensed Elevator Contractor from the requirement to comply with Codes and Standards as may be adopted and enforced by the Construction Industries Board and the Office of the State Fire Marshal, or other such state or jurisdictional agency as may be required.

(d) Where there is a conflict between the adopted standard and this Chapter, the requirements of this Chapter shall take precedence.

## SUBCHAPTER 5. LICENSES

### **380:70-5-1. Elevator Contractor's License: Issuance, denial and renewal**

(a) Upon the effective date of this Chapter, no elevator or conveyance subject to the provisions of this Act shall be installed in this state by any sole proprietor, firm or corporation not having first been issued at the time of the construction or installation a valid elevator contractor's license, issued by the Department of Labor. There shall be a six (6) month grace period from the date of enactment of this Chapter to allow new

and existing elevator contractors an opportunity to comply with the provisions of this section.

(b) Any sole proprietor, firm or corporation wishing to engage in the business of installation, alteration, service, repair, replacement or maintenance of elevators, escalators, moving walkways, wheelchair lifts, or other such conveyances within the state of Oklahoma shall make application for an elevator contractor's license to the Oklahoma Department of Labor.

(c) No license shall be granted to any sole proprietor, firm or corporation that has not demonstrated the requisite qualifications and abilities. Duly authorized applicants for an elevator contractor's license must have in their employ licensed elevator mechanic(s) who perform the work described herein.

(d) Application for elevator contractor's license shall be on forms provided by the Department and shall contain, as a minimum, the following information:

- (1) If a person or sole proprietor, the name, residence and business address of the applicant;
- (2) If a partnership, the name, residence and business address of each partner;
- (3) If a domestic corporation, the name and business address of the corporation and the name and residence address of the principal officer of said corporation;
- (4) If a corporation other than a domestic corporation, the name and address of the local agent located in the State of Oklahoma who shall be authorized to accept service of process and/or official notices;
- (5) The approximate number of licensed elevator mechanics expected to be employed by the elevator contractor applicant, and if applicable, satisfactory evidence that the employees are or will be covered by workers' compensation insurance;
- (6) Verification of liability insurance as required by the Chapter;
- (7) Such other information as the Chief Elevator Inspector may require;
- (8) Designation of at least one but not more than two responsible parties to be named on the license. Such responsible parties shall have and maintain the training credentials required for a valid contractor's license. Documentation of satisfactory completion of the required training and all subsequent refresher training shall accompany the application;

(A) In the absence of such responsible party in the employ of the contractor, the contractor shall not be allowed to perform elevator or conveyance installation, service, repair, alteration, testing or maintenance work in the State of Oklahoma.

(B) Responsible party(ies) may be changed or added to the license at any time by providing written notice to the Department of such change.

(9) Written notice of change shall be provided to the Department when any item on the application changes.

(10) A limited contractor license may be issued to those facilities that have a maintenance program for elevators and/or conveyances using mechanics trained in elevator and/or conveyance maintenance and employed by that facility. The limited contractor license shall not apply to

installation, major repair or alterations as required by the applicable ASME code.

(A) The limited contractor shall be required to submit an application for approval listing qualifications, scope of work to be performed under the license, and any additional information deemed necessary by the Chief Elevator Inspector.

(B) Mechanics working under a limited contractor license shall be required to make application to the Department and provide evidence to the Commissioner or Chief Elevator Inspector they are qualified to perform the work under the limited contractor scope of work.

(C) All other requirements of the Elevator Safety Act shall apply.

(e) Upon approval of an application and receipt of fees as provided for by the Act, the Commissioner may issue the elevator contractor's license.

(f) Upon receipt of fees as established in the Act, and such additional documentation as may be required by the Commissioner, a license may be issued to a sole proprietor, firm or corporation holding a valid license from a state or jurisdiction having standards substantially equal to those contained in this Act.

(g) The Department may deny approval or renewal of an elevator contractor's license for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may appeal to the Commissioner provided their written request is received by the Department within fifteen (15) days of the date of the denial notice.

(h) The Department shall notify holders of valid elevator contractor's licenses not more than sixty (60) days prior to the expiration date of the license that it must be renewed prior to the last day of the month in which it was initially issued. Elevator Contractor's licenses not renewed on or before the expiration date shall become invalid.

(i) Elevator Contractor's licenses not renewed prior to the expiration date shall be subject to late fee and renewal fees as provided for in the Act.

(j) Elevator contractors may have in their employ elevator inspectors licensed in accordance with the provisions of this Chapter for the purpose of witnessing and certifying conveyance tests as required by the Act, this Chapter and the applicable ASME Code(s).

**380:70-5-3. Elevator Inspector's License: Issuance, denial, and renewal**

(a) No elevator inspector's license shall be granted to any person unless he or she demonstrates to the satisfaction of the Commissioner or Chief Elevator Inspector that he/she meets the current ASME QEI-1 Standards for the Qualification of Elevator Inspectors and/or state standards as described in this Chapter. No elevator inspector's license shall be granted to any person who also holds an elevator contractor's license or an elevator mechanic's license.

(b) Applicants for a license to inspect elevators or conveyances for the purpose of recommending the issuance of

Certificates of Operation as required by this Act shall be required to meet the following qualifications:

(1) ~~Have at least one (1) year~~ two (2) years experience in designing, installing, maintaining or inspecting elevators, escalators and other such conveyances;

(2) Have successfully passed the written examination for elevator inspectors administered by an organization accredited by the ASME to certify elevator inspectors in accordance with the ASME, QEI-1 Standard.

(3) Attend an indoctrination training session covering the Oklahoma Elevator Safety Act and Department of Labor procedures for the purpose of issuing a certificate of Operation for those conveyances covered under this act. Indoctrination will be a minimum of eight (8) hours.

(4) Successfully complete an examination covering the Oklahoma Elevator Safety Act and Department of Labor procedures. This test will consist of 100 questions and the applicant will have a maximum of four (4) hours to complete the examination. A passing score will be no less than eighty percent (80%).

(5) The indoctrination training session will take place on the second Wednesday of January and the July of each year. The Examination will be given on the second Thursday of January and July of each year. The hour and place will be posted on the Department of Labor's website. If there are no applicants, the indoctrination and examination will not take place.

~~(3) (6)~~ An Elevator Inspector's license may be granted to an individual not satisfying the requirements contained in 380:70-5-3(b)(1) and (2) at the discretion of the Commissioner upon the review of documents attesting to comparable qualifications. An Elevator Inspector's license may be granted to an employee of the Oklahoma Department of Labor not satisfying the requirements contained in 380:70-5-3(b)(3) and (4) at the discretion of the Commissioner upon the review of documents attesting to comparable qualifications. In such event, the employee of the Department of Labor shall attend the indoctrination training session and successfully complete the examination at the next available date.

~~(47) Have no~~ Must not be employed by or have any financial interest in any business or operation which manufactures, installs, repairs, modifies or services elevators, escalators, or other such conveyances. This qualification does not prohibit employees of insurance companies insuring elevators and conveyances from obtaining a license as an elevator inspector.

(c) The Commissioner may appoint a Chief and Deputy Elevator Inspector who at the time of appointment are not in possession of a valid ASME QEI Certification, but are in a trainee status, provided they successfully complete the required examination within ~~eighteen (18)~~ twenty-four (24) months of appointment.

(d) Applications for an elevator inspector's license shall be on forms provided by the Department.

(e) Elevator inspector licenses shall be valid for a period of one (1) year and shall expire each year on the last day of the

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month of initial issuance. Elevator inspector's licenses not renewed on or before the expiration date shall become invalid.

(f) Elevator inspector's licenses for special inspectors may be issued and renewed upon receipt of payment of such fees as provided for in the Act and receipt of documentation on company letterhead from the inspectors employer that the licensee is a full time employee of the company.

(g) Elevator inspector's licenses not renewed prior to the expiration date shall be subject to late fees and renewal fees as provided for in this Act.

(h) The Department may deny approval or renewal of an elevator inspector's license for cause. The Department shall mail written notice to the applicant of the denial, the reason for the denial, and a statement that the applicant may be afforded the opportunity for a hearing pursuant to the provisions of the Administrative Procedures Act, provided their written request is received by the Department within fifteen (15) days of the date of the denial notice

*[OAR Docket #09-989; filed 5-20-09]*

## TITLE 530. OFFICE OF PERSONNEL MANAGEMENT CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

*[OAR Docket #09-1028]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Affirmative Action and Equal Employment Opportunity

Part 2. Discrimination Complaints Investigation

530:10-3-26

Part 3. Affirmative Action

530:10-3-33.3

530:10-3-33.6

### **AUTHORITY:**

The Administrator of the Office of Personnel Management: 74 O.S., §§ 840-1.6A and 840-2.1.

### **COMMENT PERIOD:**

February 2, 2009 to March 5, 2009.

### **PUBLIC HEARING:**

March 4, 2009

### **ADOPTION:**

March 6, 2009

### **SUBMITTED TO GOVERNOR:**

March 12, 2009

### **SUBMITTED TO HOUSE:**

March 12, 2009

### **SUBMITTED TO SENATE:**

March 12, 2009

### **GUBERNATORIAL APPROVAL:**

April 13, 2009

### **LEGISLATIVE APPROVAL:**

Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2009.

### **FINAL ADOPTION:**

May 7, 2009

### **EFFECTIVE:**

June 25, 2009

### **SUPERSEDED EMERGENCY ACTIONS:**

None.

### **INCORPORATIONS BY REFERENCE:**

None.

### **ANALYSIS:**

The proposed amendments to 530:10-3-26 is to clarify the reporting of annual training requirements. The proposed amendments to 530:10-3-33.3 is to clarify the requirements for dissemination of affirmative action plans. The proposed amendments to 530:10-3-33.6 modifies the availability analysis component of affirmative action plans.

### **CONTACT PERSON:**

Kara I. Smith, General Counsel, Office of Personnel Management, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (405) 522-1736.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## **SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY**

### **PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS**

#### **530:10-3-26. Discrimination complaint investigation training program or course approval**

(a) The Administrator may approve training that is not conducted by the Office of Personnel Management as meeting the four days of initial discrimination complaints investigator training required in 530:10-3-22.

(b) To request approval of discrimination complaints investigation training, an Appointing Authority shall submit the following course information to the Administrator for review:

- (1) Course title and a brief description;
- (2) Classroom hours or Continuing Education Units (CEUs); and
- (3) Course outline.

(c) The Office of Personnel Management shall maintain lists of approved discrimination complaint investigation training courses, and may withdraw its approval of courses by notifying employing agencies.

(d) Persons who complete approved training courses shall submit proof of completion on a form that is ~~acceptable to~~ prescribed or approved by the Administrator.

(e) The Administrator shall send notice of the acceptability of training to a person submitting proof of completion. If the person is a state employee, the Administrator shall also send the notice to the Appointing Authority.

### **PART 3. AFFIRMATIVE ACTION**

#### **530:10-3-33.3. Dissemination of affirmative action plans**

All affirmative action plans shall include a description of the methods to be used for internal and external dissemination of the affirmative action ~~policy and plan. The Appointing Authority shall separately address how the affirmative action policy and the affirmative action plan shall be disseminated both internally and externally.~~

530:10-3-33.6. Availability analysis

Affirmative action plans for agencies authorized 15 or more full-time-equivalent employees shall include an analysis of the number of minorities and females available to the workforce of the agency. An Appointing Authority shall:

- (1) Prepare an availability analysis for each job group;
(2) Use the "civilian labor force information identified by the Administrator to obtain the raw availability percentage of minorities and females in the workforce, unless more appropriate data is available;
(3) Consider all of the following availability factors and use at least one of the most appropriate considering when taking into account how individuals are usually selected for employment within each job group:

(A) Percentage of minority population of the labor area surrounding the facility and the percentage of women seeking employment in the labor area surrounding the facility;

(B) Rate of minority or female unemployment in the surrounding labor area;

(C) Percentage of minorities or females in total work force in the immediate labor area;

(D) Availability of minorities or females with the requisite skills in the immediate labor area;

(EA) Availability Percentage of minorities or females having requisite skills in the reasonable recruitment area which the agency can reasonably recruit. The reasonable recruitment area is defined as the geographical area from which the agency usually seeks or reasonably could seek workers to fill the positions in question;

(EB) Percentage of minorities or females promotable and transferable and trainable within the agency's organization in the labor area. Trainable refers to those employees within the agency who, with appropriate training that the Appointing Authority is reasonably able to provide, could become promotable or transferable during the plan year. Unless a greater weight is approved by the Administrator, the weight for this factor shall not exceed 15%;

(G) The existence of training institutions capable of training persons in the necessary skills;

(H) Estimate of training efforts the agency is reasonably able to undertake to make the job group available to minorities and females; and

(IC) Other relevant factors if approved by the Administrator;

(4) Determine the appropriate geographic area for each factor used. This shall include the recruitment area from which most employees are drawn;

(5) Weight each factor used. The weight shall represent the percentage of all employees in the job group who come from the source referenced in a particular factor, and the total of all factors used shall always equal 100%; and

(6) Complete a form prescribed or approved by the Administrator to record availability analysis. The form shall provide spaces for availability information, including but not limited to: EEO job category and job group data, raw

availability statistics, availability factors, weight factors, labor and recruitment areas, sources of data, and final availability percentage.

[OAR Docket #09-1028; filed 5-21-09]

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

[OAR Docket #09-1082]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Appendix A. Pay Band Schedule [REVOKED]

Appendix A. Pay Band Schedule [NEW]

AUTHORITY:

The Administrator of the Office of Personnel Management; 74 O.S., §§ 840-1.6A and 840-2.16.

COMMENT PERIOD:

February 17, 2009 to March 23, 2009.

PUBLIC HEARING:

March 20, 2009

ADOPTION:

March 24, 2009

SUBMITTED TO GOVERNOR:

March 30, 2009

SUBMITTED TO HOUSE:

March 30, 2009

SUBMITTED TO SENATE:

March 30, 2009

GUBERNATORIAL APPROVAL:

May 6, 2009

LEGISLATIVE APPROVAL:

Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2009.

FINAL ADOPTION:

May 21, 2009

EFFECTIVE:

July 1, 2009

SUPERSEDED EMERGENCY ACTIONS:

Superseded Rules:

Appendix A. Pay Band Schedule [REVOKED]

Appendix A. Pay Band Schedule [NEW]

GUBERNATORIAL APPROVAL:

June 10, 2008

REGISTER PUBLICATION:

25 Ok Reg 2617

DOCKET NUMBER:

08-1187

INCORPORATIONS BY REFERENCE:

None.

ANALYSIS:

The proposed amendments are necessary to assure that the pay band within the Merit Rules is in compliance with the provisions of Title 74 O.S. §840-2.16, which requires the State Employee Minimum Wage Rate to be that of a three-person household as established by the Federal Poverty Guidelines, issued by the United States Department of Health and Human Services. The United States Department of Health and Human Services recently revised the Federal Poverty Guidelines. The proposed amendments to the Pay Band Schedule reflect the revisions of the guidelines.

CONTACT PERSON:

Kara I. Smith, General Counsel, Office of Personnel Management, 2101 N. Lincoln, G-80, Oklahoma City, OK 73105, (405) 522-1736.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

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**FINALLY ADOPTED AS SET FORTH IN 75 O.S.,  
SECTION 308.1(A), WITH AN EFFECTIVE DATE  
OF JULY 1, 2009:**

APPENDIX A. PAY BAND SCHEDULE [REVOKED]

APPENDIX A. PAY BAND SCHEDULE [NEW]

<b>PAY BAND</b>	<b>MINIMUM</b>	<b>MIDPOINT</b>	<b>MAXIMUM</b>
<b>A*</b>	\$18,310	\$18,310	\$22,126
<b>B*</b>	\$18,310	\$18,551	\$23,189
<b>C*</b>	\$18,310	\$19,626	\$24,533
<b>D*</b>	\$18,310	\$21,158	\$26,448
<b>E*</b>	\$18,310	\$23,275	\$29,094
<b>F</b>	\$19,202	\$25,602	\$32,003
<b>G</b>	\$21,122	\$28,163	\$35,204
<b>H</b>	\$23,234	\$30,979	\$38,724
<b>I</b>	\$25,730	\$34,307	\$42,884
<b>J</b>	\$28,288	\$37,717	\$47,146
<b>K</b>	\$30,920	\$41,227	\$51,534
<b>L</b>	\$34,012	\$45,349	\$56,686
<b>M</b>	\$37,752	\$50,336	\$62,920
<b>N</b>	\$41,906	\$55,874	\$69,843
<b>O</b>	\$46,934	\$62,578	\$78,223
<b>P</b>	\$53,056	\$70,714	\$88,393
<b>Q</b>	\$59,930	\$79,907	\$99,884
<b>R</b>	\$67,721	\$90,295	\$112,869
<p><b>*Minimum revised to reflect state employee minimum wage rate (see 74 O.S. 840-2.16)</b></p>			

[OAR Docket #09-1082; filed 5-26-09]

# Permanent Final Adoptions

## TITLE 535. OKLAHOMA STATE BOARD OF PHARMACY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #09-1031]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 5. General Course in Method of Operations

535:1-5-5.1. Complaint confidentiality [AMENDED]

Subchapter 7. Individual Proceedings

535:1-7-2. Serving of notices [AMENDED]

535:1-7-4. Failure to appear or failure to comply [AMENDED]

535:1-7-5. Subpoenas [AMENDED]

535:1-7-7. Final orders [AMENDED]

### AUTHORITY:

Title 51 O.S. 24A et seq., Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.3, 353.5 - 353.7, 353.9, 353.11, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, 353.30; and Title 75 O.S., Section 302, 305, 307, and 309; and Title 63 O.S., Sec 2-201, 2-208 and 2-210; Title 51 Sec. 24 A.5 (3) and Title 59 O.S. Sec. 353.7 (15).

### DATES:

#### Comment period:

February 2, 2009 through March 13, 2009

#### Public hearing:

March 25, 2009

#### Adoption:

March 25, 2009

#### Submitted to Governor:

March 27, 2009

#### Submitted to House:

March 27, 2009

#### Submitted to Senate:

March 27, 2009

#### Gubernatorial approval:

May 04, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

#### Final adoption:

May 20, 2009

#### Effective:

July 1, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

The revisions in 535:1-5-5.1 describe complaint confidentiality, 535:1-7-2 includes changes in the serving of notices, 535:1-7-4 includes language cleanup for failure to appear or failure to comply, 535:1-7-5 subpoenas add "any scheduled" to hearing, all at the recommendation of our Assistant Attorney General. The 535:1-7-7 final orders revision is language cleanup and takes the emergency rule to permanent.

#### CONTACT PERSON:

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy, 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488, Telephone number (405) 521-3815

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2009:**

## SUBCHAPTER 5. GENERAL COURSE IN METHOD OF OPERATIONS

### 535:1-5-5.1. Complaint confidentiality

(a) In order to encourage the public and affected individuals to come forward with complaints regarding registrants and fully share the particulars, the Board will hold all informant or complainant names, addresses or other personal information as confidential and shall not release this information.

(b) The Board shall use all complainant or informant information provided in conducting its investigations. The Board may use this information in cases filed against registrants. ~~However, the confidential information listed in (a) above will be redacted from case files prior to providing the information to the public.~~

(c) Information obtained during an investigation into violations of the Oklahoma Pharmacy Act is not a record as that term is defined in the Oklahoma Open Records Act nor shall such information be subject to subpoena or discovery in any civil or criminal proceeding.

(d) The respondent may acquire information obtained during an investigation, unless the disclosure of such information is otherwise prohibited, except for the investigation report, if the respondent signs a protective order whereby the respondent agrees to use the information solely for the purposes of defense in the Board proceeding and in any appeal there from and agrees not to otherwise disclose the information.

## SUBCHAPTER 7. INDIVIDUAL PROCEEDINGS

### 535:1-7-2. Serving of notices

(a) All notices or other papers requiring service in an individual proceeding shall be served in one of the following manners:

(1) personally by any person appointed to make service by the Director of the Board and in any manner authorized by the law of this State for the personal service of summonses in proceedings in a state court; or,

(2) by certified or registered mail, ~~mailed by the Director of the Board or his designee addressed to the respondent at the last such post office address provided to as he may have filed with the Board of Pharmacy, or if no such address is in the file, at the by respondent or to respondent's attorney last known post office address.~~

(b) ~~Service of notice, shall be complete upon the receipt of the card showing receipt of certified or registered mail or return of the notice by the post office. Such service shall be complete upon the personal service or mailing of the notice or other paper.~~

### 535:1-7-4. Failure to appear or failure to comply

(a) Any ~~respondent defendant or accused~~ who fails to appear as directed, ~~after first having received proper notice~~, may be determined to have waived his right to present a defense to the charges alleged in the complaint and a suspension, revocation or other disciplinary action may be ordered by the Board if it

appears, after having reviewed the evidence, that the violation alleged did in fact occur.

(b) Failure to comply with the Board's order(s) may result in additional sanctions by the Board.

**535:1-7-5. Subpoenas**

(a) **Issuance; serving.** Subpoenas for the attendance of witnesses, and/or for the furnishing of information required by the Board, and/or for the production of evidence or records of any kind shall be issued by the Director of the Board. Subpoenas shall be served, and a return made in any manner prescribed by Oklahoma Administrative Procedures Act (APA), et seq.

(b) **Order to compel.** Upon the failure of any person to obey a subpoena, upon the refusal of any witness to be sworn or make an affirmation or to answer a question put to him in the course of the hearing, the Director of the Board may institute appropriate judicial proceedings under the laws of the State for an order to compel compliance with the subpoena or the giving of testimony, as the case may be. Any scheduled ~~The~~ hearing shall proceed, so far as it is possible, but the Board, in its discretion, at any time may continue the proceedings for such time as may be necessary to secure a final ruling in the compliance proceeding.

**535:1-7-7. Final orders**

All final orders in individual proceedings shall be in writing. The final order shall include findings or fact collected and conclusions of ~~law~~ Law, separately stated. A copy of the final order will be mailed forthwith to each party.

*[OAR Docket #09-1031; filed 5-22-09]*

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

*[OAR Docket #09-1032]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 3. Pharmacists
- 535:10-3-4. Uniform pharmacy continuing education [AMENDED]
- Subchapter 5. Interns, Preceptors and Training Areas
- 535:10-5-1.1. Purpose [AMENDED]
- 535:10-5-1.2. Definitions [AMENDED]
- 535:10-5-3. Intern requirements; licenses [AMENDED]
- 535:10-5-4. Intern practice requirements [AMENDED]
- 535:10-5-5. Intern credit hours; computation [AMENDED]
- 535:10-5-9. Training area requirements [AMENDED]
- 535:10-5-13. Intern file destruction [AMENDED]
- Subchapter 7. Pharmacist Licensure
- 535:10-7-8. Foreign pharmacy graduates licensure applicants [AMENDED]
- Subchapter 11. Pharmacist Administration of Immunizations
- 535:10-11-3. D.Ph. administering of immunization requirements [AMENDED]
- 535:10-11-5. D.Ph. training requirements for administration of immunizations [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.9, 353.11, 353.16A, 353.18, 353.20, 353.22, and 353.24 - 353.26 and 364.

**DATES:**

**Comment period:**

February 2, 2009 through March 13, 2009

**Public hearing:**

March 25, 2009

**Adoption:**

March 25, 2009

**Submitted to Governor:**

March 27, 2009

**Submitted to House:**

March 27, 2009

**Submitted to Senate:**

March 27, 2009

**Gubernatorial approval:**

May 04, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

**Final adoption:**

May 20, 2009

**Effective:**

July 1, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 7. Pharmacist Licensure  
535:10-7-8. Foreign pharmacy graduates licensure applicants [AMENDED]

**Gubernatorial approval:**

December 11, 2008

**Register publication:**

26 Ok Reg 417

**Docket number:**

08-1498

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The rule change in 535:10-3-4 corrects "schools" to "college" of pharmacy. The purpose statement in 535:10-5.1.1 expands on the purpose of the required practical experience requirements. In 535:10-5-1.2 a definition of currently enrolled is added, the definition of Intern is updated regarding currently enrolled, and "school" replaced by "college" in "pro-practice definition. In 535:10-5-3 updated intern requirements, licenses to clarify requirements for practical experience. In 535:10-5-4, 535:10-5-5, 535:10-5-9 and 535:10-5-13 references to "school" is changed to "college" of pharmacy. The revision in 535:10-5-9 corrects "it"s" to "its" to correct grammar. In 535:10-5-13 it adds to transfers "by reciprocity or score transfer". The change in 535:10-7-8 will eliminate the confusion for staff and applicants regarding the foreign pharmacy graduate licensure requirement and will take the emergency rule to permanent.

The revisions in 535:10-11-3 clarify (b), the revision in 535:10-11-5 correct for the change in ACPE's name to Accredited Council for Pharmacy.

**CONTACT PERSON:**

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 3. PHARMACISTS**

## Permanent Final Adoptions

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### 535:10-3-4. Uniform pharmacy continuing education

(a) **Certification.** At the time of annual renewal of registration each pharmacist must certify they have obtained at least 15 clock hours of continuing education credits obtained through satisfactory completion of an accredited program during the previous calendar year.

(b) **Records.** Proof of continuing education is to be maintained by the individual pharmacist for a period of two years from renewal date (submit to the Board only on request).

(c) **Verification forms.** Verification forms of attendance and/or completion of continuing education programs shall be obtained and maintained by the pharmacist.

(d) **Graduate school.** Pharmacists in pharmacy graduate school will be allowed credit for the required fifteen (15) hours continuing education.

(e) **Military personnel.** Military personnel will not be exempt from the continuing education requirement because of the availability of correspondence courses, etc.

(f) **Job credit.** No credit for continuing education will be granted for anything directly connected with a pharmacist's job.

(g) **Journals.** No credit will be allowed for reading, subscribing to or writing articles for various professional and trade journals.

(h) **Meetings.** Credit for individual meetings will have to be submitted to the Committee on Continuing education for credit by the individual pharmacist.

(i) **Prior approval.** Prior approval of programs on continuing education shall be obtained by the program sponsor. Each program must be submitted in its entirety, including all materials, in order to be evaluated by the Continuing education Committee. Continuing education programs sponsored by various drug companies will be acceptable, if the programs are continuing education oriented and not promotional or product oriented.

(j) **Approved programs notice.** Programs approved for credit by the Continuing education Committee and the Board of Pharmacy will be published in the Oklahoma Pharmacist as these programs are approved.

(k) **Schools Colleges of pharmacy.** The two State ~~colleges~~ schools of pharmacy may review the various continuing education programs and make recommendations to the Continuing education Committee.

(l) **American Council on Pharmaceutical Education (ACPE).** The Oklahoma Board accepts ACPE approved continuing education (CE) for CE credit.

(m) **Continuing Education Committee.** The Continuing education Committee will consist of up to six (6) pharmacist members appointed by the Board for a three (3) year minimum term. The committee will meet quarterly or as needed.

(n) **Live Continuing education recommended.** Pharmacists are encouraged to attain three (3) hours or more of live continuing education (CE) each year as part of the fifteen (15) hours required. Live CE is attained in the presence of other pharmacists with a presenter and the possibility of interaction with a peer group.

## SUBCHAPTER 5. INTERNS, PRECEPTORS AND TRAINING AREAS

### 535:10-5-1.1. Purpose

(a) The rules of this subchapter define how pharmacy college students or graduates can obtain the experience required of them under the Oklahoma Pharmacy Act Title 59, Section 353 et seq. in order to be eligible for licensure as a pharmacist.

(b) These rules allow individuals to work as an intern when they are continuously actively enrolled and participating in a PharmD in Pharmacy program to earn the practical experience required for licensure as a pharmacist.

(c) The purpose of an intern license is to allow an registrant to gain the required practical experience, under supervision, to become licensed as a pharmacist.

### 535:10-5-1.2. Definitions

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

**"Currently enrolled"** means a student currently enrolled in a college of pharmacy in a PharmD program and attending classes or pro-practice rotation.

**"Faculty preceptor"** means an Oklahoma licensed pharmacist who is an Oklahoma licensed preceptor employed by a ~~school~~ or college of pharmacy to conduct a pro-practice rotation.

**"Foreign pharmacy graduate intern"** means a graduate of a foreign ~~school~~ or college of pharmacy who has verified NABP FPGEC certification and has received an Oklahoma intern certificate from the Board.

**"Intern" or "Registered Intern"** means a student having completed fifty (50) college hours of credit, with an overall average of not less than "C"; currently enrolled and in good standing attending classes in an accredited college of pharmacy PharmD in Pharmacy program currently approved by the Board; or a graduate of an accredited college of pharmacy currently approved by the Board not otherwise eligible for registration as an intern or pharmacist, except as provided in 535:10-7-8 ~~currently enrolled and in good standing or graduate of an accredited school or college of pharmacy approved by the Board~~ who has received an Oklahoma Intern certificate from the Board.

**"Intern duties"** means those duties that may be performed by a licensed Intern while working in a licensed training area under the supervision of a preceptor. The licensed Intern may do any of the functions of a Pharmacist for which they have been trained with the exception of supervising technicians or any other exceptions noted in Title 535. All intern duties must be performed in compliance with the rules of 535:10-5 and this Title.

**"Intern hours"** means the hours a licensed intern must acquire in order to be eligible for licensure as a pharmacist.

**"Pro-practice" or "college or school pro-practice"** means a structured advance practice rotation administered by the faculty of a college ~~or school~~ of pharmacy.

**535:10-5-3. Intern requirements; licenses**

(a) A registered intern shall be defined as a student having completed fifty (50) college hours of credit, with an overall average of not less than "C", currently enrolled and attending classes and in good standing in an accredited ~~school or~~ college of pharmacy in a PharmD in Pharmacy program, or

(b) a graduate of an accredited ~~school or~~ college of pharmacy not otherwise eligible for registration as an intern or pharmacist, except as provided in 535:10-7-8.

(1) The Board of Pharmacy shall be notified by the Pharmacy ~~Colleges Schools~~ in Oklahoma

(A) when a student is not continuously enrolled in a college of pharmacy ~~school in an accredited Pharmacy program~~; or,

(B) when a pharmacy ~~student's student is not in good standing for~~ overall grade point average is less than "C";

~~(2) C) Then When an intern license or registration is not continuously enrolled and in good standing, as defined in 535:10-5-3(1), the certificate of internship is automatically void- and the~~ The intern shall return such license to the Board.

(2) Such intern may apply for a new intern license when the Board is notified by the college of pharmacy school that the applicant is in good standing ~~in pharmacy school, in a PharmD in Pharmacy program~~ provided the provisions of these regulations have not been violated by the intern.

(3) An intern shall notify the Board when requesting the transfer of intern hours to another state of any intent not to return to Oklahoma; or, within ten (10) days of becoming licensed as a pharmacist in another state.

(4) An intern certificate becomes void five (5) years after date of issuance or at such other date as set by the Board.

**535:10-5-4. Intern practice requirements**

(a) **Supervision requirement.** An intern may practice in an approved training area only under the immediate visual supervision of a preceptor, except as described in 535:10-5-4-(a) (3). See also 535:10-5-2.

(1) A preceptor may supervise only one intern at a time.

(2) A ratio of one (1) faculty preceptor with up to two (2) interns will be allowed in a pro-practice rotation.

(3) Non-dispensing pro-practice rotations are to be supervised by a preceptor, but immediate visual supervision is not required.

(b) **Professional Conduct.** Interns will be held accountable to the rules and violations of professional conduct. The professional conduct rules for interns will be the same as required by 535:10-3-1.1 and 535:10-3-1.2 for pharmacists.

(c) **Employment notification.** All licensed pharmacy interns shall notify the Board of Pharmacy, in writing, of the place of their non-college practice within ten (10) days of going to work and/or termination of this practice location. The pro-practice employment location notification will be the responsibility of the college ~~or school~~ of pharmacy.

**535:10-5-5. Intern credit hours; computation**

(a) **Intern pro-practice hours.** A pharmacy intern pursuing a PharmD degree in an accredited ~~school or~~ college of pharmacy may obtain up to 1,500 intern hours while completing the degree.

(1) Pro-practice hours will be obtained through a board approved ~~school or~~ college of pharmacy professional practice program.

(2) Documentation of pro-practice hours shall be provided to the Board by the ~~school or~~ college of pharmacy on a Board approved form.

(b) **Intern non-college practice hours.** Non-college practice hours will be a learning experience, earned in a pharmacy that is licensed as a training area, under the supervision of licensed preceptor. The preceptor will send a "Preceptor's Intern Progress Report" to the Board (on a form furnished by the Board) every 240 hours or upon termination of the intern.

(c) **Computation of hours.** Computation of hours for credit for an intern shall be on the basis of forty (40) hours for one (1) calendar week's work. Hours gained in excess of forty (40) hours in one calendar week shall not be credited.

**535:10-5-9. Training area requirements**

(a) **Pharmacies.** Any pharmacy desiring approval for the training of interns shall make application to the Board of Pharmacy on a form supplied by the Board. The Board will consider the requirements and qualifications listed in 535:25-3 at a minimum. A pharmacy approved as a training area shall conspicuously display ~~it's~~ its training area certificate in the pharmacy, and be subject to the following provisions:

(1) Such pharmacy shall be subject to inspection by the Board.

(2) Such pharmacy shall agree to furnish the necessary preceptor(s) under whose supervision the intern will be allowed to perform the duties outlined in this Subchapter. The number of interns practicing in a training area is limited to the number of preceptors present and on duty in a training area.

(3) No pharmacy under probation or suspension by the Board shall be approved as a training area. A pharmacy will not be able to continue as a training area under the above conditions. A pharmacy must apply for a new training area certificate and be approved by the Board after completion of probation and/or suspension.

(4) All training areas shall submit reports as required by the Board.

(5) The Board shall set the training area original certification fee.

(6) All training areas shall renew their certification for a fee set by the Board.

(7) Training area renewal certification will be effective January 1, 2000 and expire December 31, 2002, 2005 and every three years thereafter.

(b) **Unique or specific training areas.** Any Oklahoma college ~~or school~~ of pharmacy may apply to the Board for approval of a specific or unique training area. This training area shall be subject to Subsection (a) (1), (2), (4) and (5) of this Section.

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(c) **Changes.** Changes of pharmacy location, name or ownership shall require a new training area certificate.

## 535:10-5-13. Intern file destruction

- (a) An intern file may be destroyed if an intern:
- (1) is dropped from a college of pharmacy school;
  - (2) becomes a licensed pharmacist in any state; or transfers by reciprocity or score transfer to another state; or,
  - (3) license expires.

## SUBCHAPTER 7. PHARMACIST LICENSURE

### 535:10-7-8. Foreign pharmacy graduate licensure applicants

(a) Foreign pharmacy graduate applicants shall meet the requirements set forth in 535:10-7-4, 535:25 and this Subchapter and Title.

(b) Foreign pharmacy graduate applicants, as defined in 535:10-7-2 shall:

- (1) First, submit a copy of applicant's valid NABP FPGEC Certificate to the Board;
- (2) second, apply and be approved for an Oklahoma intern certificate as required by 535:10-5-2; and,
- (3) third, complete 1000 hours of internship in Oklahoma within 12 months of licensure as an Oklahoma intern.

(A) The foreign pharmacy graduate intern and the preceptor shall satisfactorily report these hours on forms supplied by the Board.

(B) The foreign pharmacy graduate intern is subject to all Board rules.

(c) Upon satisfactorily completing the requirements of this section, a foreign pharmacy graduate may make application for ~~(4) the NAPLEX (licensure by examination) as set forth in 535:10-7-5; or,~~

- ~~(2) Reciprocity as set forth in 535:10-7-6; or,~~
- ~~(3) Score transfer as set forth in 535:10-7-7~~

(d) Foreign pharmacy graduates applicants may apply for licensure by reciprocity once they have met the following:

- (1) Successfully complete the NABP FPGEC certificate, and submit a copy to the Board;
- (2) Have passed the NAPLEX Examination; and,
- (3) Have met the requirements in 535:10-7-6.

## SUBCHAPTER 11. PHARMACIST ADMINISTRATION OF IMMUNIZATIONS

### 535:10-11-3. D.Ph. administering of immunization requirements

(a) A D.Ph. must have completed an approved training course and received registration for immunizations with the Board as stated in 535:10-11-4 prior to administering immunizations.

(b) A D.Ph. shall administer immunizations ~~only on the patient specific prescription~~ order of a prescribing practitioner.

(c) The Board will maintain a register of those pharmacists who have been approved for immunizations.

(d) A D.Ph. with immunization registration must maintain ongoing competency through required training, e.g. CPR and continuing education.

### 535:10-11-5. D.Ph. training requirements for administration of immunizations

(a) The following is a list of approved pharmacist training programs for administration of immunizations:

(1) Programs that include training in immunizations offered by the two state colleges of pharmacy:

(A) Southwestern Oklahoma State University (SWOSU) College of Pharmacy

(B) University of Oklahoma (OU) College of Pharmacy

(2) Immunization programs approved by the Accreditation Council for Pharmacy American Council on Pharmaceutical Education (ACPE).

(3) Immunization programs offered by the American Pharmaceutical Association (APHA).

(4) Immunization programs offered by the National Community Pharmacy Association (NCPA).

(5) Immunization programs offered by the American Society of Health System Pharmacists (ASHP).

(b) Each D.Ph must have successfully completed one of these training courses in immunization prior to registering with the Board or administering immunizations prescribed by an Oklahoma licensed prescribing practitioner.

*[OAR Docket #09-1032; filed 5-22-09]*

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

*[OAR Docket #09-1033]*

### RULEMAKING ACTION:

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### RULES:

Subchapter 3. Pharmacies

535:15-3-4.1. Pharmacy licensing requirement [AMENDED]

535:15-3-9. Non-resident pharmacies [AMENDED]

535:15-3-10. Inventory [AMENDED]

535:15-3-13. Pharmacist's responsibility in a pharmacy [AMENDED]

Subchapter 6. Hospital Drug Room

535:15-6-4. Staffing requirements [AMENDED]

535:15-6-11. Administration of drugs to patients [AMENDED]

### AUTHORITY:

Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26 and 354.

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The revision in 535:15-3-4.1 further described the pharmacy licensing requirement, change recommended by our AG liaison. The revision in 535:15-3-9 corrects "OSTAR" to "Oklahoma Control Reporting". The revision in 535:15-3-10 allows a board requested inventory of a pharmacy.

The revision in 535:15-3-13 (d) recommended by Attorney General Liaison cleans up the valid patient practitioner relationship.

The revision in 535:15-6-4 corrects the rules cite to the Oklahoma Health Department rules. The revision in 535:15-6-11 described "administration only" in a hospital drug room.

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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, 2009:**

**SUBCHAPTER 3. PHARMACIES**

**535:15-3-4.1. Pharmacy licensing requirement**

(a) Every pharmacy conducting ~~interstate and/or~~ intrastate transactions in Oklahoma ~~must shall~~ be licensed as required under Title 59, O.S., Section 353.18(A). Every pharmacy shall also be licensed as required by Title 59 O.S. Section 353.18(A) if Oklahoma is the state from which it or to which it delivers, distributes, or dispenses or offers to sale, deliver, distribute, or dispense dangerous drugs, medicines, chemicals or poisons for the treatment or prevention of diseases, excluding agricultural chemicals and drugs.

(b) Every pharmacy shall list the corporate registered agent and address as required on their new and/or renewal application.

(c) Every applicant for pharmacy license issued under Title 59 O.S. Section 353.18 shall fully and completely disclose ownership as required by the Board on their new and/or renewal application.

**535:15-3-9. Non-resident pharmacies**

(a) **Definitions.** "Non-resident pharmacy" means a pharmacy, not located in Oklahoma, that transacts or does business in Oklahoma by soliciting, receiving, dispensing, and/or delivering prescription medications and devices to Oklahoma residents.

(b) **Licensing requirements.** A non-resident pharmacy shall:

- (1) make application and receive an annual non-resident pharmacy license at a fee set by the Board;
- (2) maintain in good standing a pharmacy license in its resident state; and,
- (3) comply with the Oklahoma Secretary of State requirements for conducting business in this state.

(c) **Laws and regulations.** Oklahoma pharmacy laws and regulations shall apply to the practice of pharmacy for the Oklahoma portion of the nonresident pharmacy's practice or operation.

(1) The pharmacist manager (pharmacist in charge (PIC)) and all other pharmacists performing pharmacist-only functions in Oklahoma licensed non-resident pharmacies must be currently licensed in the state in which they are practicing.

(2) The pharmacist manager (PIC) and/or pharmacy owner(s), or partners, or corporate officer(s) shall be responsible for compliance with Oklahoma laws and regulations pertaining to the provisions of receiving, dispensing, and/or delivering prescription medications and devices to Oklahoma residents.

(3) The requirement of 535:15-3-9 (c) and (e) shall apply only to the extent that such requirements are consistent with the laws and rules of the pharmacy's resident state.

(d) **Inspections.** Non-resident pharmacies are subject to inspection as follows:

(1) Oklahoma pharmacy inspectors may conduct on-site periodic routine inspections during reasonable business hours; or

(2) The Oklahoma Board may request copies of the resident state Board of Pharmacy's periodic routine inspection reports.

(e) **Records.** Prescription records documenting prescriptions delivered and distributed to Oklahoma residents shall be identifiable, readily retrievable and available for Board review.

(1) Records must be maintained for not less than five years.

(2) Patient records shall comply with 535:15-3-14.

(3) Schedule II, III, and IV prescription records should be sent to the Oklahoma Control Reporting Schedule Two Abuse Reduction (OSTAR) program as set out in Title 63 of the Oklahoma Statutes.

(f) **Counseling services.** Non-resident pharmacies shall provide an accessible toll-free telephone counseling service with a licensed pharmacist for patient drug inquiries during regular working hours. The counseling provided shall comply with the pharmaceutical care requirements listed in OAC 535:10-9.

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(g) **Prescription integrity.** A pharmacy shall not increase the quantity of a prescription without the authorization of the prescriber.

## 535:15-3-10. Inventory

(a) **Change of ownership or pharmacy manager inventory.** When changing the owner or pharmacy manager, a controlled drug inventory must be taken and sent to the Board within ten (10) days. (It is recommended that both the out-going and in-coming managers sign the inventory). The inventory must indicate the new manager's name and registration number. The inventory should indicate the former manager's name, registration number and current employment, if known.

(b) **Inventory at renewal.** An inventory of all controlled dangerous substances (CDS) must be taken between May 1 and July 1 of each year. A copy of this inventory will be included with the pharmacy renewal application.

(c) **Board requested inventory.** In the case of suspected loss, theft, and/or diversion, a pharmacy may be requested by the Board to conduct an inventory (all, or in part), within ten (10) days and submit a copy to the Board.

## 535:15-3-13. Pharmacist's responsibility in a pharmacy

(a) **Access to drugs.** Only a pharmacist shall be responsible for control and distribution of all drugs.

(1) Only the pharmacist shall be permitted to unlock the pharmacy area or any additional storage areas for dangerous drugs, except in extreme emergency.

(2) An extreme emergency shall be in case of fire, water leak, electrical failure, public disaster or other catastrophe whereby the public is better served by overlooking the safety/security restrictions on drugs.

(3) Prescription medications shall not be left outside the prescription area when the pharmacist is not in attendance.

(b) **Professional judgement.** A pharmacist is required to exercise sound professional judgement with respect to the legitimacy of a prescription. The law does not require a pharmacist to dispense a prescription if the pharmacist doubts its origin or if he believes that the prescription may not have been issued for a legitimate medical purpose.

(c) **Legitimate purpose.** The pharmacy or pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice.

(d) **Valid patient practitioner relationship.** The pharmacy or pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued ~~solely on the basis of an internet based questionnaire, an internet based consultation, or a telephonic consultation~~ without a valid preexisting patient-practitioner relationship.

(e) **Valid prescription drugs.** Only those prescription drugs legal to sell in the United States shall be dispensed. (e.g. FDA approved prescription drugs, or legally compounded

prescription drugs, or drugs in a drug-testing protocol, or other legal prescription drugs.)

## SUBCHAPTER 6. HOSPITAL DRUG ROOM

### 535:15-6-4. Staffing requirements

(a) The PIC shall be assisted by a sufficient number of additional pharmacists (D.Ph.s) to operate such a drug room competently, safely and adequately to meet the needs of the patients of the hospital facility.

(b) Each hospital drug room shall have oversight by a PIC who shall be responsible for certifying that the drug room meets the requirements of the Oklahoma Pharmacy Act and the rules of this Title. The PIC shall notify the Board, in writing, within 10 days of any change of employment.

(c) A drug room supervisor must be assigned as designated in the rules of the Oklahoma Department of Health under OAC 310:667~~557~~-21-2(c) et seq.

### 535:15-6-11. Administration of drugs to patients

(a) **General provisions.** Drugs shall be administered at a hospital facility in accordance with the policies and procedures of that facility.

(b) **Self-Administration.** Self-administration of drugs by patients shall be permitted per hospital policy only when specifically authorized by the prescribing ALI practitioner per hospital policy, provided the drugs to be self administered have been identified by a licensed pharmacist or ALI practitioner.

(c) **Administration only.** The drugs supplied or provided from a drug room shall be for administration only to patients of the hospital. No drugs may be provided to employees nor to individuals who are not patients of the hospital.

*[OAR Docket #09-1033; filed 5-22-09]*

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

*[OAR Docket #09-1036]*

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 10. Good Compounding Practices

Part 1. Good Compounding Practices for Non-sterile Products [NEW]

535:15-10-2. Definitions [AMENDED]

535:15-10-3. Pharmacist responsibilities [AMENDED]

535:15-10-4. Drug compounding facilities [AMENDED]

535:15-10-5. Compounding equipment [AMENDED]

535:15-10-6. Component selection requirements [AMENDED]

535:15-10-7. Control of drug product containers [AMENDED]

535:15-10-8. Drug compounding controls [AMENDED]

535:15-10-8.1. Transfer of compounded prescription [NEW]

535:15-10-8.2. Beyond use dating [NEW]

535:15-10-9. Labeling [AMENDED]

535:15-10-10. Records and reports [AMENDED]

535:15-10-11. Pharmacy generated product requirements [AMENDED]

535:15-10-12. Compounding for a prescriber's office use [AMENDED]

- 535:15-10-13. Compounding veterinarian products [AMENDED]
- 535:15-10-14. Compounding of non-sterile hazardous drugs [NEW]
- 535:15-10-15. Compounding of non-sterile radiopharmaceuticals [NEW]
- Part 3. Good Compounding Practices for Sterile Products [NEW]
- 535:15-10-50. Purpose [NEW]
- 535:15-10-51. Definitions [NEW]
- 535:15-10-52. Pharmacist responsibilities [NEW]
- 535:15-10-53. General requirements [NEW]
- 535:15-10-54. CSP microbial risk levels [NEW]
- 535:15-10-55. Drug compounding facilities [NEW]
- 535:15-10-56. Compounding equipment [NEW]
- 535:15-10-57. Component selection requirements [NEW]
- 535:15-10-58. Control of drug product containers [NEW]
- 535:15-10-59. Drug compounding controls [NEW]
- 535:15-10-60. Transfer of compounded prescription [NEW]
- 535:15-10-61. Beyond-use dating [NEW]
- 535:15-10-62. Labeling [NEW]
- 535:15-10-63. Records and reports [NEW]
- 535:15-10-64. Compounding for institution and/or practitioner administration [NEW]
- 535:15-10-65. Compounding of sterile hazardous drugs [NEW]
- 535:15-10-66. Compounding of sterile radiopharmaceuticals [NEW]
- 535:15-10-67. Compounding of sterile allergen extracts [NEW]
- Appendix A. USP <797> Beyond-Use Date Limits Chart [NEW]

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Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18, 353.20, 353.22, 353.24 - 353.26 and 354.

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The revisions in 535:15-10-1 through 535:15-10-15 for non-sterile and the new language in 535:15-10-50 through 535:15-10-67 for sterile compounding will bring Oklahoma's compounding rules up to federal USP compounding standards.

**Part 1. Good compounding practices for non-sterile products.**

These revisions include 535:15-10-1 purpose, 535:15-10-2 definitions, 535:15-10-3 pharmacist responsibilities, 535:15-10-4 drug compounding facilities, 535:15-10-5 compounding equipment, 535:15-10-6 component selection requirements, 535:15-10-7 control of drug product containers, 535:15-10-8 drug compounding controls, 535:15-10-8.1 transfer of compounded prescription, 535:15-10-8.2 beyond use dating, 535:15-10-9 labeling, 535:15-10-10 records and reports, 535:15-10-11 pharmacy generated product requirements, 535:15-10-12 compounding for a prescriber's office use, 535:15-10-13 compounding veterinarian products, 535:15-10-14 compounding non-sterile hazardous drugs, 535:15-10-15 compounding non-sterile radiopharmaceuticals revised for non-sterile compounding. Rules in Part 1 are for non-sterile products.

**Part 3. Good compounding practices for sterile products.** These new rules add 535:15-10-50 purpose, 535:15-10-51 definitions, 535:15-10-52

pharmacist responsibilities, 535:15-10-53 general requirements, 535:15-10-54 CSP microbial risk levels, 535:15-10-55 drug compounding facilities, 535:15-10-56 compounding equipment, 535:15-10-57 component selection requirements, 535:15-10-58 control of drug product containers, 535:15-10-59 drug compounding controls, 535:15-10-60 transfer of compounded prescription, 535:15-10-61 beyond-use dating, 535:15-10-62 labeling, 535:15-10-63 records and reports, 535:15-10-64 compounding for institution and/or practitioner administration, 535:15-10-65 compounding of sterile hazardous drugs, 535:15-10-66 compounding of sterile radiopharmaceuticals, 535:15-10-67 compounding of sterile allergen extracts. The rules in Part 3 are for sterile products.

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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, 2009:**

**SUBCHAPTER 10. GOOD COMPOUNDING PRACTICES**

**PART 1. GOOD COMPOUNDING PRACTICES FOR NON-STERILE PRODUCTS**

**535:15-10-2. Definitions**

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

**"Beyond-Use Date (BUD)"** means the date and time, as appropriate, after which a compounded preparation is not to be used and is determined from the date the preparation is compounded.

**"Biological Safety Cabinet (BSC)"** means a ventilated cabinet for hazardous drugs, personnel, product, and environmental protection having an open front with inward airflow for personnel protection, downward high-efficiency particulate air (HEPA)-filtered laminar airflow for product protection, and HEPA-filtered exhausted air for environmental protection meeting USP standards.

**"Compounder"** means a compounder is a pharmacist or anyone compounding under the direct supervision of a pharmacist pursuant to a prescription order by a licensed prescriber.

**"Compounding"** means the preparation, mixing, assembling, packaging, and labeling of a drug or device as the result of in accordance with a licensed practitioner's prescription drug order or under an initiative based on the Practitioner/Patient/Pharmacist/Compounder relationship in the course of professional practice.

(A) Compounding may be for the purpose of, or as an incident to, research, teaching, or chemical analysis.

(B) Compounding includes the preparation of Drugs or Devices in anticipation of prescription drug

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orders based on routine, regularly observed prescribing patterns.

(C) Reconstitution of commercial products is not considered compounding for the purposes of this subchapter.

(D) Manipulation of commercial available products according to or beyond the manufacturer's instructions or copying commercially products for the reason of non-availability or component specifications would be considered compounding as pertaining to a practitioner / patient / compounder relationship.

"**Component**" means any ingredient used in the compounding of a drug product, including those that may not appear on the labeling of such a product.

"Hazardous drug" means any drug listed as such by NIOSH and/or any drug identified by at least one of the following six criteria: carcinogenicity, teratogenicity or developmental toxicity, reproductive toxicity in humans, organ toxicity at low doses in humans or animals, genotoxicity, or new drugs that mimic existing hazardous drugs in structure or toxicity.

"Inordinate Amount" means an amount of compounded drug that exceeds the amount a pharmacy anticipates may be used or dispensed before the BUD of the compounded drug and/or is unreasonable considering the intended use of the compounded drug.

"Isolator" means a device that is sealed or is supplied with air through a microbially retentive filtration system (HEPA minimum) and may be reproducibly decontaminated.

"Labeling" means all labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

"Manufacturing" means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance(s) or labeling or re-labeling of its container, and for the promotion and marketing of such drugs or devices. Manufacturing also includes any preparation of a drug or device that is given or sold for resale by pharmacies, practitioners, or other persons. The distribution of inordinate amounts of compounded products without a prescriber/patient/pharmacist relationship is considered manufacturing.

"Personal Protective Equipment (PPE)" means items such as gloves, gowns, respirators, goggles, face shields, and others that protect individual workers from hazardous physical or chemical exposures.

"**Pharmacy Generated Products**" or "**(PGP)**" means a medical product that is prepared, packaged and labeled in a pharmacy that can be sold by the pharmacy without a prescription.

"Preparation" means an article compounded in a licensed pharmacy pursuant to the order of a licensed prescriber.

"Product" means a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the FDA. Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

"USP" means "United States Pharmacopeia"

### 535:15-10-3. Pharmacist responsibilities

(a) All Pharmacists who engage in drug compounding, shall be proficient in compounding and should continually expand their compounding knowledge by participating in seminars and/or studying appropriate literature.

(b) Every pharmacist engaging in drug compounding shall be familiar with all details of ~~Good-USP Compounding Practices Standards~~ and should be familiar with ~~FDAMA~~ related patent regulations.

(c) The pharmacist has the responsibility to:

(1) ensure the validity of all prescriptions

~~(2)~~ certify all prescriptions.

~~(3)~~ approve or reject all components, drug product containers, closures, in-process materials, and labeling.

~~(4)~~ ensure preparations are of acceptable strength, quality, and purity.

~~(5)~~ verify all critical processes to ensure that procedures will consistently result in the expected qualities in the finished preparation.

~~(6)~~ prepare and review all compounding records to assure ensure that no errors have occurred in the compounding process.

~~(7)~~ ensure appropriate stability evaluation is performed or determined from the literature for establishing reliable beyond-use dating.

~~(8)~~ assure ensure the proper maintenance, cleanliness, and use of all equipment used in a prescription compounding practice; and,

~~(9)~~ assure ensure only authorized personnel shall be in the immediate vicinity of the drug compounding operation.

~~(10)~~ perform final check of preparations prior to their release from the pharmacy.

(A) A check for compounding accuracy must ensure accuracy of the label and volumes or quantities of all drugs and solutions

(B) A visual examination procedure must ensure:

(i) Comparison with original order for initial dispensing

(ii) Accuracy of calculations

(iii) Use of proper solutions, additives and equipment

(iv) Labels are complete

(v) Proper assignment of beyond use date and time

(vi) Integrity of the container, including visual defects

(vii) Proper storage

(viii) Absence of particulate matter, precipitates, turbidity, discoloration, evidence of contamination

- or other signs that the preparation should not be used
- (C) The pharmacist shall reject and destroy all preparations that do not pass the final examination.
- (D) Pharmacists shall document final preparation examinations prior to releasing the Compounded Sterile Preparations from the pharmacy.
- (d) The pharmacist-in-charge has the responsibility to ensure that all compounders who compound pharmaceuticals meet all requirements for training, testing and education set forth in these regulations and contained in the regulations set forth in USP standards.
- (1) Competency shall be demonstrated prior to preparing any products for patient use, and
- (2) Whenever the quality assurance program yields unacceptable results, and
- (3) Whenever unacceptable or questionable techniques are observed, and
- (4) Evaluated at least annually.
- (e) **Pharmacist requirements.** Any pharmacist in charge who performs or supervises the preparation of compounded medications shall:
- (1) Have available written policies and procedures for all steps in the compounding of preparations. In addition, said policies and procedures shall address personnel education and training and evaluation, storage and handling, clothing, personal hygiene, hand washing, quality assurance, expiration dating, and other procedures as needed.
- (2) Certify that all participating pharmacists and pharmacy technicians have completed training and testing program in product preparation. Documentation of training and testing shall be available for review.
- (3) Develop policies and procedures to annually test and review the techniques of participating pharmacists and pharmacy technicians.
- (f) Staff will be trained and evaluated according as follows:
- (1) Training is required for any individual who prepares compounded products. This training must be completed before the employee is allowed to prepare compounded products.
- (2) Training may consist of any combination of didactic and experiential methods which must convey proper technique, infection control procedures, etc. required by USP standards.
- (3) A written test shall be administered and passed based on the material referenced above upon initial hire or prior to assignment to prepare compounded products.
- (4) Testing will be conducted annually for every employee involved in product preparation. Compounding personnel who fail written tests shall be immediately re-instructed and reevaluated by expert compounding personnel to ensure correction of all practice deficiencies.
- (5) An "Individual Training Record" shall be maintained for every employee involved in sterile product preparation.
- (6) Nothing in these regulations shall prohibit a licensed student pharmacy intern engaged in experiential classes from assisting a properly qualified pharmacist in

preparing sterile products under that pharmacist's direct supervision.

(7) Complete documentation by a pharmacist of training and testing shall be available for inspection.

(g) **Pharmacy technician requirements.** Pharmacy technicians participating in the preparation of compounded products shall have completed a pharmacist supervised training and testing program in product preparation. Completed documentation by a pharmacist of training and testing shall be available for inspection.

**535:15-10-4. Drug compounding facilities**

(a) Pharmacies engaging in compounding shall have a specifically designated and adequate space for the orderly compounding of prescriptions, including the placement and storage of equipment and materials.

(b) The aseptic processing for sterile products shall be in an area separate and distinct from the area used for the compounding of non-sterile drug products.

(c) The area(s) used for the compounding of drugs shall be maintained in a good state of repair. These area(s) shall also be maintained in a clean and sanitary condition. Adequate washing facilities are to be provided and sewage, trash and other refuse in the compounding area is to be disposed of in a safe, sanitary, and timely manner.

(d) Hazardous drugs shall be prepared within a certified Class II, Type A (exhaust may be discharged to the outdoors) or Class II, Type B (exhaust may be discharged to the outdoors) laminar flow biological safety cabinet. All new construction, and those undergoing renovation requiring the moving of existing hoods used in the preparation of cytotoxic drugs, shall exhaust the hood to the outdoors, unless the Board of Pharmacy grants an exception. Hazardous drug compounding shall have negative pressure to adjacent positive pressure areas, thus providing inward airflow to contain any airborne drug. All vented cabinets shall be vented through HEPA filtration, preferably to outside air or through use of suitable technology or equipment. Ventilation exhaust shall be placed as not to reenter the facility at any point.

(d)e) Bulk drugs and other chemicals or materials used in the compounding of drugs must be stored as directed by the manufacturer, or according to USP monograph requirements, in a clean, dry area, under appropriate temperature conditions (controlled room temperature, refrigerator, or freezer in adequately labeled containers). Bulk drugs shall also be stored such that they are protected from contamination.

(e)f) Adequate lighting and ventilation shall be provided in all compounding areas.

(f)g) Potable water shall be supplied under continuous positive pressure in a plumbing system free of defects that could contribute contamination to any compounded drug product.

(g) These area(s) used for compounding shall be maintained in a clean and sanitary condition.

(h) Purified water must be used for compounding non-sterile drug preparations when formulations indicate the inclusion of water.

(h) If parenteral products are being compounded, the rules in Subchapter 9 must be met.

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### 535:15-10-5. Compounding equipment

- (a) Equipment used in the compounding of drug products shall be of appropriate design and capacity as well as suitably located to facilitate operations for its intended use, cleaning and maintenance.
- (b) Compounding equipment shall be of suitable composition so the surfaces that contact components shall ~~not~~ neither be reactive, additive nor absorptive ~~so as to alter, therefore not affecting or altering~~ the purity of the ~~product~~ compounded preparation.
- (c) Equipment and utensils used for compounding shall be thoroughly cleaned and sanitized immediately prior to promptly after every use to prevent contamination and ~~(d)~~ Equipment and utensils must be stored in a manner to protect them from contamination.
- (d) Defective equipment shall be clearly labeled as such.
- (e) Automated, mechanical, electronic, limited commercial scale manufacturing or testing equipment, and other types of equipment may be used in the compounding of drug products. If such equipment is used, it shall be routinely inspected, calibrated ~~(if as necessary)~~, or checked to ensure proper performance.
- (f) ~~Immediately prior to the initiation of compounding operations, the equipment and utensils must be inspected by the pharmacist and determined to be suitable for use.~~
- (g) ~~When drug products with special precautions (antibiotics, and hazardous materials and radiopharmaceuticals) are involved, appropriate measures must be utilized in order to prevent cross-contamination and proper disposal procedures must be followed. These measures include either the dedication of equipment for such operations or the meticulous cleaning of equipment prior to its use for the preparation of other drugs. Equipment dedicated for specific use (i.e. penicillin) shall be clearly designated as such.~~

### 535:15-10-6. Component selection requirements

- (a) ~~The Pharmacist—~~pharmacist shall first attempt to use USP-NF drug substances and inactive components for compounding that have been made in an FDA ~~inspected~~ registered facility.
- (b) If components are not obtainable from an FDA ~~inspected~~ registered facility or if the FDA and/or the company cannot document FDA ~~inspection~~ registration, pharmacists compounding prescriptions shall use their professional judgment in first receiving, storing or using drug components that meet official compendia requirements or another high quality source.
- (c) If components of compendial quality are not obtainable, components of high quality such as those that are chemically pure, analytical reagent grade, American Chemical Society-certified, or Food Chemicals Codex grade may be used.
- (d) Components shall be stored off the floor, handled and stored to prevent contamination, and rotated so that the oldest stock is used first.

### 535:15-10-7. Control of drug product containers

- (a) Drug product containers and closures shall be handled and stored in a manner to prevent contamination and to permit inspection and cleaning of the work area.
- (b) Containers and closures shall be of suitable material as to not alter the compounded drug as to quality, strength or purity of the compounded preparation.

### 535:15-10-8. Drug compounding controls

- (a) There shall be written procedures for the compounding of drug products to assure that the finished products have the identity, strength, quality and purity they purport ~~or are represented to have possess.~~ These procedures should be available in either written form or electronically stored with printable documentation.
- (b) The objective of the documentation is to allow another compounder to reproduce an equivalent prescription at a future date.
- (b) ~~(c)~~ Procedures shall include a listing of the components, their amounts (in weight or volume), the order of component mixing, and a description of the compounding process.
- (c) ~~(e)~~ In addition, All—~~all~~ equipment and utensils and the container/closure system, relevant to the sterility and stability of the intended use of the drug shall be listed.
- (d) These written procedures shall be followed in the execution of the compounding procedure and are designed to enable a compounder, whenever, necessary, to systematically trace, evaluate, and replicate the steps included throughout the preparation process of a compounded preparation.
- (e) Components shall be accurately weighed, measured, ~~or~~ and subdivided as appropriate. These operations should be checked and rechecked by the compounding pharmacist at each stage of the process to ensure that each weight and measure is correct as stated in the written compounding procedures.
- (f) Written procedures shall be established and followed that describe the tests or examinations to be conducted on the product compounded (e.g., degree of weight variation among capsules) to assure reasonable uniformity and integrity of compounded drug ~~products~~ preparations. Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90% and not more than 110% of the theoretically calculated and labeled quantity of active ingredient per unit weight or volume and not less than 90% and not more than 110% of the theoretically calculated weight or volume per unit of the preparation.
- (1) Such control procedures shall be established to monitor the output and to validate the performance of those compounding processes that may be responsible for causing variability in the final drug product.
- (2) ~~Such control~~ These procedures shall include, but are not limited to, the following (where appropriate):
- (A) Capsule weight variation to ensure that each unit shall be not less than 90% and not more than 110% of the theoretically calculated weight for each unit;
- (B) Adequacy of mixing to assure uniformity and homogeneity;

(C) Clarity, completeness or pH of solutions.

(2) The compounder shall label any excess compounded products so as to reference them to the formula used, the assigned batch number, and beyond use date based on the compounder's appropriate testing, published data, or USP-NF standard.

~~(g) Appropriate written procedures designed to prevent microbiological contamination of compounded drug products purporting to be sterile shall be established and followed. Such procedures shall include validation of any sterilization process.~~

~~(h) Beyond use dates and storage requirements (e.g., refrigeration) should be established. The U.S.P. NF Guidelines should be used.~~

~~(g) Material safety data sheet (MSDS) files should be easily accessible.~~

**(h) General requirements:**

(1) Compounding a drug product that is commercially available in the marketplace or that is essentially a copy of an available FDA-approved drug product is generally prohibited unless patient therapy is compromised.

(2) However, in special circumstances a pharmacist may compound an appropriate quantity of a drug that is different from an FDA-approved drug that is commercially available based on documentation provided by the prescribing physician of a patient specific medical need (e.g. the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available.

(A) The unavailability of such drug product must be documented prior to compounding.

(B) This or similar documentation must be available when requested by the Board.

(3) Except for those products where stability prohibits advanced compounding, all products dispensed by the pharmacy shall be in a form ready for administration, except in health care facilities where medications may be provided as demanded by policies and procedures.

**535:15-10-8.1. Transfer of compounded prescriptions**

(a) If a patient requests a transfer of their prescription, a copy of the original prescription shall be transmitted upon the request of the receiving pharmacist.

(b) The information included in the transfer of the prescription shall include:

(1) Active ingredient(s),

(2) Concentration,

(3) Dosage Form e.g. capsule, cream, suspension, injectable, etc.

(4) Route of delivery e.g. oral, injectable, topical, vaginal, etc.

(5) Delivery mechanism e.g. topical, transdermal, immediate release, sublingual, etc.

(6) Dosing Duration e.g. Q12H, Q24H, Q72H, etc.

(7) Details about the compounding procedure must be reasonably available from the transferring pharmacy.

**535:15-10-8.2. Beyond-use dating**

(a) Pharmacies engaging in compounding shall assign every compounded preparation an appropriate beyond-use date.

(b) Beyond-use dates may be assigned based on criteria different from those applied to assigning expiration dates to manufactured drug products.

(c) BUD dates are to be assigned conservatively, and should be based on the following USP-NF standards:

(1) For Non-aqueous liquids and solid formulations

(A) Where the manufactured drug product is the source of active Ingredient - The beyond-use date is not later than 25% of the time remaining until the product's expiration date or 6 months, whichever is earlier.

(B) Where a USP of NF substance is the source of active ingredient - the beyond-use date is not later than 6 months for

(i) Water-containing formulations (prepared from ingredients in solid form) - the beyond-use date is not later than 14 days for liquid preparations when stored at cold temperatures between 2° and 8°C (36° and 46° F).

(ii) All other formulations - The beyond-use date is not later than the intended duration of therapy or 30 days, whichever is earlier.

(2) The USP-NF standards listed above may be exceeded when there is supporting scientific stability information that is directly applicable to the specific preparation (i.e., the same drug concentration range, pH, excipients, vehicle, water content, etc.)

(3) Information to be considered when assigning a beyond-use date includes chemical, physical and microbiological stability; nature of the drug, its chemical degradation mechanism, the container in which it is packaged, expected storage conditions, and the intended duration of therapy.

**535:15-10-9. Labeling**

(a) If a component is transferred from the original container to another (e.g., a powder is taken from the original container, weighed, placed in a container, and stored in another container) the new container shall be identified with the:

(1) Component name,

(2) Lot and expiration date BUD if available,

(3) Strength and/or concentration, and;

(4) Weight or measure

(b) Products prepared in anticipation of a prescription prior to receiving a valid prescription should not be an inordinate amount.

(1) A regularly used amount should be prepared based on a history of prescriptions filled by the pharmacy.

(2) These products shall be labeled or documentation referenced with the:

(A) Complete list of ingredients or preparation name and reference,

(B) Preparation date,

(C) Assigned beyond-use date:

(i) Based on published data, or;

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- (ii) Appropriate testing, or;
- (iii) USP-NF standards.

(D) Specific storage under conditions dictated by its composition and stability e.g., in a clean, dry place or in the refrigerator shall be specified (refrigerator, freezer etc), except where clean dry area is dictated, and;

(E) Batch or lot number.

(c) Upon the completion of the drug preparation operation, the pharmacist shall examine the product for correct labeling.

(d) The containers and closures shall be of suitable material so as not to alter the quality, strength, or purity of the compounded drug.

(e) The outpatient prescription label shall contain the following:

- (1) Patient name,
- (2) Prescriber's name,
- (3) Name & address of pharmacy,
- (4) Directions for use,
- (5) Date filled,
- (6) Beyond use date & storage (may be auxiliary labels), and;
- (7) An appropriate designation that this is a compounded prescription, such as "Compounded Rx".

## 535:15-10-10. Records and reports

(a) Any procedures or other records required to comply with USP Compounding Standards ~~Good Compounding Practices~~ shall be retained for the same period of time as required for retention of prescription records; and copies of such records, shall be readily available for authorized inspection.

~~(b) All records required to be retained under Good Compounding Practices, or copies of such records, shall be readily available for authorized inspection.~~

~~(e-b)~~ Computer information and the hard copy of the prescription should indicate that the prescription is to be compounded.

~~(d-c)~~ Adequate records must be kept of controlled dangerous substances (Scheduled drugs) used in compounding.

## 535:15-10-11. Pharmacy generated product requirements

(a) A Pharmacy Generated Product (PGP) ~~may~~ be if prepared from RX Only drugs, not to may not exceed recommended OTC strengths and doses.

(b) PGP will be labeled properly and will be sold with the public's health and welfare in mind.

(c) Compounded PGP's are to be sold directly to the consumer after professional interaction or consultation with the health care provider and the consumer.

(d) A PGP cannot be bulk compounded to sell to a second entity for resale. This would require a manufacturer's license.

## 535:15-10-12. Compounding for a prescriber's office use

(a) Pharmacies engaging in compounding may prepare compounded drug ~~products~~ preparations for a licensed prescriber's office use.

(b) An order by the licensed prescriber indicating the formula and quantity ordered will be filed in the pharmacy.

(c) The ~~product~~ preparation is to be administered in the office and not dispensed to the patient. The preparation label should state "for office use only-not for resale".

~~(d)~~ An invoice shall be kept on file by the pharmacy. This invoice shall include, but not be limited to, the name and address of purchaser, quantity sold, drug description, price, and date of transaction. These invoices must be readily available for inspection. A drug supplier permit is required per OAC 535:15-7.

~~(d-e)~~ A record of the compounded drug ~~product~~ may be kept as a prescription record in the pharmacy computer and

~~(e)~~ A label may be generated and a number assigned by the pharmacy computer for the compounded drug product.

(f) Under Oklahoma Bureau of Narcotics rules [475:30-1-3 (b) et seq.], a prescription for controlled dangerous substances cannot be filled "for office or medical bag use".

(g) Compounded preparations may not be given or sold for resale by practitioners or other persons.

## 535:15-10-13. Compounding veterinarian products

(a) Prescriptions for animals may be compounded based on an order or prescription from a licensed prescriber. Compounding for office use for administration by veterinarians is allowed.

(b) These prescriptions are to be handled and filled the same as the human prescriptions.

(c) The preparation is to be administered by a veterinarian and not dispensed to the patient. The preparation label should state "for office use only-not for resale".

~~(e-d)~~ Caution should be taken as to not violate federal patent laws by duplicating an available product in inordinate quantities.

(e) An invoice shall be kept on file by the pharmacy. This invoice shall include, but not be limited to, the name and address of purchaser, quantity sold, drug description, price, and date of transaction. These invoices must be readily available for inspection. A drug supplier permit is required per OAC 535:15-7.

~~(d-f)~~ Under Oklahoma Bureau of Narcotics rules [475:30-1-3 (b) et seq.], a prescription for controlled dangerous substances cannot be filled "for office or medical bag use".

(g) Compounding with bulk chemicals for food-producing animals is not permitted.

## 535:15-10-14. Compounding of non-sterile hazardous drugs

Pharmacies engaging in compounding of hazardous drugs shall be responsible for meeting the following criteria:

- (1) Non-sterile hazardous drugs shall include the NIOSH list of hazardous drugs as well as any individual

products named per each individual pharmacy by referencing MSDS sheets or any other reference relating to above definition.

(2) Exposure control shall begin when hazardous drugs enter the facility. The PIC shall be responsible to confirm that medical products have labeling on the outer container that can be understood by all workers who will be separating hazardous from nonhazardous drugs.

(3) All employees must wear PPE when opening containers to unpack hazardous drugs. Employees must also wear chemotherapy gloves to prevent contamination when transporting the drug to the work area.

(4) Hazardous drugs must be stored separately from other drugs, as recommended by current ASHP guidelines on handling hazardous drugs. Hazardous drugs must be stored and transported in closed containers that minimize the risk of breakage.

(5) Pharmacies and pharmacist shall make sure the storage area has sufficient general exhaust ventilation to dilute and remove any airborne contaminants. Use a ventilated cabinet designed to reduce worker exposures while preparing hazardous drugs. When asepsis is not required, a Class I BSC, powder containment hood or an isolator intended for containment applications may be sufficient. Do not use a ventilated cabinet that re-circulates air inside the cabinet or exhausts air back into the room environment unless the hazardous drug(s) in use will not volatilize while they are being handled or after they are captured by the HEPA filter.

(6) Staff should be fully trained and procedures established for their particular equipment and unique workplace setting.

(7) All staff shall wear PPE while working with hazardous drugs.

(8) Mix, prepare, and otherwise manipulate, count, crush, compound powders, or pour liquid hazardous drugs inside a ventilated cabinet designed to prevent hazardous drugs from being released into the work environment.

(9) Do not use supplemental engineering or process controls (such as needleless systems, glove bags and closed-system drug transfer devices) as a substitution for ventilated cabinets, even though such controls may reduce the potential for exposure when preparing and administering hazardous drugs.

(10) Use a high-efficiency particulate air filter (HEPA filter) for the exhaust from these controls.

(11) When drug preparation is complete, seal the final product in a plastic bag or other sealable container for transport before taking it out of the ventilated cabinet.

(12) Wash hands with soap and water immediately before donning and after removing gloves.

(13) Develop a written safety plan for all routine maintenance activities performed on equipment that could be contaminated with hazardous drugs.

(14) Manage hazardous drug spills according to policies and procedures for each workplace according to size of spill, possible spreading etc. Locate spill kits and other

cleanup materials in the immediate area where exposures may occur.

(15) Consider a medical surveillance program or allow workers to have routine medical care.

**535:15-10-15. Compounding of non-sterile radiopharmaceuticals**

(a) The unique circumstances and requirements for radiopharmaceutical preparations necessitate specific stipulations that must not only satisfy pharmaceutical drug quality, but also consider crucial radiation safety concerns to operators. Facility design and variation in certain chapter standards may be required and shall be documented with supporting evidence upon request.

(b) Radiopharmaceuticals prepared for oral administration shall be designated as, and conform to, the standards for non-sterile preparations. Any variation in certain chapter standards may be required to meet radiation safety concerns to operators and shall be documented with supporting evidence upon request.

**PART 3. GOOD COMPOUNDING PRACTICES FOR STERILE PRODUCTS**

**535:15-10-50. Purpose**

(a) The objective of this chapter is to describe conditions and practices to prevent harm, including death, to patients that could result from (1) microbial contamination (non-sterility), (2) excessive bacterial endotoxins, (3) variability in the intended strength of correct ingredients that exceeds either monograph limits for official articles or 10% for nonofficial articles, (4) unintended chemical and physical contaminants, and (5) ingredients of inappropriate quality in compounded sterile preparations (CSPs). Contaminated CSPs are potentially most hazardous to patients when administered into body cavities, central nervous and vascular systems, eyes, and joints, and when used as baths for live organs and tissues. When CSPs contain excessive bacterial endotoxins they are potentially most hazardous to patients when administered into the central nervous system.

(b) To achieve the above five conditions and practices, this chapter provides minimum practice and quality standards for CSPs of drugs and nutrients based on current scientific information and best sterile compounding practices. The use of technologies, techniques, materials, and procedures other than those described in this chapter is not prohibited so long as they have been proven to be equivalent or superior with statistical significance to those described herein. The standards in this chapter do not pertain to the clinical administration of CSPs to patients via application, implantation, infusion, inhalation, injection, insertion, instillation, and irrigation, which are the routes of administration. Four specific categories of CSPs are described in this chapter: low-risk level, medium-risk level, and high-risk level, and immediate use. For the purposes of this chapter, CSPs include, but are not limited to the following:

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(1) Compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals, including but not limited to the following dosage forms that must be sterile when they are administered to patients: aqueous bronchial and nasal inhalations, baths and soaks for live organs and tissues, injections (e.g., colloidal dispersions, emulsions, solutions, suspensions), irrigations for wounds and body cavities, ophthalmic drops and ointments, and tissue implants.

(2) Manufactured sterile products prepared according to the instructions in manufacturers' approved labeling. Product package inserts usually refer to aseptic technique, but do not usually describe environmental quality controls, storage, or BUD and times for radiopharmaceuticals.

(c) All personnel who prepare CSPs shall be responsible for understanding these fundamental practices and precautions, for developing and implementing appropriate procedures, and for continually evaluating these procedures and the quality of final CSPs to prevent harm.

### **535:15-10-51. Definitions**

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

"ACPH" means "air changes per hour".

"ALARA" means "as low as reasonably achievable".

"Ante-Area" means an ISO Class 8 or better area where personnel hand hygiene and garbing procedures, staging of components, order entry, CSP labeling, and other high-particulate generating activities are performed. It is also a transition area that (1) provides assurance that pressure relationships are constantly maintained so that air flows from clean to dirty areas and (2) reduces the need for the heating, ventilating, and air-conditioning (HVAC) control system to respond to large disturbances.

"Beyond-use date (BUD)" means the date and time, as appropriate, after which a compounded preparation is not to be used and is determined from the date the preparation is compounded.

"Biological Safety Cabinet (BSC)" means a ventilated cabinet for CSPs, personnel, product, and environmental protection having an open front with inward airflow for personnel protection, downward high-efficiency particulate air (HEPA)-filtered laminar airflow for product protection, and HEPA-filtered exhausted air for environmental protection.

"Buffer Area" means an ISO Class 7 or better area where the primary engineering control (PEC) is physically located. Activities that occur in this area include the staging of components and supplies used when compounding CSPs.

"Clean Room" means an ISO Class 5 or better room in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class. Microorganisms in the environment are monitored so that a microbial level for air, surface, and personnel gear are not exceeded for a specified cleanliness class.

"Component" means any ingredient used in the compounding of a drug product, including those that may not appear on the labeling of such a product.

"Compounder" is a pharmacist or anyone compounding under the direct supervision of a pharmacist pursuant to a prescription order by a licensed prescriber.

"Compounding" means the preparation, mixing, assembling, packaging, and labeling of a drug or device in accordance with a licensed practitioner's prescription drug order under an initiative based on the Practitioner/Patient/Pharmacist relationship in the course of professional practice.

(A) Compounding may be for the purpose of, or as an incident to, research, teaching, or chemical analysis.

(B) Compounding includes the preparation of Drugs or Devices in anticipation of Prescription Drug Orders based on routine, regularly observed prescribing patterns.

(C) Reconstitution of commercial products is not considered compounding for the purposes of this subchapter.

(D) Manipulation of commercial available products according to or beyond the manufacturer's instructions or copying commercial products for the reason of non-availability or component specifications would be considered compounding as pertaining to a practitioner / patient / compounder relationship.

"Compounding Aseptic Containment Isolator (CACI)" means a compounding aseptic isolator (CAI) designed to provide worker protection from exposure to undesirable levels of airborne drug throughout the compounding and material transfer processes and to provide an aseptic environment for compounding sterile preparations. Air exchange with the surrounding environment should not occur unless the air is first passed through a microbial retentive filter (HEPA minimum) system capable of containing airborne concentrations of the physical size and state of the drug being compounded. Where volatile hazardous drugs are prepared, the exhaust air from the isolator should be appropriately removed by properly designed building ventilation.

"Compounding Aseptic Isolator (CAI)" means a form of isolator specifically designed for compounding pharmaceutical ingredients or preparations. It is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment should not occur unless the air has first passed through a microbially retentive filter (HEPA minimum).<sup>2</sup>

"Critical Site" means a location that includes any component or fluid pathway surfaces (e.g., vial septa, injection ports, beakers) or openings (e.g., opened ampuls, needle hubs) exposed and at risk of direct contact with air (e.g., ambient room or HEPA filtered), moisture (e.g., oral and mucosal secretions), or touch contamination. Risk of microbial particulate contamination of the critical site increases with the size of the openings and exposure time.

"CSP" means "Compounded Sterile Preparation"

"CSTD" means "Closed-System Vial-Transfer Device"

"FDA" means the federal "Food and Drug Administration"

**"Hazardous drug"** means any drug listed as such by NIOSH and/or any drug identified by at least one of the following six criteria: carcinogenicity, teratogenicity or developmental toxicity, reproductive toxicity in humans, organ toxicity at low doses in humans or animals, genotoxicity, or new drugs that mimic existing hazardous drugs in structure or toxicity.

**"HEPA"** means "High Efficiency Particulate Air"

**"Immediate Use"** means "administration begins not later than 1 hour following the start of the compounding procedure".

**"Inordinate Amount"** means an amount of compounded drug that exceeds the amount a pharmacy anticipates may be used or dispensed before the BUD of the compounded drug and is unreasonable considering the intended use of the compounded drug.

**"ISO"** means "International Organization for Standardization"

**"ISO 5"** means air containing no more than 100 P/ft<sup>3</sup> of air of a size at least 0.5 micron or larger in diameter (3520 P/m<sup>3</sup>), formerly FS209e Class 100.

**"ISO 7"** means air containing no more than 10,000 P/ft<sup>3</sup> of air of a size at least 0.5 micron or larger in diameter (352,000 P/m<sup>3</sup>), formerly FS209e Class 10,000.

**"ISO 8"** means air containing no more than 100,000 P/ft<sup>3</sup> of air of a size at least 0.5 micron or larger in diameter (3,520,000 P/m<sup>3</sup>), formerly FS209e Class 100,000.

**"Isolator"** means a device that is sealed or is supplied with air through a microbially retentive filtration system (HEPA minimum) and may be reproducibly decontaminated.

**"Labeling"** means a term that designates all labels and other written, printed, or graphic matter on an immediate container of an article or preparation or on, or in, any package or wrapper in which it is enclosed, except any outer shipping container. The term "label" designates that part of the labeling on the immediate container.

**"LAFW"** means "Laminar Airflow Workbench"

**"Manufacturing"** means the production, propagation, conversion, or processing of a drug or device, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance(s) or labeling or re-labeling of its container, for the promotion and marketing of such drugs or devices. Manufacturing also includes any preparation of a drug or device that is given or sold for resale by pharmacies, practitioners, or other persons. The distribution of inordinate amounts of compounded products without a prescriber/patient/pharmacist relationship is considered manufacturing.

**"MDV"** means "Multiple Dose Vial"

**"Media-Fill Test"** means a test used to qualify aseptic technique of compounding personnel or processes and to ensure that the processes used are able to produce sterile product without microbial contamination. During this test, a microbiological growth medium such as Soybean-Casein Digest Medium is substituted for the actual drug product to simulate admixture compounding.<sup>3</sup> The issues to consider in the development of a media-fill test are media-fill procedures, media selection, fill volume, incubation, time and temperature,

inspection of filled units, documentation, interpretation of results, and possible corrective actions required.

**"Multiple-Dose Container"** means a multiple-unit container for articles or preparations intended for parenteral administration only and usually containing antimicrobial preservatives.

**"Negative Pressure Room"** means a room that is at a lower pressure than the adjacent spaces and therefore, the net flow of air is into the room.

**"NIOSH"** means "National Institute for Occupational Safety and Health"

**"PEC"** means "Primary Engineering Control"

**"PET"** means "Positron Emission Tomography"

**"Personal Protective Equipment (PPE)"** items such as gloves, gowns, respirators, goggles, face shields, and others that protect individual workers from hazardous physical or chemical exposures.

**"Primary Engineering Control (PEC)"** means a device or room that provides an ISO Class 5 environment for the exposure of critical sites when compounding CSPs. Such devices include, but may not be limited to, laminar airflow workbenches (LAFWs), biological safety cabinets (BSCs), compounding aseptic isolators (CAIs), and compounding aseptic containment isolators (CACIs).

**"Preparation"** means an article compounded in a licensed pharmacy pursuant to the order of a licensed prescriber; the article may or may not contain sterile products.

**"Product"** means a commercially manufactured drug or nutrient that has been evaluated for safety and efficacy by the FDA. Products are accompanied by full prescribing information, which is commonly known as the FDA-approved manufacturer's labeling or product package insert.

**"Positive Pressure Room"** means a room that is at a higher pressure than the adjacent spaces and, therefore, the net airflow is out of the room.

**"Single-dose container"** means a single-dose, or a single-unit, container for articles or preparations intended for parenteral administration only. It is intended for a single use. A single-dose container is labeled as such. Examples of single-dose containers include prefilled syringes, cartridges, fusion-sealed containers, and closure-sealed containers when so labeled.

**"Segregated Compounding Area"** means a designated space, either a demarcated area or room, that is restricted to preparing low-risk level CSPs with 12-hour or less BUD. Such area shall contain a device that provides unidirectional airflow of ISO Class 5 air quality for preparation of CSPs and shall be void of activities and materials that are extraneous to sterile compounding.

**"Terminal Sterilization"** means the application of a lethal process (e.g., steam under pressure or autoclaving) to sealed containers for the purpose of achieving a predetermined sterility assurance level of usually less than 10<sup>-6</sup>, or a probability of less than one in one million of a non-sterile unit.

**"Unidirectional Flow"** means airflow moving in a single direction in a robust and uniform manner and at sufficient speed to reproducibly sweep particles away from the critical processing or testing area.

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"USP" means "United States Pharmacopeia"

### **535:15-10-52. Pharmacist responsibilities**

(a) All Pharmacists who engage in drug compounding, shall be proficient in compounding and should continually expand their compounding knowledge by participating in seminars and/or studying appropriate literature.

(b) Every pharmacist engaging in drug compounding must be familiar with all details of USP Compounding Standards.

(c) The pharmacist has the responsibility to:

- (1) ensure the validity of all prescriptions
- (2) certify all prescriptions.
- (3) approve or reject all components, drug product containers, closures, in-process materials, and labeling.
- (4) ensure preparations are of acceptable strength, quality, and purity.
- (5) verify all critical processes to ensure that procedures will consistently result in the expected qualities in the finished preparation.
- (6) prepare and review all compounding records to ensure that no errors have occurred in the compounding process.
- (7) ensure appropriate stability evaluation is performed or determined from the literature for establishing reliable beyond-use dating.
- (8) ensure the proper maintenance, cleanliness, and use of all equipment used in a prescription compounding practice; and,
- (9) ensure only authorized personnel shall be in the immediate vicinity of the drug compounding operation.
- (10) perform final check of preparations prior to their release from the pharmacy.

(A) A check for compounding accuracy must ensure accuracy of the label and volumes or quantities of all drugs and solutions

(B) A visual examination procedure must ensure:

- (i) Comparison with original order for initial dispensing
- (ii) Accuracy of calculations
- (iii) Use of proper solutions, additives and equipment
- (iv) Labels are complete
- (v) Proper assignment of beyond use date and time
- (vi) Integrity of the container, including visual defects
- (vii) Proper storage
- (viii) Absence of particulate matter, precipitates, turbidity, discoloration, evidence of contamination or other signs that the preparation should not be used.

(C) The pharmacist shall reject and destroy all preparations that do not pass the final examination.

(D) Pharmacists shall document final preparation examinations prior to releasing the Compounded Sterile Preparations from the pharmacy.

(d) The pharmacist-in-charge has the responsibility to ensure that all compounders who compound sterile pharmaceuticals meet all requirements for training, testing and education set forth in these regulations and contained in the regulations set forth in USP standards.

(1) Competency shall be demonstrated prior to preparing any sterile products for patient use, and

(2) Whenever the quality assurance program yields unacceptable results, and

(3) Whenever unacceptable or questionable techniques are observed, and

(4) Evaluated at least annually.

(e) Pharmacist requirements. Any pharmacist in charge who performs or supervises the preparation or sterilization of sterile medications shall:

(1) Have available written policies and procedures for all steps in the compounding of preparations. In addition, said policies and procedures shall address personnel education and training and evaluation, storage and handling, clothing, personal hygiene, hand washing, aseptic technique, quality assurance, expiration dating, and other procedures as needed.

(2) Certify that all participating pharmacists and pharmacy technicians have completed training and testing program in sterile product preparation. Documentation of training and testing shall be available for review.

(3) Develop policies and procedures to annually test and review the techniques of participating pharmacists and pharmacy technicians to assure adherence to aseptic procedures.

(f) Staff will be trained and evaluated according as follows:

(1) Training is required for any individual who prepares sterile products. This training must be completed before the employee is allowed to prepare sterile products.

(2) Training may consist of any combination of didactic and experiential methods which must convey proper technique, infection control procedures, etc. required by USP standards.

(3) A written test shall be administered and passed based on the material referenced above upon initial hire or prior to assignment to prepare sterile products.

(4) Media-fill challenge tests will be used to evaluate sterile technique.

(5) Results of the media challenge tests shall be documented and logged.

(6) End product testing that results in a failure will result in a review of the aseptic technique of the individual involved.

(7) Testing involving media challenge tests will be conducted annually for every employee involved in sterile product preparation. Semiannual testing will be conducted for personnel involved in high-risk level compounding. Compounding personnel who fail written tests or whose media-fill test vials result in gross microbial colonization shall be immediately instructed and reevaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies.

(8) Glove fingertip sampling using processes compliant with the most current USP-required procedures shall be used to evaluate competency of personnel in performing hand hygiene and garbing procedures initially and at least annually.

(9) An "Individual Training Record" shall be maintained for every employee involved in sterile product preparation.

(10) Nothing in these regulations shall prohibit a licensed student pharmacy intern engaged in experiential classes from assisting a properly qualified pharmacist in preparing sterile products under that pharmacist's direct supervision.

(11) Complete documentation by a pharmacist of training and testing shall be available for inspection.

(g) **Pharmacy technician requirements.** Pharmacy technicians participating in the preparation of sterile products shall have completed a pharmacist supervised training and testing program in sterile product preparation. Completed documentation by a pharmacist of training and testing shall be available for inspection.

**535:15-10-53. General requirements**

(a) Compounding a drug product that is commercially available in the marketplace or that is essentially a copy of an available FDA-approved drug product is generally prohibited unless patient therapy is compromised.

(b) However, in special circumstances a pharmacist may compound an appropriate quantity of a drug that is different from an FDA-approved drug that is commercially available based on documentation provided by the prescribing physician of a patient specific medical need (e.g. the physician requests an alternate product due to hypersensitivity to excipients or preservative in the FDA-approved product, or the physician requests an effective alternate dosage form) or if the drug product is not commercially available.

(1) The unavailability of such drug product must be documented prior to compounding.

(2) This or similar documentation must be available when requested by the Board.

(c) Except for those products where stability prohibits advanced compounding, all products dispensed by the pharmacy shall be in a form ready for administration, except in health care facilities where medications may be provided as demanded by policies and procedures.

**535:15-10-54. CSP microbial contamination risk levels**

(a) **Sterile products.** Pharmacies and pharmacists dispensing sterile products shall comply with all applicable federal, state, and local law and regulation concerning pharmacy. If the PEC (primary engineering control) is a compounding aseptic isolator that does not meet the environmental requirements described in USP <797> or is a laminar air-flow workbench (LAFW) or a biological safety cabinet (BSC) that cannot be located within an ISO Class 7 buffer area, then only low-risk level nonhazardous CSPs pursuant to a physician's order for a specific patient may be prepared, and administration of such

CSPs shall commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. Low-risk level CSPs with a 12-hour or less BUD shall meet all of the following criteria:

(1) PECs (LAFWs, BSCs, CAIs, CACIs,) shall be certified and maintain ISO Class 5 as described in USP <797> for exposure of critical sites and shall be in a segregated compounding area restricted to sterile compounding activities that minimize the risk of CSP contamination.

(2) The segregated compounding area shall not be in a location that has unsealed windows or doors that connect to the outdoors or high traffic flow, or that is adjacent to construction. Sinks should not be located adjacent to the ISO Class 5 PEC. Sinks should be separated from the immediate area of the ISO Class 5 PEC device.

(3) Personnel shall follow proper procedures for personnel cleansing and garbing prior to compounding and maintain proper competency of aseptic work practices.

(4) Personnel will follow proper procedures in ensure cleaning and disinfection of sterile compounding areas. Additionally, viable and non-viable environmental air sampling must be performed according to facility written procedures.

(b) **Risk level.** Requirements for preparation of sterile products will be based on the distinction of sterile products as either low-risk, medium-risk or high-risk products. These risk levels apply to the quality of CSPs immediately after the final aseptic mixing or filling or immediately after the final sterilization, unless precluded by the specific characteristics of the preparation.

(1) **Low-Risk Level CSPs.** Sterile products compounded under all of the following conditions are at a low risk of contamination:

(A) The CSPs are compounded with aseptic manipulations entirely within an ISO Class 5 environment or better air quality using only sterile ingredients, products, components, and devices.

(B) The compounding involves only transfer, measuring, and mixing manipulations using not more than three commercially manufactured packages of sterile products and not more than two entries into any one sterile container or package (e.g., bag, vial) of sterile product or administration container/device to prepare the CSP.

(C) Manipulations are limited to aseptically opening ampuls, penetrating disinfected stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices and package containers of other sterile products, and containers for storage and dispensing.

(2) **Medium-Risk Level CSPs.** When CSPs compounded aseptically under low-risk conditions, and one or more of the following conditions exists, such CSPs are at a medium risk of contamination.

(A) Multiple individual or small doses of sterile products are combined or pooled to prepare a sterile product that will be administered either to multiple patients or to one patient on multiple occasions.

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- (B) The compounding process includes complex aseptic manipulations other than the single volume transfer.
- (C) The compounding process requires unusually long duration, such as that required to complete the dissolution or homogeneous mixing.
- (3) **High-risk sterile products.** CSPs compounded under any of the following conditions are either contaminated or at a high risk to become contaminated.
- (A) Non-sterile ingredients are incorporated, or a non-sterile device is employed before terminal sterilization
- (B) Any of the following are exposed to air quality worse than ISO Class 5 for more than 1 hour
- (i) Sterile contents of commercially manufactured products,
  - (ii) CSPs that lack effective antimicrobial preservatives, and
  - (iii) Sterile surfaces of devices and containers for the preparation, transfer, sterilization, and packaging of CSPs.
- (C) Compounding personnel are improperly garbed and gloved as outlined by USP.
- (D) Sterile water-containing preparations are stored for more than 6 hours before being sterilized.
- (E) It is assumed, and not verified by examination of labeling and documentation from suppliers or by direct determination, that the chemical purity and content strength of ingredients meet their original or Compendial specifications in unopened or in opened packages of bulk ingredients.
- (c) **Immediate use.** The immediate-use provision is intended only for those situations where there is a need for emergency or immediate patient administration of a CSP. Such situations may include cardiopulmonary resuscitation, emergency room treatment, preparation of diagnostic agents, or critical therapy where the preparation of the CSP under conditions described for Low-Risk Level subjects the patient to additional risk due to delays in therapy. Immediate-use CSPs are not intended for storage for anticipated needs or batch compounding. Preparations that are medium-risk level and high-risk level CSPs shall not be prepared as immediate-use CSPs. Immediate-use CSPs are exempt from the requirements described for *Low-Risk Level CSPs* only when all of the following criteria are met:
- (1) The compounding process involves simple transfer of not more than three commercially manufactured packages of sterile nonhazardous products from the manufacturers' original containers and not more than two entries into any one container or package (e.g., bag, vial) of sterile infusion solution or administration container/device. For example, anti-neoplastics shall not be prepared as immediate-use CSPs because they are hazardous drugs.
  - (2) Unless required for the preparation, the compounding procedure is a continuous process not to exceed 1 hour.
  - (3) During preparation, aseptic technique is followed and, if not immediately administered, the finished CSP is under continuous supervision to minimize the potential for contact with non-sterile surfaces, introduction of particulate matter or biological fluids, mix-ups with other CSPs, and direct contact of outside surfaces.
    - (A) Administration begins not later than 1 hour following the start of the preparation of the CSP.
    - (B) Unless immediately and completely administered by the person who prepared it or immediate and complete administration is witnessed by the preparer, the CSP shall bear a label listing patient identification information, the names and amounts of all ingredients, the name or initials of the person who prepared the CSP, and the exact 1-hour beyond use date and time.
    - (C) If administration has not begun within 1 hour following the start of preparing the CSP; the CSP shall be promptly, properly, and safely discarded.
  - (d) Opened or needle-punctured single dose containers, such as bags, bottles, syringes, and vials of sterile products and CSPs shall be used within 1 hour if opened in worse than ISO Class 5 air quality and any remaining contents must be discarded.
  - (e) Single-dose vials exposed to ISO Class 5 or cleaner air may be used for multiple needle entries up to 6 hours after initial needle puncture. Opened single-dose ampuls shall not be stored for any time period. Multiple-dose containers (e.g., vials) are formulated for removal of portions on multiple occasions because they usually contain antimicrobial preservatives.
  - (f) The BUD after initially entering or opening (e.g., needle-punctured) multiple-dose containers is 28 days unless an alternate time period is otherwise specified by the manufacturer. This does not mean the expiration date of the unopened container.
  - (g) **Quality Assurance.** Quality assurance practices include, but are not limited to the following:
    - (1) Routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.
    - (2) Visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments, such as eye protection and face masks.
    - (3) Review of all orders and packages of ingredients to ensure that the correct identity and amounts of ingredients were compounded.
    - (4) Visual inspection of CSPs to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.
      - (A) Semiannual certification of the primary engineering controls.
      - (B) Semiannual certification of nonviable environmental monitoring of all ISO 5, ISO 7, ISO 8 and segregated compounding areas.
      - (C) Semiannual certification of viable environmental monitoring of all ISO 5, ISO 7, ISO 8 and segregated compounding areas.
      - (D) Removable prefilters shall be inspected monthly, cleaned or changed at least quarterly or

as directed by a qualified certifier, and the date documented.

(E) HEPA filters shall be repaired or replaced when recommended by a qualified certifier. Initial and annual competence documentation of personnel, including

- (i) Written test
- (ii) Hand Hygiene and garbing
- (iii) Gloved fingertip sampling
- (iv) Aseptic manipulation
- (v) Aseptic media-fill test
- (vi) Cleaning and disinfecting
- (vii) Surface sampling
- (viii) Equipment
- (ix) Routine visual inspection of all compounded sterile preparations
- (x) Provision of guidelines to nursing education for competence documentation for non-pharmacy personnel who mix sterile preparations for immediate use

(h) Quality control practices will include:

- (1) Daily documentation of temperature in areas where sterile products or sterile preparations are stored or compounded
- (2) Daily documentation of the accuracy and precision of devices such as automated compounders and repeater pumps

(i) The PIC or designee will prepare a periodic report of infection control procedures to track quality control and quality assurance activities, as appropriate.

(j) Records of laminar air flow workbench maintenance and certification and ante-area, clean-room and buffer area certifications shall be kept in the pharmacy. A certification stamp shall be affixed to the hood.

(k) Storage. All pharmacies preparing and dispensing compounded sterile products must provide:

- (1) Adequate controlled room temperature storage space for all raw materials.
- (2) Adequate storage space for all equipment. All drugs and supplies shall be stocked on shelving above the floor.
- (3) Adequate refrigerator storage space for compounded solutions, with routinely documented temperatures. Temperature ranges required are 36-46° F or 2-8° C.
- (4) Adequate freezer storage space if finished products are to be frozen (e.g. reconstituted antibiotics.) There shall be a procedure to routinely document temperatures.

(l) Labeling. In addition to regular labeling requirements, the label shall include:

- (1) Parenteral products shall have the rate of infusion when applicable.
- (2) Expiration date (Policies and procedures shall address label change procedures as required by physician orders.)
- (3) Storage requirements or special conditions.
- (4) Name of ingredients and amounts contained in each dispensing unit.

(5) All products dispensed to outpatients, and removed from the site of preparation for administration different than the site of preparation, shall have label information as required by state law.

(m) Shipping. Sterile product shipping:

- (1) Policies and procedures shall assure preparation storage requirements during delivery.
- (2) Pharmacy must assure ability to deliver products within an appropriate time frame.

(n) Home patient care services. The pharmacist in charge of the pharmacy dispensing sterile parenteral solutions shall provide the following or assure that they are provided prior to providing medications.

- (1) The pharmacist must assure that the patient is properly trained if self-administering.
- (2) In situations where a pharmacy or pharmacist employs a nurse to administer medications, the pharmacist in charge must:
  - (A) Employ a registered nurse.
  - (B) Assure that proper records are maintained in compliance with laws and regulations.
  - (C) Make these records available to inspectors from appropriate agencies.

- (3) 24-hour service shall be assured by the pharmacy.
- (4) Pharmacists shall recommend and monitor clinical laboratory data as requested.
- (5) Side effects and potential drug interactions should be documented and reported to the physician.
- (6) Patient histories and therapy plans should be maintained.

(o) Pharmacist-in-charge responsibilities for high-risk sterile products. When preparing high-risk sterile products, the pharmacist in charge is responsible for making sure the above procedures, in addition to the following, shall be met:

- (1) Compound all medications in one of the following environments:
  - (A) A separate controlled limited access area with a positive air flow room inspected and certified as meeting ISO Class 7 requirements.
  - (B) An enclosed room providing an ISO Class 5 environment for compounding.
  - (C) A barrier isolator that provides an ISO Class 5 environment for compounding. It is recommended that all pharmacies have an anteroom designed to be separate from the buffer room. The anteroom should be available for the decontamination of supplies and equipment, and donning of protective apparel. A sink should be available in the anteroom area so that personnel can scrub prior to entering the buffer room.
- (2) Use total aseptic techniques, including gowning, mask, and hair net.
- (3) Provide a system for tracking each compounded product including:
  - (A) Personnel involved in each stage of compounding;
  - (B) Raw materials used including quantities, manufacturer, lot number, and expiration date;
  - (C) Labeling;

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- (D) Compounding records shall be kept for 5 years.
- (4) Establishment of procedures for sterilization of all products prepared with any non-sterile ingredients by filtration with 0.22 micron or other means appropriate for the product components.
- (5) All high-risk level compounded sterile products for administration by injection into the vascular and central nervous systems that are prepared:
- (A) in groups of more than twenty-five (25) identical individual single-dose packages (such as ampules, bags, syringes, and/or vials), or;
- (B) in multiple dose vials for administration to multiple patients, or;
- (C) are exposed longer than twelve (12) hours at a two (2) to eight (8) degrees centigrade and longer than six (6) hours at warmer than eight (8) degrees centigrade before they are sterilized; and shall be tested to ensure they are sterile, do not contain excessive bacterial endotoxins, and are of labeled potency before they are dispensed or administered as provided below.
- (i) Sterility testing (bacterial and fungal) - The USP Membrane Filtration Method is the method of choice where feasible (e.g. components are compatible with the membrane). The USP Direct Transfer Method is preferred when the membrane filtration is not feasible. An alternative method may be used if verification results demonstrate that the alternative is at least as effective and reliable as the USP Membrane Filtration Method or the USP Direct Transfer Method. The pharmacist in charge shall establish written procedures requiring daily observation of the media and requiring an immediate recall if there is any evidence of microbial growth and said procedures must be available to Board inspectors.
- (ii) Bacterial endotoxin (pyrogen) testing - The USP Bacterial Endotoxin Test, or verified equivalent, shall be used to ensure compounded sterile products do not contain excessive endotoxins.
- (6) Establishment of procedures for yearly testing the techniques of pharmacists using simulated aseptic procedures and documentation thereof.
- (7) Any facility improvements as required by this regulation (i.e. separate controlled limited access area and certification of ISO Class 5 must be complied with one year after approval of these rules.

### **535:15-10-55. Drug compounding facilities**

- (a) Pharmacies engaging in compounding shall have a specifically designated and adequate space for the orderly compounding of prescriptions, including the placement and storage of equipment and materials.
- (b) The aseptic processing for sterile products shall be in an area separate and distinct from the area used for the compounding of non-sterile drug products. If parenteral products are being compounded, the rules in OAC 535:15-10-3.1 should be met. A primary engineering control (PEC), (laminar airflow

workbench (LAFW), biological safety cabinet (BSC), compounding aseptic isolator (CAI) or compounding aseptic containment isolator (CACI)) will be used to prepare all sterile preparations, except those compounded for Immediate Use.

(c) The area(s) used for the compounding of drugs shall be maintained in a good state of repair. These area(s) shall also be maintained in a clean and sanitary condition. Adequate washing facilities are to be provided and sewage, trash and other refuse in the compounding area is to be disposed of in a safe, sanitary, and timely manner.

(d) Bulk drugs and other chemicals or materials used in the compounding of drugs must be stored as directed by the manufacturer, or according to USP monograph requirements, in a clean, dry area under appropriate temperature conditions (controlled room temperature, refrigerator, or freezer in adequately labeled containers.) Bulk drugs shall also be stored such that they are protected from contamination.

(e) Adequate lighting and ventilation shall be provided in all compounding areas.

(f) Potable water shall be supplied under continuous positive pressure in a plumbing system free of defects that could contribute contamination to any compounded drug product.

(g) Work area and equipment. Any pharmacy dispensing compounded sterile preparations shall meet or exceed the following requirements:

(1) A separate controlled limited access area (also called a buffer area or buffer room) for compounding sterile solutions, which shall be of adequate space for compounding, labeling, dispensing, and sterile preparation of the medication. This area shall have controlled temperature. Cleanliness of the area is of critical importance. Drugs and other materials, taken into the limited access area, shall be removed from cardboard and other particle generating materials before being taken into the area.

(2) The controlled limited access area shall have a certified and inspected ISO Class 5 environment. Such an environment exists inside a certified laminar airflow hood (clean room, biological safety cabinet or other barrier isolator meeting ISO Class 5 requirements) used for the preparation of all compounded sterile products. The ISO Class 5 environment device or area is to be inspected and certified semiannually. Barrier isolator workstations are closed systems and are not as sensitive to their external environment as laminar airflow equipment. It is recommended to place them in a limited access area with cleaning and sanitizing in the surrounding area on a routine basis.

(3) A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the clean room and the general environment outside the compounding area. The results shall be reviewed and documented on a log at least every work shift (minimum frequency shall be at least daily) or by a continuous recording device. The pressure between the ISO Class 7 and the general pharmacy area shall not be less than 5 Pa (0.02 inch water column). In facilities where

low- and medium-risk level CSPs are prepared, differential airflow shall maintain a minimum velocity of 0.2 meters per second (40 feet per minute) between buffer area and ante-area.

(4) Hazardous drugs shall be prepared within a certified Class II, Type A (exhaust may be discharged to the outdoors) or Class II, Type B (exhaust may be discharged to the outdoors) laminar flow biological safety cabinet. Hazardous drug compounding shall have negative pressure to adjacent positive pressure ISO Class 7 or better ante-areas, thus providing inward airflow to contain any airborne drug. All vented cabinets shall be vented through HEPA filtration, preferably to outside air or through use of suitable technology or equipment. Ventilation exhaust shall be placed as not to reenter the facility at any point.

(5) The area shall be designed to avoid excessive traffic and airflow disturbances.

(6) The area shall be ventilated in a manner not interfering with laminar flow hood conditions.

(7) Daily procedures must be established for cleaning the compounding area.

(8) PECs should be left on continuously. If a PEC has been turned off, allow the blowers to run continuously for at least 30 minutes before using.

**535:15-10-56. Compounding equipment**

(a) Equipment used in the compounding of drug products shall be of appropriate design and capacity as well as suitably located to facilitate operations for its intended use, cleaning and maintenance.

(b) Compounding equipment shall be of suitable composition so the surfaces that contact components shall neither be reactive, additive or absorptive, therefore not affecting or altering the purity of the compounded preparation.

(c) Equipment and utensils used for compounding shall be thoroughly cleaned promptly after every use to prevent contamination and must be stored in a manner to protect from contamination.

(d) Defective equipment shall be clearly labeled as such.

(e) Automated, mechanical, electronic, limited commercial scale manufacturing or testing equipment, and other types of equipment may be used in the compounding of drug products. If such equipment is used, it shall be routinely inspected, calibrated as necessary or checked to ensure proper performance.

(f) When drug products with special precautions (antibiotics and hazardous materials) are involved, appropriate measures must be utilized in order to prevent cross-contamination and proper disposal procedures must be followed. These measures include either the dedication of equipment for such operations or the meticulous cleaning of equipment prior to its use for the preparation of other drugs. Equipment dedicated for specific use (i.e. penicillin) shall be clearly designated as such.

**535:15-10-57. Component selection requirements**

(a) The pharmacist shall first attempt to use U.S.P.-NF drug substances and inactive component that have been made in an FDA registered facility.

(b) If components are not obtainable from a FDA registered facility or if the FDA and/or the company cannot document FDA registration, pharmacists compounding prescriptions shall use their professional judgment in first receiving, storing or using drug components that meet official compendia requirements or another high quality source.

(c) If components of compendial quality are non obtainable, components of high quality such as those that are chemically pure, analytical reagent grade, American Chemical Society-certified, or Food Chemicals Codex grade may be used.

(d) Components shall be stored off the floor, handled and stored to prevent contamination, and rotated so that the oldest stock is used first.

**535:15-10-58. Control of drug product containers**

(a) Drug product containers and closures shall be handled and stored in a manner to prevent contamination and to permit inspection and cleaning of the work area.

(b) Containers and closures shall be of suitable material as to not alter the compounded drug as to quality, strength or purity of the compounded preparation.

**535:15-10-59. Drug compounding controls**

(a) There shall be written procedures for the compounding of drug products to assure that the finished products have the identity, strength, quality and purity they purport to have. These procedures should be available in either written form or electronically stored with printable documentation.

(b) The objective of the documentation is to allow another compounder to reproduce the identical prescription at a future date.

(c) Procedures shall include a listing of the components, their amounts (in weight or volume), the order of component mixing, and a description of the compounding process. In addition, all equipment and utensils and the container/closure system, relevant to the sterility and stability of the intended use of the drug shall be listed.

(d) These written procedures shall be followed in the execution of the compounding procedure and are designed to enable a compounder, whenever necessary, to systematically trace, evaluate, and replicate the steps included throughout the preparation process of a compounded preparation.

(e) Components shall be accurately weighed, measured, and subdivided as appropriate. These operations should be checked and rechecked by the compounding pharmacist at each stage of the process to ensure that each weight and measure is correct as stated in the written compounding procedures.

(f) Written procedures shall be established and followed that describe the tests or examinations to be conducted on the product compounded (e.g., degree of variation) to ensure reasonable uniformity and integrity of compounded drug preparations. Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90% and not more than 110% of the theoretically calculated and labeled quantity of active ingredient per unit weight or volume and

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not less than 90% and not more than 110% of the theoretically calculated weight or volume per unit of the preparation.

- (1) Such control procedures shall be established to monitor the output and to verify the performance of those compounding processes that may be responsible for causing variability in the final drug product. These procedures shall include, but are not limited to, the following (where appropriate):
  - (A) Adequacy of mixing to assure uniformity and homogeneity;
  - (B) Clarity, completeness or pH of solutions.
- (2) The compounder shall label any excess compounded products so as to reference them to the formula used, the assigned batch number, and beyond use date based on the compounder's appropriate testing, published data, or USP-NF standard.
- (g) MSDS (material data safety sheet) files should be easily accessible.

## **535:15-10-60. Transfer of sterile compounded prescriptions**

- (a) If a patient requests a transfer of their prescription, a copy of the original prescription shall be transmitted upon the request of the receiving pharmacist.
- (b) The information included in the transfer of the prescription shall include:
  - (1) Active ingredient(s)
  - (2) Concentration
  - (3) Dosage Form
  - (4) Route of delivery
  - (5) Delivery mechanism
  - (6) Dosing Duration i.e. Q12H, Q24H, Q72H
  - (7) Details about the compounding procedure must be reasonably available from the transferring pharmacy.

## **535:15-10-61. Beyond use dating**

(a) Beyond-use dates (BUDs) shall be assigned to all compounded sterile preparations. The shorter of the chemical stability (established by the manufacturer, or listed in a current authoritative reference, or established by direct testing following USP standards or equivalent) and microbial limits of sterility (USP <797> requirements) shall be used to determine the date.

(1) If a pharmacy does not have a program of sterility and endotoxin testing in place and additional documentation for longer dates, then the following BUDs are to be used for compounded sterile preparations, (as illustrated in the Appendix A Chart):

- (A) If USP <797> Risk Level is "Immediate Use" Beyond Use Dates (BUD), and if kept
  - (i) at room temperature; use within 1 hour,
  - (ii) refrigerated; use within 1 hour, or
  - (iii) in freezer, N/A.
- (B) If USP <797> Risk Level is "Low Risk" BUD, and if kept
  - (i) at room temperature, use within 48 hours,
  - (ii) refrigerated, use within 14 days, or

- (iii) in freezer, use within 45 days.
- (C) If USP <797> Risk Level is "Low Risk with 12 hour or less" BUD, and if kept
  - (i) at room temperature use within 12 hours or less
  - (ii) refrigerated, use within 12 hours or less, or
  - (iii) in freezer, N/A
- (D) If USP <797> Risk Level is "Medium Risk" BUD, and if kept
  - (i) at room temperature, use within 30 hours,
  - (ii) refrigerated, use within 9 days, or,
  - (iii) in freezer, use within 45 days
- (E) If USP <797> Risk Level is "High Risk" BUD, and if kept
  - (i) at room temperature, use within 24 hours
  - (ii) refrigerated, use within 3 days, or
  - (iii) in freezer, use within 45 days

(2) If a pharmacy does have a program of sterility and endotoxin testing in place, then the BUDs for the non-sterile preparations are to be used, as previously presented in OAC 535:15-10-8.2.

(b) Reusable compounded preparations that are returned to a hospital pharmacy shall be placed in the refrigerator (unless contraindicated) with the original BUD on the label.

## **535:15-10-62. Labeling**

(a) If a component is transferred from the original container to another (e.g., a powder is taken from the original container, weighed, placed in, and stored in another container) the new container shall be identified with the:

- (1) Component name,
- (2) Lot and BUD if available,
- (3) Strength and/or concentration, and;
- (4) Weight or measure

(b) Products prepared in anticipation of a prescription prior to receiving a valid prescription should not be an inordinate amount.

(1) A regularly used amount should be prepared based on a history of prescriptions filled by the pharmacy.

(2) These products shall be labeled or documentation referenced with the:

- (A) Complete list of ingredients or preparation name and reference,
- (B) Preparation date,
- (C) Assigned beyond-use date:
  - (i) Based on published data, or;
  - (ii) Appropriate testing, or;
  - (iii) U.S.P.-NF standards.
- (D) Specific storage conditions dictated by composition and stability shall be specified (refrigerator, freezer, etc.), except where clean dry area is dictated, and;
- (E) Batch or lot number.

(c) Upon the completion of the drug preparation operation, the pharmacist shall examine the product for correct labeling.

(d) The outpatient prescription label shall contain the following:

- (1) Patient name,

- (2) Prescriber's name,
- (3) Name & address of pharmacy,
- (4) Directions for use,
- (5) Date filled,
- (6) Beyond use date & storage (may be auxiliary labels), and;
- (7) An appropriate designation that this is a compounded prescription, such as "Compounded Rx".

**535:15-10-63. Records and reports**

- (a) Any procedures or other records required to comply with Good Compounding Practices shall be retained for the same period of time as required for retention of prescription records and copies of such records shall be readily available for authorized inspection.
- (c) Computer information and the hard copy of the prescription should indicate that the prescription is to be compounded.
- (d) Adequate records must be kept of controlled dangerous substances (Scheduled drugs) used in compounding.

**535:15-10-64. Compounding for institution and/or practitioner administration**

- (a) The purpose of this section is to provide standards for the compounding of preparations pursuant to a prescription for a patient from a practitioner in a different health care facility or institutional pharmacy. Since compounding is already based on the practitioner/patient/pharmacist triad, this should be satisfied when a practitioner writes an order to administer the drug in the medical record.
- (b) A compounded product shall NOT be sold to a third party for resale.
- (c) A retail pharmacy that provides compounded preparations to an institutional pharmacy shall obtain a Compounding Drug Supplier Permit from the Board prior to such activity.
- (d) A retail pharmacy that provides compounded preparations to practitioners for office use or to an institutional pharmacy shall enter into a written agreement with the practitioner or pharmacy. The written agreement shall:
  - (1) Address acceptable standards of practice for each party entering into agreement and include a statement that the compounded preparation may only be administered to the patient and may not be dispensed to the patient or sold to any other person or entity
  - (2) Include liability language, references to performance improvement and quality controls
  - (3) require the practitioner or receiving pharmacy to include on patient's record, medication order, or medication administration record the batch number and BUD of the compounded preparation administered to a patient
  - (4) Describe the scope of services to be performed by the filling pharmacy and practitioner or receiving pharmacy, including a statement of the process for:
    - (A) A patient to report an adverse reaction or submit a complaint; and
    - (B) The pharmacy to recall compounded preparations.

- (e) Records of orders and distributions of compounded preparations to a practitioner for office use or receiving pharmacy shall be kept by pharmacy for at least 5 years and be available for inspection. These records shall be maintained separately from the records of products dispensed pursuant to a prescription.
- (f) Orders shall include the following information:
  - (1) Date of order
  - (2) Name, address and phone number of the practitioner who ordered the preparation and, if applicable, the name, address, and phone number of pharmacy to receive compounded preparation
  - (3) Name, strength, and quantity of preparation ordered.
  - (4) Patient name, when available.
- (g) Distribution records shall include the following information:
  - (1) Date the preparation was compounded
  - (2) Date the preparation was distributed
  - (3) Name, strength, and quantity in each container of the preparation
  - (4) Lot number of the preparation
  - (5) Quantity of containers delivered
  - (6) Name, address, and phone number of the facility to whom the preparation is being distributed
  - (7) patient name, when available.

**535:15-10-65. Compounding of sterile hazardous drugs**

- (a) Although the potential therapeutic benefits of compounded sterile and non-sterile hazardous drug preparations outweigh the risks of their adverse effects in ill patients, exposed healthcare workers risk similar adverse effects with no therapeutic benefit. Occupational exposure to hazardous drugs can result in:
  - (1) Acute effects, such as skin rashes;
  - (2) Chronic effects, including adverse reproductive events; and
  - (3) Possibly cancer. Each facility must have a communication program that identifies hazardous drugs and communicates this list to all workers that participate in product acquisition, storage, transportation, housekeeping and waste disposal.
- (b) Hazardous drugs shall be any drug identified by at least one of the following six criteria: carcinogenicity, teratogenicity or developmental toxicity, reproductive toxicity in humans, organ toxicity at low doses in humans or animals, or genotoxicity. A new or investigational drug that has no information on toxicity should be treated as a hazardous drug. At a minimum, the hazardous drug communication list shall be drugs received in the facility that are recognized as such by the National Institute for Occupational Safety and Health (NIOSH).
- (c) Hazardous drugs shall be prepared for administration only under conditions that protect the healthcare workers and other personnel in the preparation and storage areas. Hazardous drugs shall be stored separately from other inventory in a manner to prevent contamination and personnel exposure. Many hazardous drugs have sufficient vapor pressures that allow volatilization at room temperature; thus storage

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is preferably within a containment area such as a negative pressure room. The storage area should have sufficient general exhaust ventilation, at least 12 air changes per hour (ACPH) to dilute and remove any airborne contaminants.

(d) Hazardous drugs shall be handled with caution at all times using appropriate chemotherapy gloves during receiving, distribution, stocking, inventorying, preparation for administration, and disposal.

(e) Hazardous sterile drugs shall be prepared in an ISO Class 5 environment with protective engineering controls in place as specified in 535.15-10.5-5. Hazardous drug compounding shall have negative pressure to adjacent positive pressure ISO Class 7 or better ante-areas, thus providing inward airflow to contain any airborne drug. All vented cabinets shall be vented through HEPA filtration, preferably to outside air or through use of suitable technology or equipment. Ventilation exhaust shall be placed as not to reenter the facility at any point.

(f) If a CACI that meets the requirements of this chapter is used outside of an ISO class 7 buffer area, the compounding area shall maintain negative pressure and have a minimum of 12 ACPHs. Manufacturer's guidelines or NISF guidelines shall be followed for isolators, containment hoods and BSC. Quality control certification for proper function shall be performed every six months by NISF certified personnel.

(g) When closed-system vial-transfer devices (CSTDs) (i.e., vial-transfer systems that allow no venting or exposure of hazardous substance to the environment, Add-Vantage and PhaSeal) are used, they shall be used within the vented cabinet.

(h) In facilities that prepare a low volume, an average of no more than two per day, of hazardous drugs, the use of two tiers of containment (e.g., CSTD within a BSC or CACI that is located in a non-negative pressure room) is acceptable.

(i) Appropriate personnel protective equipment (PPE) shall be worn when compounding hazardous drugs. PPE should include gowns, face masks, eye protection, hair covers, shoe covers or dedicated shoes, gloving with chemotherapy gloves; and compliance with manufacturers' recommendations when using a CACI.

(j) All personnel who compound hazardous drugs shall be fully trained in the storage, handling, and disposal of these drugs. This training shall occur prior to preparing or handling hazardous drugs, and its effectiveness shall be verified by testing specific hazardous drugs preparation techniques. Such verification shall be documented for each person at least annually. This training shall include didactic overview of hazardous drugs, including mutagenic, teratogenic, and carcinogenic properties, and it shall include ongoing training for each new hazardous drug that enters the marketplace. Compounding personnel of reproductive capability shall confirm in writing that they understand the risks of handling hazardous drugs. The training shall include at least the following: (1) safe aseptic manipulation practices; (2) negative pressure techniques when utilizing a BSC, powder containment hood or CACI; (3) correct use of CSTD devices; (4) containment, cleanup, and disposal procedures for breakages and spills; and (5) treatment of personnel contact and inhalation exposure.

(k) Consider a medical surveillance program or allow workers to have routine medical care.

(l) Disposal of all hazardous drug wastes shall comply with all applicable federal and state regulations. All personnel who perform routine custodial waste removal and cleaning activities in storage and preparation areas for hazardous drugs shall be trained in appropriate procedures to protect themselves and prevent contamination.

### **535:15-10-66. Compounding of sterile radiopharmaceuticals**

(a) In the case of production of radiopharmaceuticals for positron emission tomography (PET), the USP general test chapter *Radiopharmaceuticals for Positron Emission Tomography-Compounding* <823> supersedes this chapter or applicable federal manufacturing regulations. Upon release of a PET radiopharmaceutical as a finished drug product from a production facility, the further handling, manipulation, or use of the product will be considered compounding, and the content of this section and chapter is applicable.

(b) For the purposes of this chapter, radiopharmaceuticals compounded from sterile components in closed sterile containers and with a volume of 100 mL or less for a single-dose injection or not more than 30 mL taken from a multiple-dose container shall be designated as, and conform to, the standards for "Low-Risk Level CSPs"

(c) The unique circumstances and requirements for radiopharmaceutical preparations necessitate specific stipulations that must not only satisfy pharmaceutical drug quality, but also consider crucial radiation safety concerns to operators. An integrated approach which addresses both aseptic and radiation safety techniques is necessary. Facility design and variation in certain chapter standards may be required and shall be documented with supporting evidence upon request.

(d) These radiopharmaceuticals shall be compounded using appropriately shielded vials and syringes in a properly functioning and certified ISO Class 5 PEC located in an ISO Class 8 or cleaner air environment to permit compliance with applicable state and federal regulations.

(e) Storage and transport of properly shielded vials of radiopharmaceutical CSPs may occur in a limited access ambient environment without a specific ISO class designation.

(f) Technetium-99m/molybdenum-99 generator systems shall be stored and eluted (operated) under conditions recommended by manufacturers and applicable state and federal regulations. Such generator systems shall be eluted in an ISO Class 8 or cleaner air environment.

(g) Direct visual inspection of radiopharmaceutical CSPs shall be conducted in accordance with ALARA.

(h) The handling of radiopharmaceuticals is controlled through the licensing of "Authorized Users" by the Oklahoma Department of Environmental Quality. As such, limited numbers of distribution channels exist to obtain radiopharmaceuticals. It is recognized that there is a special population that is outside the daily distribution range of a commercial nuclear pharmacy and that radiopharmaceuticals are not reasonably available. For these facilities, if the PEC is a CAI, CACI, a laminar airflow workbench (LAFW) or a biological safety

cabinet (BSC) that cannot be located within an ISO Class 8 or better buffer area, then only low-risk CSPs pursuant to a physician's order may be prepared, and administration of such CSPs shall commence within 12 hours of preparation or as recommended in the manufacturers' package insert, whichever is less. These Low-risk level radiopharmaceutical CSPs with a 12-hour or less BUD shall be prepared in PECs (LAFWs, BSCs, CAIs, CACIs), which shall be certified and maintain ISO Class 5 and shall be in a segregated compounding area restricted to sterile compounding activities that minimize the risk of CSP contamination. A line of demarcation defining the segregated compounding area shall be established. Materials and garb exposed in a patient care and treatment areas must be cleaned before being brought into controlled compounding area. Other requirements as dictated by Low-Risk Radiopharmaceuticals shall be followed as described in this chapter.

(i) Preparation of radiopharmaceuticals for Immediate-Use category is reserved for radiopharmaceuticals needed for emergency or immediate patient care. Radiopharmaceuticals under this exemption shall apply only to diagnostic radiopharmaceuticals and administration must begin not later than one hour following the start of preparing the CSP. Certain preparations may necessitate more than two punctures into the same septum, i.e. Technetium 99mTc-Red Blood Cell labeling.

(j) Preparation of radio-labeled leukocytes or blood products requires the procedure be performed in an ISO Class 5 PEC that is located in an ISO Class 8 or cleaner air environment. Blood manipulations shall be clearly separated from routine procedures and have specific standard operating procedures to avoid cross contamination.

(k) Labeling requirements for this chapter do not supersede the labeling requirements of 535:15-17-5.

**535:15-10-67. Compounding of sterile allergen extracts**

(a) Allergen extracts as CSPs are single-dose and multiple-dose *intra*dermal or *subcutaneous injections* that are prepared by specially trained physicians and pharmacy personnel under their direct supervision. Allergen extracts as CSPs are not subject to the personnel, environmental, and storage requirements for all *CSP Microbial Contamination Risk Levels* in this chapter only when all of the following criteria are met:

(1) The compounding process involves simple transfer via sterile needles and syringes of commercial sterile allergen products and appropriate sterile added substances (e.g., glycerin, phenol in sodium chloride injection).

(2) All allergen extracts as CSPs shall contain appropriate substances in effective concentrations to prevent the growth of microorganisms. Non-preserved allergen extracts shall comply with the appropriate CSP risk level requirements in the chapter.

(3) Before beginning compounding activities, personnel perform a thorough hand-cleansing procedure by removing debris from under fingernails using a nail cleaner under running warm water followed by vigorous hand and arm washing to the elbows for at least 30 seconds with either non-antimicrobial or antimicrobial soap and water.

(4) Compounding personnel don hair covers facial hair covers, gowns, and face masks.

(5) Compounding personnel perform antiseptic hand cleansing with an alcohol-based surgical hand scrub with persistent activity.

(6) Compounding personnel don powder-free sterile gloves that are compatible with sterile 70% isopropyl alcohol (IPA) before beginning compounding manipulations.

(7) Compounding personnel disinfect their gloves intermittently with sterile 70% IPA when preparing multiple allergen extracts as CSPs.

(8) Ampul necks and vial stoppers on packages of manufactured sterile ingredients are disinfected by careful wiping with sterile 70% IPA swabs to ensure that the critical sites are wet for at least 10 seconds and allowed to dry before they are used to compound allergen extracts as CSPs.

(9) The aseptic compounding manipulations minimize direct contact contamination (e.g., from glove fingertips, blood, nasal and oral secretions, shed skin and cosmetics, other non-sterile materials) of critical sites (e.g., needles, opened ampuls, vial stoppers).

(10) The label of each multiple-dose vial (MDV) of allergen extracts as CSPs lists the name of one specific patient and a BUD and storage temperature range that is assigned based on manufacturers' recommendations or peer-reviewed publications.

(11) Single-dose allergen extracts as CSPs shall not be stored for subsequent additional use.

(b) Personnel who compound allergen extracts as CSPs must be aware of greater potential risk of microbial and foreign material contamination when allergen extracts as CSPs are compounded in compliance with the foregoing criteria instead of the more rigorous standards in this chapter for *CSP Microbial Contamination Risk Levels*. Although contaminated allergen extracts as CSPs can pose health risks to patients when they are injected *intra*dermally or *subcutaneously*, these risks are substantially greater if the extract is inadvertently injected *intra*venously.

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## APPENDIX A. USP <797> BEYOND-USE DATE LIMITS CHART [NEW]

<u>USP &lt;797&gt; Risk Level</u>	<u>Room Temperature</u>	<u>Refrigerated</u>	<u>Freezer</u>
<u>Immediate Use</u>	<u>1 hour</u>	<u>1 hour</u>	<u>N/A</u>
<u>Low Risk</u>	<u>48 hours</u>	<u>14 days</u>	<u>45 days</u>
<u>Low Risk with 12 hour or less BUD</u>	<u>12 hours or less</u>	<u>12 hours or less</u>	<u>N/A</u>
<u>Medium Risk</u>	<u>30 hours</u>	<u>9 days</u>	<u>45 days</u>
<u>High Risk</u>	<u>24 hours</u>	<u>3 days</u>	<u>45 days</u>

[OAR Docket #09-1036; filed 5-22-09]

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

[OAR Docket #09-1034]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**

- Subchapter 3. Manufacturers
- 535:20-3-1. Manufacturer permit [REVOKED]
- 535:20-3-1.1. Purpose [NEW]
- 535:20-3-1.2. Definitions [RESERVED]
- 535:20-3-2. Registration; manufacturer licensing, registration or permit requirement [AMENDED]
- 535:20-3-3. Minimum required information for licensure [AMENDED]
- 535:20-3-4. Minimum qualifications [AMENDED]
- 535:20-3-5. Personnel [AMENDED]
- 535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records [AMENDED]
- 535:20-3-6.1. Facility requirements [NEW]
- 535:20-3-6.2. Multiple Licensing [NEW]
- 535:20-3-6.3. Security [NEW]
- 535:20-3-6.4. Storage [NEW]
- 535:20-3-6.5. Examination of materials [NEW]
- 535:20-3-6.6. Returned, damaged, and outdated drugs [NEW]
- 535:20-3-6.7. Recordkeeping [NEW]
- 535:20-3-6.8. Written policies and procedures [NEW]
- 535:20-3-6.9. Responsible persons [NEW]
- 535:20-3-6.10. Compliance with federal, state and local laws [NEW]
- 535:20-3-6.11. Salvaging and reprocessing [NEW]
- 535:20-3-9. Prohibited conduct [NEW]
- Subchapter 5. Packers
- 535:20-5-1. Definitions [AMENDED]
- 535:20-5-1.1. Purpose [NEW]
- 535:20-5-2. Registration; packager permit requirement [AMENDED]
- 535:20-5-3. Minimum required information for licensure [AMENDED]
- 535:20-5-4. Minimum qualifications [AMENDED]
- 535:20-5-5. Personnel [AMENDED]
- 535:20-5-6. Minimum requirements for storage, handling, maintenance and records for RX Only drugs [AMENDED]
- 535:20-5-6.1. Facility requirements [NEW]
- 535:20-5-6.2. Multiple Licensing [NEW]

- 535:20-5-6.3. Security [NEW]
- 535:20-5-6.4. Storage [NEW]
- 535:20-5-6.5. Examination of materials [NEW]
- 535:20-5-6.6. Returned, damaged, and outdated drugs [NEW]
- 535:20-5-6.7. Recordkeeping [NEW]
- 535:20-5-6.8. Written policies and procedures [NEW]
- 535:20-5-6.9. Responsible persons [NEW]
- 535:20-5-6.10. Compliance with federal, state and local laws [NEW]
- 535:20-5-6.11. Salvaging and reprocessing [NEW]
- 535:20-5-9. Prohibited conduct [NEW]
- Subchapter 7. Wholesalers and Pedigree Rules
- 535:20-7-7.7. Recordkeeping; including pedigree requirement [AMENDED]
- Subchapter 9. Medical Gas Suppliers and Distributors
- 535:20-9-3. Medical gas suppliers [AMENDED]
- 535:20-9-4. Medical gas distributors [AMENDED]
- 535:20-9-6. Prohibited Conduct [NEW]

**AUTHORITY:**

Title 51 O.S. 24A et seq., Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, and 354; and Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3).

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**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

- Subchapter 3. Manufacturers
- 535:20-3-1. Manufacturer permit; Purpose [AMENDED]
- 535:20-3-1.1. Definitions [RESERVED]
- 535:20-3-2. Registration; manufacturer licensing, registration or permit requirement [AMENDED]
- 535:20-3-3. Minimum required information for licensure [AMENDED]
- 535:20-3-4. Minimum qualifications [AMENDED]
- 535:20-3-5. Personnel [AMENDED]
- 535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records [AMENDED]
- 535:20-3-6.1. Facility requirements [NEW]
- 535:20-3-6.2. Multiple Licensing [NEW]
- 535:20-3-6.3. Security [NEW]
- 535:20-3-6.4. Storage [NEW]
- 535:20-3-6.5. Examination of materials [NEW]
- 535:20-3-6.6. Returned, damaged, and outdated drugs [NEW]
- 535:20-3-6.7. Recordkeeping [NEW]
- 535:20-3-6.8. Written policies and procedures [NEW]
- 535:20-3-6.9. Responsible persons [NEW]
- 535:20-3-6.10. Compliance with federal, state and local laws [NEW]
- 535:20-3-6.11. Salvaging and reprocessing [NEW]
- 535:20-3-9. Prohibited Conduct [NEW]

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- Subchapter 7. Wholesalers and Pedigree
- 535:20-7-7.7. Recordkeeping; including pedigree requirement [AMENDED]

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**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

**Subchapter 3. Manufacturers.** The revisions in 535:20-3-1 through 535:20-3-9 take emergency manufacturer rules to permanent. Because manufacturer rules previously referred to wholesaler rules the revision in wholesale rules affected manufacturer's unintentionally. These rules revisions allow manufacturer rules to stand on their own.

The revision in 535:20-3-1. Manufacturer permit [REVOKED], added 535:20-3-1.1 purpose and reserved 535:20-3-1.2 for definitions, 535:20-3-2 amendments describe registration; manufacturer licensing, registration or permit requirement, 535:20-3-3. Minimum required information for licensure are updated, 535:20-3-4 minimum qualifications are updated, and 535:20-3-5 personnel eliminates an unnecessary reference in (b).

The requirements in 535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records correct references. Added new are 535:20-3-6.1 through 535:20-3-6.11 and 535:20-3-5-9. Changes in multiple licensing 535:20-6.3, 535:20-3-6.3 security, 535:20-3-6.4 Storage, 535:20-3-6.5 examination of materials, 535:20-3-6.6 Returned, damaged, and outdated drugs, 535:20-3-6.7 Recordkeeping, 535:20-3-6.8 Written policies and procedures, 535:20-3-6.9 Responsible persons, 535:20-3-6.10 Compliance with federal, state and local laws, 535:20-3-6.11 Salvaging and reprocessing and 535:20-3-9 Prohibited conduct

**Subchapter 5. Packagers.** These rules revisions amend definitions in 535:20-5-1, add a purpose statement in 535:20-5-1.1, and 535:20-5-2. Registration; packager permit requirement language is cleaned up to improve clarity. 535:20-5-3. Minimum required information; 535:20-5-4 Minimum qualifications for licensure; 535:20-5-5 Personnel; and 535:20-5-6 Minimum requirements for storage, handling, maintenance and records are described in manufacturer rules instead of referencing wholesaler rules. Added new are 535:20-5-6.1 Facility requirements, 535:20-5-6.2 Multiple Licensing, 535:20-5-6.3 Security, 535:20-5-6.4 Storage, 535:20-5-6.5. Examination of materials, 535:20-5-6.6 Returned, damaged, and outdated drugs, 535:20-5-6.7

Recordkeeping, 535:20-5-6.8 Written policies and procedures, 535:20-5-6.9 Responsible persons, 535:20-5-6.10 Compliance with federal, state and local laws, and 535:20-5-6.11 Salvaging and reprocessing, these subject areas were formerly referenced to wholesaler rules (see section 535:20-5-6). Added is prohibited conduct in 535:20-5-9.

**Subchapter 7. Wholesalers and pedigree rules.** The revision in 535:20-7 takes the emergency rule to delay the pedigree requirement date until January 1, 2011.

**Subchapter 9. Medical gas suppliers and distributors.** The revisions in 535:20-9-3 and 535:20-9-4 bring into the medical gas supplier and distributor rules the requirements and remove references to the wholesale rules. They add prohibited conduct rules for medical gas suppliers and distributors to protect the drug supply chain in 535:20-9-6.

**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, 2009:**

**SUBCHAPTER 3. MANUFACTURERS**

**535:20-3-1. Manufacturer permit [REVOKED]**

- (a) ~~A manufacturer permit entitles the permit holder to manufacture and wholesale Rx Only drugs (prescription drugs) from the licensed location.~~
- (b) ~~A manufacturer permit is only valid for the name, ownership and location listed on the permit.~~
- (c) ~~A new permit is required within 10 days if name, ownership or location changes.~~
- (d) ~~Each manufacturing location must be licensed.~~
- (e) ~~Each manufacturer whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma manufacturer permit.~~

**535:20-3-1.1. Purpose**

- (a) The rules in this Subchapter set the minimum standards and requirement for persons who must license as a manufacturer as defined in 59 O.S. 353.1 before engaging in manufacturing as required in 59 O.S. Section 353.18 (B) and (C).
- (b) The rules of this Subchapter are to implement the requirement in the Pharmacy Practice Act and may include requirements for the Utilization of Used Prescription Medication Act.

**535:20-3-1.2. Definitions [RESERVED]**

**535:20-3-2. Registration; manufacturer permit requirement**

- (a) All manufacturers of Rx Only (dangerous) drugs conducting interstate and/or intrastate transactions in Oklahoma shall register annually with the Board of Pharmacy.

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(1) Permits shall be issued only to those manufacturers which satisfy the provisions of Title 59, O.S., Section 353.18 (B)(1)(2) et seq., and all rules of this Title, et seq.

(2) Each manufacturer must comply with the Federal Food, Drug and Cosmetic Act Good Manufacturing Practices Act (GMPA, 21 U.S.C., Sec. 331 et seq.), the Prescription Drug Marketing Act of 1987 (PDMA, 21 U.S.C., Sec. 331 et seq.) and/or any other applicable federal, state, or local laws and regulations.

(b) A manufacturer permit entitles the permit holder to manufacture and wholesale Rx Only drugs (prescription drugs) from the licensed location.

(c) A manufacturer permit is only valid for the name, ownership and location listed on the permit.

(d) A new permit is required within 10 days if name, ownership or location changes.

(e) Each manufacturing location must be licensed.

(f) Each manufacturer whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma manufacturer permit.

### **535:20-3-3. Minimum required information for permit**

~~The minimum required information for manufacturer licensure shall be as set forth in 535:20-7-4 regarding wholesalers and in 535:25 and this Title.~~

(a) Applicants shall be registered with the federal Food and Drug Administration (FDA) as a manufacturer.

(b) All manufacturer applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.

(c) Manufacturer applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

(1) The name, full business address, and telephone number;

(2) All trade or business names used by the manufacturer applicant;

(3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;

(4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);

(5) The name(s) of the owner and/or operator of the manufacturer applicant; and

(6) Any other information the Board deems necessary to protect the public health.

### **535:20-3-4. Minimum qualifications**

(a) All manufacturers must conform to the federal Good Manufacturing Practices GMPA, and/or any other applicable federal, state or local laws and regulations.

(b) The minimum qualifications for manufacturers shall be the same as those set forth in ~~535:20-7-5 regarding wholesalers and in 535:25 and this Chapter.~~

(c) The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacturer of drugs or devices:

(1) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, manufacturer, wholesale or retail drug distribution, or distribution of controlled substances;

(2) Any felony convictions of the applicant under federal, state, or local laws;

(3) The applicant's past experience in the manufacture or distribution of drugs, including controlled substances;

(4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;

(5) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;

(6) Compliance with licensing requirements under previously granted licenses, if any;

(7) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,

(8) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(d) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

### **535:20-3-5. Personnel**

~~(a) Personnel employed in manufacturing shall have sufficient education, training and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.~~

~~(b) The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20-3-5 535:20-7-5 for personnel employed in wholesale distribution.~~

### **535:20-3-6. Minimum requirements for Rx Only drug storage, handling, maintenance and records**

~~The minimum requirements for RX Only (dangerous) drug storage, handling, maintenance and records for manufacturers shall be the same as those set forth in 535:20-7-7 through 535:20-7-7.10 regarding wholesalers. The following decimal sections shall describe the minimum requirements for the storage and handing of drugs, and for the establishment and maintenance of drug records by manufacturers and their officers, agents, representatives, and employees.~~

#### **535:20-3-6.1. Facility requirements**

(a) All manufacturers of drugs shall conform to U. S. Food and Drug Administration (FDA) Current Good Manufacturing Practice Regulations (CGMP).

(b) All manufacturers shall conform to the Oklahoma Pharmacy Act and the rules of this Title.

(c) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

- (1) Be licensed by the Board;
- (2) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
- (3) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;
- (4) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;
- (5) Be maintained in a clean and orderly condition; and,
- (6) Be free from infestation by insects, rodents, birds, or vermin of any kind.

**535:20-3-6.2. Multiple Licensing**

- (a) A manufacturing facility shall not be in a facility where a retail pharmacy is located.
- (b) The manufacturing facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.

**535:20-3-6.3. Security**

- (a) Each facilities used for manufacturing shall be secure from unauthorized entry.
  - (1) Access from outside the premises shall be kept to a minimum and be well-controlled.
  - (2) The outside perimeter of the premises shall be well-lighted.
  - (3) Entry into areas where drugs are held shall be limited to authorized personnel.
- (b) All facilities shall be equipped with an alarm system to detect entry after hours.
- (c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

**535:20-3-6.4. Storage**

All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

- (1) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.
- (2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs.

(3) The recordkeeping requirement in this Title for manufacturers shall be followed for all stored drugs.

**535:20-3-6.5. Examination of materials**

- (a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.
- (b) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.
- (c) The recordkeeping requirement in this Title for manufacturers shall be followed for all incoming and outgoing drugs.

**535:20-3-6.6. Returned, damaged, and outdated drugs**

- (a) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.
- (b) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the manufacturer shall consider, among other things:
  - (1) The conditions under which the drug has been held, stored or shipped before or during its return; and,
  - (2) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.
- (c) The recordkeeping requirements for manufacturers in this Title shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

**535:20-3-6.7. Recordkeeping**

- (a) Manufacturers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.
- (b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.
- (c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.
- (d) Each manufacturer should maintain an ongoing list of persons with whom they do business.

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## **535:20-3-6.8. Written policies and procedures**

(a) Manufacturers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(b) Manufacturers shall include in their written policies and procedures the following:

(1) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(A) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or

(C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(2) A procedure to ensure that manufacturers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(3) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(A) This procedure shall provide for written documentation of the disposition of outdated drugs.

(B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

## **535:20-3-6.9. Responsible persons**

Manufacturers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug manufacturer, distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

## **535:20-3-6.10. Compliance with federal, state and local laws**

(a) Manufacturers shall operate in compliance with applicable federal, state, and local laws and regulations.

(b) Manufacturers shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(c) Manufacturers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.

## **535:20-3-6.11. Salvaging and reprocessing**

Manufacturers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

## **535:20-3-9. Prohibited conduct**

(a) The following shall be considered prohibited conduct and be a violation of these rules:

(1) Engaging in the manufacturing of drugs

(A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required;

(B) destroying, altering, concealing, or failing to maintain complete and accurate records for any drug manufactured, when required;

(C) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, or

(D) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s).

(2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).

(3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or the commission of any other act with respect to a drug that results in the drug being misbranded.

(4) Manufacturing, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,

(b) Any violation of the rules of registrant conduct in 535:25-9 is prohibited conduct.

## **SUBCHAPTER 5. PACKAGERS**

### **535:20-5-1. Definitions**

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

**"Packager"** means packager as defined in Title 59 O.S. Section 353.1. ~~any~~ Any person, firm, or corporation, except a pharmacy, who transfers dangerous drugs from one container to another of any type.

**"Prescription drug"** means "prescription drug" as defined in Title 59 O.S. Section 353.1 ~~535:20-7-2 regarding wholesalers.~~

**"Wholesaler"** means a ~~"Wholesaler"~~ ~~"Wholesale distributor"~~ as defined in ~~535:20-7-2 regarding wholesalers~~ Title 59 O.S. Section 353.1.

### **535:20-5-1.1. Purpose**

(a) The rules in this Subchapter set the minimum standards and requirement for persons who must license as a packager

as defined in 59 O.S. 353.1 before engaging in packaging as required in 59 O.S. Section 353.18 (B) and (C).

(b) The rules of this Subchapter are to implement the requirement in the Pharmacy Practice Act.

**535:20-5-2. Registration; packager permit requirements**

(a) All packagers of Rx Only (dangerous) drugs conducting interstate and/or intrastate transactions in Oklahoma shall register annually with the Board of Pharmacy.

(b) Permits shall be issued only to those packagers who possess a wholesaler permit and satisfy the provisions of:

- (1) Title 59, O.S., Section 353.18 (B)(1)(2) et seq.,
- (2) the rules of this Title,
- (3) the Federal Food, Drug and Cosmetic Act Good Manufacturing Practice Act (GMPA, 21 U.S.C., Sec. 331 et seq.);
- (4) the Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or,
- (5) any other applicable federal, state, or local laws and regulations.

(c) A packager permit is only valid for the name, ownership and location listed on the permit.

(d) A new packager permit is required within 10 days if name, ownership or location changes.

(e) Each location shall possess a packager permit.

(f) Each packager whose product is sold in Oklahoma is required to obtain and maintain an Oklahoma packager permit.

**535:20-5-3. Minimum required information for permit licensure**

~~The minimum required information for packager licensure shall be that information as required by the Oklahoma Pharmacy Act, the rules of this Chapter, 535:25, and the rules in 535:20 7 4 regarding wholesalers.~~

(a) Applicants shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to repackage.

(b) All packager applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.

(c) Packager applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:

- (1) The name, full business address, and telephone number;
- (2) All trade or business names used by the manufacturer applicant;
- (3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;
- (4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);
- (5) The name(s) of the owner and/or operator of the manufacturer applicant; and
- (6) Any other information the Board deems necessary to protect the public health.

**535:20-5-4. Minimum qualifications**

(a) All packagers must conform to the federal Good Manufacturing Practices GMPA, and/or any other applicable federal, state or local laws and regulations.

(b) The minimum qualifications for packagers shall be the same as those set forth in ~~535:20 7 5 regarding wholesalers~~ the rules in 535:25 and this Chapter Title for applicants and registrants.

(c) The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in manufacturer of drugs or devices:

- (1) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, manufacturer, wholesale or retail drug distribution, or distribution of controlled substances;
- (2) Any felony convictions of the applicant under federal, state, or local laws;
- (3) The applicant's past experience in the manufacture or distribution of drugs, including controlled substances;
- (4) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;
- (5) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;
- (6) Compliance with licensing requirements under previously granted licenses, if any;
- (7) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,
- (8) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(d) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

**535:20-5-5. Personnel**

~~(a)~~ Personnel employed in packaging shall have sufficient education, training and/or experience to perform assigned functions and comply with federal, state and local licensing requirements.

~~(b) The Board shall as required in 353.18(B), at a minimum, consider those qualifications listed in 535:20 7 5 for personnel employed in wholesale distribution.~~

**535:20-5-6. Minimum requirements for storage, handling, maintenance and records for RX Only drugs**

~~The minimum requirements for storage, handling, maintenance and records for Rx Only (dangerous) drugs for packagers shall be the same as those set forth in 535:20 7 7 through 535:20 7 7.10 regarding wholesalers. The following decimal~~

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sections shall describe the minimum requirements for the storage and handing of drugs, and for the establishment and maintenance of drug records by packagers and their officers, agents, representatives, and employees.

## **535:20-5-6.1. Facility requirements**

(a) All packagers of drugs shall conform to U. S. Food and Drug Administration (FDA) Current Good Manufacturing Practice Regulations (CGMP).

(b) All packagers shall conform to the Oklahoma Pharmacy Act and the rules of this Title.

(c) Each facility at which drugs are packaged, stored, warehoused, handled, held, offered, marketed, or displayed shall:

- (1) Be licensed by the Board;
- (2) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;
- (3) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;
- (4) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;
- (5) Be maintained in a clean and orderly condition; and,
- (6) Be free from infestation by insects, rodents, birds, or vermin of any kind.

## **535:20-5-6.2. Multiple Licensing**

(a) A packager facility shall not be in a facility where a retail pharmacy is located.

(b) The packager facility shall be located apart and separate from any retail pharmacy, licensed by the Board of Pharmacy, as set forth in this Title and 535:25-3-5.

## **535:20-5-6.3. Security**

(a) Each facility used for packaging shall be secure from unauthorized entry.

- (1) Access from outside the premises shall be kept to a minimum and be well-controlled.
- (2) The outside perimeter of the premises shall be well-lighted.
- (3) Entry into areas where drugs are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

## **535:20-5-6.4. Storage**

All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements

in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(1) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(2) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs.

(3) The recordkeeping requirement in this Title for manufacturers shall be followed for all stored drugs.

## **535:20-5-6.5. Examination of materials**

(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(b) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(c) The recordkeeping requirement in this Title for manufacturers shall be followed for all incoming and outgoing drugs.

## **535:20-5-6.6. Returned, damaged, and outdated drugs**

(a) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(b) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the packager shall consider, among other things:

- (1) The conditions under which the drug has been held, stored or shipped before or during its return; and,
- (2) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(c) The recordkeeping requirements for packagers in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

## **535:20-5-6.7. Recordkeeping**

(a) Packagers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

- (c) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.
- (d) Each packager should maintain an ongoing list of persons with whom they do business.

**535:20-5-6.8. Written policies and procedures**

- (a) Packagers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.
- (b) Packagers shall include in their written policies and procedures the following:
  - (1) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:
    - (A) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;
    - (B) Voluntary action by the manufacturer to remove defective or potentially defective drugs from the market; or
    - (C) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.
  - (2) A procedure to ensure that manufacturers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.
  - (3) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.
    - (A) This procedure shall provide for written documentation of the disposition of outdated drugs.
    - (B) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

**535:20-5-6.9. Responsible persons**

Packagers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug manufacturer, distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

**535:20-5-6.10. Compliance with federal, state and local laws**

- (a) Packagers shall operate in compliance with applicable federal, state, and local laws and regulations.
- (b) Packagers shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to

enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

- (c) Packagers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulations.

**535:20-5-6.11. Salvaging and reprocessing**

Packagers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

**535:20-5-9. Prohibited conduct**

- (a) The following shall be considered prohibited conduct and be a violation of these rules:
  - (1) Engaging in the packaging and/or distribution of drugs
    - (A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required;
    - (B) destroying, altering, concealing, or failing to maintain complete and accurate records for any drug packaging, when required;
    - (C) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, or,
    - (D) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s).
  - (2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).
  - (3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or the commission of any other act with respect to a drug which results in the drug being misbranded.
  - (4) Packaging, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or,
- (b) Any violation of the rules of registrant conduct in 535:25-9 is prohibited conduct.

**SUBCHAPTER 7. WHOLESALERS AND PEDIGREE RULES**

**535:20-7-7.7. Recordkeeping; including pedigree requirement**

- (a) Wholesale distributors shall establish and maintain complete inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs and devices.
- (b) After January 1, 2009~~2011~~, each person who is engaged in wholesale distribution of prescription drugs, (including

repackagers of the finished form of the prescription drug) whether located in or out-of-state, must maintain and provide a pedigree record developed in accordance with standards and requirements of the Board, for all drugs received, distributed, sold and/or offered for sale outside of the normal distribution channel, or that leave or have ever left the normal distribution channel and shall before each wholesale distribution of such drug provide a pedigree to the person who receives such prescription drug.

- (1) A statement or record in written or electronic form shall be used to record each distribution of any given drug, from the sale by a manufacturer through acquisition and sale by any wholesaler distributor, packager and/or repackager.
- (2) The pedigree shall include, but not be limited to, the following information for each transaction:
  - (A) The source of the drug(s), including the name and principal address of the seller;
  - (B) The name of the drug and the national drug code (NDC) number, the amount of the drug, the date of the purchase, quantity (container size, number of containers), and lot number(s) of the drug;
  - (C) The business name and address of each owner of the drug, its shipping information, including the name and address of the facility of each person certifying delivery or receipt of the drug;
  - (D) A certification that the information contained therein is true and accurate under penalty of perjury.
- (3) The wholesale distributor must conduct due diligence in verifying pedigrees.
- (4) The pedigree or electronic record requirements do not apply to compressed medical gases (medical gas suppliers and medical gas distributors, etc.)
- (5) The pedigree or electronic record requirements do not apply to drugs labeled for veterinarian use.
- (c) Wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution, or other disposition of all drugs and devices. Such records shall include the dates of receipt and distribution or other disposition of the drugs and devices. Inventories and records shall be maintained and made available for inspection and photocopying for a period of two (2) years following their creation date.
  - (1) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period.
  - (2) Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.
- (d) Each wholesale distributor should maintain an ongoing list of persons with whom they do business.

## SUBCHAPTER 9. MEDICAL GAS SUPPLIERS AND DISTRIBUTORS

### 535:20-9-3. Medical gas suppliers

(a) **Licensing requirement.** Before conducting interstate and/or intrastate transactions in Oklahoma, a medical gas supplier shall register annually with ~~must be licensed by~~ the Board of Pharmacy.

- (1) A medical gas supplier permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new medical gas supplier permit.
- (2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)
- (3) Each location shall possess a medical gas supplier permit. A medical gas supplier permit entitles the permit holder to store and supply medical gas (prescription drugs) at the licensed location.
- (b) Permits shall be issued only to those medical gas suppliers who satisfy the provisions of:
  - (1) Title 59, O.S., Section 353.18 (B)(1)(2) et seq.
  - (2) All medical gas supplier applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.
  - (3) Applicants shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to handle medical gas.
  - (4) The Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or,
  - (5) Any other applicable federal, state, or local laws and regulations.
- (c**e**) **Minimum required information for licensure.** The minimum required information for medical gas supplier licensure shall be as follows, same as that information required by 535:20-7-4 regarding wholesalers. Medical gas supplier applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:
  - (1) The name, full business address, and telephone number;
  - (2) All trade or business names used by the manufacturer applicant;
  - (3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;
  - (4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);
  - (5) The name(s) of the owner and/or operator of the manufacturer applicant; and
  - (6) Any other information the Board deems necessary to protect the public health.
- (d**e**) **Minimum qualifications.** Medical gas suppliers must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.
  - (1) Medical gas suppliers must conform to all applicable federal, state or local laws and regulations.

(2) The minimum qualifications shall be the same as those set forth in 535:25-535:20-7-5 regarding wholesalers, and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in the supplying of medical gases:

(A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;

(B) Any felony convictions of the applicant under federal, state, or local laws;

(C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;

(D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;

(E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;

(F) Compliance with licensing requirements under previously granted licenses, if any;

(G) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,

(H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

~~(e) **Personnel.** Personnel employed by medical gas suppliers shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements. The Board shall as required in 353.18(B), at a minimum, shall consider those qualifications listed in 535:20-7-5 and 535:20-7-6 for personnel employed in wholesale distribution.~~

~~(f) **Minimum requirements for storage, handling, and records.** Medical gas suppliers must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.~~

~~(1) The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.~~

~~(A) All medical gas suppliers of drugs shall conform to U. S. Food and Drug Administration (FDA) requirements for medical gas prescription drugs.~~

~~(B) All medical gas suppliers shall conform to the Oklahoma Pharmacy Act and the rules of this Title.~~

~~(C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:~~

~~(i) Be licensed by the Board;~~

~~(ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;~~

~~(iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;~~

~~(iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;~~

~~(v) Be maintained in a clean and orderly condition; and,~~

~~(vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.~~

~~(2) Medical gases housed by a medical gas supplier shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.~~

~~(g) **Prescription requirement Requirements.** Medical gas suppliers shall not supply medical gas without a drug order. Drug orders may be issued for institutional or licensed medical practitioner office use as well as to a patient.~~

~~(1) An original or copy of a prescription drug order must be kept at the licensed location supplying the medical gas.~~

~~(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.~~

~~(h) **Minimum requirements for storage, handling, and records for medical gas.** The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas suppliers and their officers, agents, representatives, and employees.~~

~~(1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.~~

~~(A) Access from outside the premises shall be kept to a minimum and be well-controlled.~~

~~(B) The outside perimeter of the premises shall be well-lighted.~~

~~(C) Entry into areas where drugs are held shall be limited to authorized personnel.~~

~~(D) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security~~

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system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(A) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.

(C) The recordkeeping requirement in this Chapter for medical gas suppliers shall be followed for all stored drugs.

(3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.

(4) **Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas supplier shall consider, among other things:

(i) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(B) The recordkeeping requirements for medical gas suppliers in this Chapter shall be followed for all

outdated, damaged, deteriorated, misbranded or adulterated drugs.

(5) **Recordkeeping.** Medical gas suppliers shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(C) Each medical gas supplier should maintain an ongoing list of persons with whom they do business.

(6) **Written policies and procedures.** Medical gas suppliers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(A) Medical gas suppliers shall include in their written policies and procedures the following:

(i) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(I) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(II) Voluntary action by the medical gas supplier to remove defective or potentially defective drugs from the market; or

(II) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(B) A procedure to ensure that medical gas suppliers prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated drugs.

- (ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.
- (7) **Responsible persons.** Medical gas suppliers shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.
- (8) **Compliance with federal, state and local laws.** Medical gas suppliers shall operate in compliance with applicable federal, state, and local laws and regulations.
  - (A) Medical gas suppliers shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.
  - (B) Medical gas suppliers that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.
- (9) **Salvaging and reprocessing.** Medical gas suppliers shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

**535:20-9-4. Medical gas distributors**

- (a) **Licensing requirement.** Before conducting interstate and or intrastate transactions in Oklahoma, a medical gas distributor shall register annually with ~~must be licensed by~~ the Board of Pharmacy.
  - (1) A medical gas distributor permit is only valid for the name, ownership and location listed on the permit. Changes of name, ownership or location shall require a new medical gas distributor permit.
  - (2) Changes in any information required for licensure must be reported to the Board within ten (10) days (e.g. manager, contact person, phone, etc.)
  - (3) Each location shall possess a medical gas distributor permit. Medical gas distributor permit entitles the permit holder to store and distribute medical gas (prescription drugs) at the licensed location.
- (b) Permits shall be issued only to those medical gas distributors who satisfy the provisions of:
  - (1) Title 59, O.S., Section 353.18 (B)(1)(2) et seq.,
  - (2) All medical gas distributor applicants must meet the requirements under the Oklahoma Pharmacy Act, this Title and the rules in 535:25 for applicants.
  - (3) Applicants shall be registered with the federal Food and Drug Administration (FDA) and meet the federal requirements to handle and wholesale medical gas.
  - (4) The Prescription Drug Marketing Act (PDMA, 21 U.S.C., Sec. 331 et seq.); and/or,
  - (5) Any other applicable federal, state, or local laws and regulations.

- (c) **Minimum required information for licensure.** The minimum required information for medical gas distributors licensure shall be the same as follows, ~~that information required by 535:20-7-4 regarding wholesalers.~~ Medical gas distributor applicants must submit a satisfactorily completed application together with the required fee annually. This application shall include, at least, the following:
  - (1) The name, full business address, and telephone number;
  - (2) All trade or business names used by the manufacturer applicant;
  - (3) Address, telephone numbers, and the names of contact persons for the manufacturing facility;
  - (4) The type of ownership or operation (e.g., partnership, corporation, or sole proprietorship);
  - (5) The name(s) of the owner and/or operator of the manufacturer applicant; and
  - (6) Any other information the Board deems necessary to protect the public health.
- (d) **Minimum qualifications.** Medical gas distributors must conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.
  - (1) Medical gas distributors must conform to all applicable federal, state or local laws and regulations.
  - (2) The minimum qualifications shall be the same as those set forth in ~~535:20-7-5 regarding wholesalers.~~ 535:25 and this Chapter. The Board shall consider, at a minimum, the following factors in reviewing the qualifications of persons who engage in medical gas distribution:
    - (A) Any convictions of the applicant under any federal, state, or local laws relating to drugs, drug samples, manufacture, packager, wholesale or retail drug distribution, or distribution of controlled substances;
    - (B) Any felony convictions of the applicant under federal, state, or local laws;
    - (C) The applicant's past experience in the handling, manufacture, packaging or distribution of drugs, including controlled substances;
    - (D) The furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device handling, manufacturing, packing, or distribution;
    - (E) Suspension, sanction, or revocation by federal, state, or local government of any license currently or previously held by the applicant for the handling, manufacture, packaging, or distribution of any drugs, including controlled substances; or by any of its owners for violation of state or federal laws regarding drugs or devices;
    - (F) Compliance with licensing requirements under previously granted licenses, if any;
    - (G) Compliance with requirements to maintain and/or make available to the State Board of Pharmacy or to federal, state, or local law enforcement officials those records required under this section; and,

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(H) Any other factors or qualifications the Board considers relevant to and consistent with the public health and safety.

(3) The Board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be consistent with the public health and safety.

(e) **Personnel.** Personnel employed by medical gas distributors shall have sufficient education, training, and/or experience to perform assigned functions and comply with federal, state and local licensing requirements. ~~The Board shall as required in 535:18(B), at a minimum, consider those qualifications listed in 535:20 7 5 and 535:20 7 6 for personnel employed in wholesale distribution.~~

(f) **Minimum requirements.** Medical gas distributors must meet minimum requirements for storage and handling, and for the establishment and maintenance of distribution records for medical gases.

(1) ~~These minimum requirements shall be the same as those set forth in 535:20 7 7.3 regarding wholesalers security, except for Paragraphs (2) and (3) of Subsection (a) and 535:20 7 7.4 regarding storage except for Paragraphs (1) and (2) of Subsection (a). The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.~~

(A) All medical gas distributors of drugs shall conform to U. S. Food and Drug Administration (FDA) requirements for medical gas prescription drugs.

(B) All medical gas distributors shall conform to the Oklahoma Pharmacy Act and the rules of this Title.

(C) Each facility at which drugs are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(i) Be licensed by the Board;

(ii) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(iii) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment and security conditions;

(iv) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(v) Be maintained in a clean and orderly condition; and,

(vi) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Medical gases housed by a medical gas distributor shall conform to the Compressed Medical Gases Guidelines published by the Department of Health and Human Services, Food and Drug Administration.

(g) **Prescription requirements Requirements.** Medical gas distributors shall distribute only to an entity licensed to receive medical gas or upon a practitioner's drug order. A pharmacy, dentist, or licensed practitioner's practice license verifies their authority to receive Rx Only medical gases.

(1) An original or copy of a prescription drug order must be kept at the licensed location distributing the medical gas.

(2) A prescription drug order is only valid for one (1) year. Prescription drug orders shall be maintained for five years and be readily retrievable and available at inspection.

(3) Distributors that sell to licensed medical gas suppliers must keep an updated copy of each supplier's license on file.

(h) **Minimum requirements for storage, handling and records for medical gas Rx Only drugs.** The following shall describe the minimum requirements for the storage and handing of medical gas prescription drugs, and for the establishment and maintenance of drug records by medical gas distributors and their officers, agents, representatives, and employees.

(1) **Security.** Each facility used for medical gases shall be secure from unauthorized entry.

(A) Access from outside the premises shall be kept to a minimum and be well-controlled.

(B) The outside perimeter of the premises shall be well-lighted.

(C) Entry into areas where drugs are held shall be limited to authorized personnel.

(D) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(2) **Storage.** All drugs shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with the requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(A) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(B) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of drugs, if required.

(C) The recordkeeping requirement in this Chapter for medical gas distributors shall be followed for all stored drugs.

(3) **Examination of materials.** Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated drugs or chemicals that are unfit. This examination shall be adequate to reveal container damage that would

suggest possible contamination or other damage to the contents.

(A) Each outgoing shipment shall be carefully inspected for identity of the drug products and to ensure that there is no delivery of drugs that have been damaged in storage or held under improper conditions.

(B) The recordkeeping requirement in this Chapter shall be followed for all incoming and outgoing drugs.

**(4) Returned, damaged, and outdated drugs.** Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other drugs until they are destroyed.

(A) If the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, then the drug shall be destroyed, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, quality, strength, and purity. In determining whether the conditions under which a drug has been returned cast doubt on the drug's safety, identity, strength, quality or purity, the medical gas distributors shall consider, among other things:

(i) The conditions under which the drug has been held, stored or shipped before or during its return; and,

(ii) The condition of the drug and its container, carton, or labeling, as a result of storage or shipping.

(B) The recordkeeping requirements for medical gas distributors in this Chapter shall be followed for all outdated, damaged, deteriorated, misbranded or adulterated drugs.

**(5) Recordkeeping.** Medical gas distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of drugs.

(A) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the drugs.

(B) Records described in this section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(C) Each medical gas distributor should maintain an ongoing list of persons with whom they do business.

**(6) Written policies and procedures.** Medical gas distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for

the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories.

(A) Medical gas distributors shall include in their written policies and procedures the following:

(i) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to any:

(I) Action initiated at the request of the Food and Drug Administration (FDA) or other federal, state, or local law enforcement or other government agency, including the Board of Pharmacy;

(II) Voluntary action by the medical gas distributor to remove defective or potentially defective drugs from the market; or

(III) Action undertaken to promote public health and safety by replacing of existing merchandise with an improved product or new package design.

(B) A procedure to ensure that medical gas distributors prepare for, protect against, and handle a crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state or national emergency.

(C) A procedure to ensure that any outdated drugs shall be segregated from other drugs and destroyed.

(i) This procedure shall provide for written documentation of the disposition of outdated drugs.

(ii) This documentation shall be maintained for two (2) years after disposition of the outdated drugs.

**(7) Responsible persons.** Medical gas distributors shall establish and maintain lists of officers, directors, managers and other persons in charge of drug distribution, storage, and handling, including a description of their duties and a summary of their qualifications.

**(8) Compliance with federal, state and local laws.** Medical gas distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(A) Medical gas distributors shall permit the Board of Pharmacy and authorized federal, state, and local law enforcement officials to enter and inspect their premises and delivery vehicles, and to audit their records and written operating procedures and to confiscate records, to the extent authorized by law and rule.

(B) Medical gas distributors that deal in controlled substances shall register with the appropriate state controlled substance authority and with the Drug Enforcement Administration (DEA), and shall comply with all applicable state, local and DEA regulation.

**(9) Salvaging and reprocessing.** Medical gas distributors shall be subject to the provisions of any applicable federal, state or local laws or regulations that relate to drug

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product salvaging or reprocessing including U.S. 21 CFR Parts 207, 210 and 211.

## **535:20-9-6. Prohibited conduct**

(a) The following shall be considered prohibited conduct and be a violation of these rules:

- (1) Engaging in medical gas distributing of drugs
  - (A) with intent to defraud or deceive, failing to maintain or provide a complete and accurate record, when required;
  - (B) destroying, altering, concealing, or failing to maintain complete and accurate records for any drug packaging, when required;
  - (C) knowingly purchasing or receiving drugs from a person, not authorized to distribute drugs, or
  - (D) selling, bartering, brokering, or transferring drugs to a person not authorized to purchase drugs, under the jurisdiction in which the person receives the drug(s).
- (2) Forging, counterfeiting, or falsely creating any label for a drug(s) or who falsely represents any factual matter contained in any label of a drug(s).
- (3) Altering, mutilating, destroying, obliterating, or removing the whole or any part of the labeling of a drug or the commission of any other act with respect to a drug that results in the drug being misbranded.
- (4) supplying, packaging, purchasing, selling, delivering or bringing into the state contraband drug(s), or any one who illegally possesses any amount of contraband drug(s); or.

(b) Any violation of the rules of registrant conduct in 535:25-9 is prohibited conduct.

[OAR Docket #09-1034; filed 5-22-09]

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

[OAR Docket #09-1035]

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Applicants, Registrants, and Applications  
535:25-3-4. Requirements for applicants or registrants who have had action against any license, permit or certificate [AMENDED]  
Subchapter 9. Violations of the Rules of Registrant Conduct  
535:25-9-8. Failure to maintain effective controls [AMENDED]

### **AUTHORITY:**

Title 51 O.S. 24A et seq., Oklahoma State Board of Pharmacy is the regulatory authority under Title 59 O.S., Sec. 353.7, 353.13, 353.13A, 353.16A, 353.17, 353.18; 353.20, 353.22, 353.24 - 353.26, 353.29, and 354; Title 75 O.S., Section 302, 305, 307, and 309; Title 63 O.S., Sec 2-201, 2-208 and 2-210; and Title 51 Sec. 24 A.5 (3).

### **DATES:**

#### **Comment period:**

February 2, 2009 through March 13, 2009

#### **Public hearing:**

March 25, 2009

### **Adoption:**

March 25, 2009

### **Submitted to Governor:**

March 27, 2009

### **Submitted to House:**

March 27, 2009

### **Submitted to Senate:**

March 27, 2009

### **Gubernatorial approval:**

May 04, 2009

### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 20, 2009

### **Final adoption:**

May 20, 2009

### **Effective:**

July 1, 2009

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **ANALYSIS:**

The revision in 535:25-3-4 corrects the numbering from (c) to (b) as there is no (b). The revision in 535:25-9-8 expands registrant's responsibility to establish and maintain effective controls on prescription drugs to protect drug safety and security.

### **CONTACT PERSON:**

Mr. John A. Foust, Executive Director, Oklahoma State Board of Pharmacy located at 4545 Lincoln Boulevard, Suite 112, Oklahoma City, OK 73105-3488. Phone number (405) 521-3815 and FAX number (405) 521-3758.

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

## **SUBCHAPTER 3. APPLICANTS, REGISTRANTS, AND APPLICATIONS**

### **535:25-3-4. Requirements for applicants or registrants who have had action against any license, permit or certificate**

(a) If the Board approves an applicant or registrant who has had a previous registration, license, permit, or certificate which was revoked or subject to Board action at cancellation, the applicant shall be subject to the following terms:

- (1) A minimum of two years probation.
- (2) Any specific requirements placed on the applicant by the Board based on the previous action and applicant's or registrant's current status.
- (3) Any violations by the applicant or registrant shall subject the applicant or registrant to cumulative action based on previous violation on the previous license and the current violation.
- (4) Failure of the applicant or registrant to meet any terms or requirements of the Board shall subject the applicant to Board action based on current failure and previous Board action against previous License

(e**b**) The Board shall have the right to order any additional terms or conditions that it determines are required to protect the public health and safety.

**SUBCHAPTER 9. VIOLATIONS OF THE RULES OF REGISTRANT CONDUCT**

- 535:25-9-8. Failure to maintain effective controls**
- (a) Failure to establish and maintain effective controls to prevent prescription errors is a violation of registrant conduct.
- (b) Failure to establish and maintain effective controls against the diversion of prescription drugs into other than legitimate medical, scientific, or industrial channels as provided by federal, state or local laws or rules is a violation of registrant conduct.
- (c) The sale of dangerous drugs to a person or entity not eligible to receive such drugs is a violation of registrant conduct.
- (d) The purchase of dangerous drugs from a person or entity not eligible to possess such drugs is a violation of registrant conduct.

[OAR Docket #09-1035; filed 5-22-09]

**TITLE 600. REAL ESTATE APPRAISER BOARD  
CHAPTER 10. LICENSURE AND CERTIFICATION REQUIREMENTS**

[OAR Docket #09-880]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- 600:10-1-4. Examination [AMENDED]
- 600:10-1-6. Experience prerequisite [AMENDED]
- 600:10-1-16. Supervision of trainee appraisers [AMENDED]

**AUTHORITY:**

Oklahoma Real Estate Appraisers Act; 59 O.S. § 858-706 (B); Real Estate Appraiser Board

**DATES:**

**Comment Period:**

January 16, 2009 through February 27, 2009

**Public Hearing:**

March 6, 2009

**Adoption:**

March 6, 2009

**Submitted to Governor:**

March 16, 2009

**Submitted to House:**

March 16, 2009

**Submitted to Senate:**

March 16, 2009

**Gubernatorial approval:**

April 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in final approval on May 8, 2009

**Final adoption:**

May 8, 2009

**Effective:**

July 14, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

The proposed amendment to rule 600:10-1-4 adds an additional requirement for trainee appraiser certification. The proposed amendment to

rule 600:10-1-6 provides a jurisdictional exception for those conducting work product reviews related to the experience requirement and clarifies existing language. The proposed amendment to 600:10-1-14 adds a requirement for those wishing to supervise a trainee and removes obsolete language.

**CONTACT PERSON:**

George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107 (405) 521-6636

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**600:10-1-4. Examination**

- (a) To be certified as a State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser the applicant must pass the examination that is appropriate for the applicable classification or certificate.
- (b) Prior to taking the appraiser examination, an individual must make application for State Licensed, State Certified Residential or State Certified General Appraiser and shall satisfy all licensing and certification requirements as set forth by the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of the Appraisal Foundation, which are incorporated by reference.
- (c) Applicants for State Licensed, State Certified Residential and State Certified General Appraiser must complete the required hours in both education and experience before making application to take the appraiser examination.
- (d) If requirements are satisfactorily met by applicants for State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser, notification shall be sent to the applicant allowing that applicant to take the examination on the next available test date.
- (e) There shall be no examination required to be certified as a Trainee Appraiser; however, applicants for Trainee Appraiser must provide the identification of a qualified supervisory appraiser in the manner described by 600:10-1-16(a) and must successfully complete a Board-sponsored course for trainees and supervisors.

**600:10-1-6. Experience prerequisite**

- (a) An original certification as a State Licensed Appraiser, State Certified Residential Appraiser or State Certified General Appraiser shall not be issued to any person who does not possess the minimum experience criteria set forth by the Appraiser Qualifications Board of the Appraisal Foundation provided any state licensed appraiser who becomes state licensed prior to July 1, 2001, shall not be required to attain the minimum requirements of experience promulgated by the Appraiser Qualifications Board to maintain certification as a state licensed appraiser.
- (b) Applications for certification as a State Licensed Appraiser or State Certified Residential Appraiser must be accompanied by a One Hundred Fifty Dollar (\$150.00) non-refundable application fee. Applications for certification as a

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State Certified General Appraiser must be accompanied by a Two Hundred Twenty Five Dollar (\$225.00) non-refundable application fee.

(c) Experience credit shall be allowed in accordance with the guidelines set forth by the Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of the Appraisal Foundation.

(d) ~~Each applicant for certification shall furnish under oath on forms prescribed by the Board a detailed listing of the real estate appraisal reports or file memoranda for each year for which experience is claimed by the applicant.~~

(e) Applicants for the State Licensed, State Certified Residential, or State Certified General classifications shall ~~are required~~ to submit, in addition to the approved application form, properly completed experience log forms according to the basic form approved by the Board. Additionally, applicants for either the State Licensed, State Certified Residential, or State Certified General classifications shall submit the following upon request by the Board:

(1) A letter of verification from a third party (or parties, i.e., employer, appraiser supervisor, etc.) stating and confirming direct knowledge that the applicant has achieved the stated hours of real estate appraisal experience, and

(2) Copies of ~~at least three actual~~ written real estate appraisal work product or workfiles ~~reports that exemplify the type of appraisal work experience that credit is being applied for. Reports submitted must be self contained or summary reports of appraisals. Applicants for Certified General Appraiser must submit reports of at least two non-residential appraisals.~~

(e) The requirements of USPAP shall not apply to the Board, its agents, committee members, and staff when conducting an appraisal review for purposes of confirming an applicant's experience under this administrative regulation.

### 600:10-1-16. Supervision of trainee appraisers.

(a) Trainee Appraisers shall report to the Board, on a form prescribed by the Board, the identity of any supervisory appraiser. Trainee Appraisers may have more than one supervisory appraiser. When a Trainee Appraiser has more than one supervisory appraiser, each shall be reported to the Board as indicated above.

(1) The supervisor-trainee relationship shall become effective on the date of receipt of the original required form with original signatures in the administrative office of the Board.

(2) A supervisory appraiser shall notify the Board in writing immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(b) Trainee Appraisers shall maintain an appraisal log on a form prescribed by the Board. Separate appraisal logs shall be maintained for work performed with each supervisory appraiser. This appraisal log shall record the following information:

- (1) Client name and date of report,
- (2) Address or legal description of the real property appraised,

(3) Description of the work performed by the trainee appraiser and the scope of review and supervision of the supervisory appraiser,

(4) Number of actual hours worked,

(5) Type of property appraised,

(6) Form number or description of report rendered, and

(7) The signature and state certificate number of the supervisory appraiser.

(c) Experience credit for the purpose of upgrading will not be given unless:

(1) a properly completed trainee-supervisory report form is on file in the administrative office of the Board, and

(2) the Trainee Appraiser either signs the certification required by Standards Rule 2-3 of the Uniform Standards of Professional Appraisal Practice, or the supervisory appraiser gives credit to the Trainee Appraiser in the certification and complies with the requirements of Standards Rule 2-2(a)(vii), 2-2(b)(vii), or 2-2(c)(vii) as applicable.

(d) Both supervisory and trainee appraisers shall maintain complete workfiles as required by the Uniform Standards of Professional Appraisal Practice and the Oklahoma Certified Real Estate Appraisers Act.

(e) A supervisory appraiser shall meet the following requirements:

(1) have been a State Licensed or Certified Appraiser for a period of at least three (3) years;

(2) be a State Certified General Appraiser, or a State Certified Residential Appraiser, or State Licensed under AQB Criteria Appraiser on a credential issued by the Oklahoma Real Estate Appraiser Board, ~~provided however, that trainee supervisor relationships between State Licensed under AQB Criteria Appraisers shall only be permissible until January 1, 2008;~~

(3) be in good standing with the Board and not have been revoked, suspended, or placed on supervised probation in the last two years subject to any disciplinary action within the last two years that affects the supervisor's legal eligibility to engage in appraisal practice; and

(4) accept responsibility for training, guidance, and direct supervision of the Trainee Appraiser by signing the form referenced in (a), above; and

(5) must successfully complete a Board-sponsored course for trainees and supervisors; provided however, that supervisors in place as of the effective date of this rule must successfully complete this course within one

(1) year following the effective date of the rule.

(f) A supervisory appraiser shall:

(1) accept responsibility for a Trainee Appraiser's appraisal reports by signing each report and certifying that the report is in compliance with the Uniform Standards of Professional Appraisal Practice, and

(2) personally inspect each appraised property with the Trainee Appraiser until the supervisory appraiser determines that the Trainee Appraiser is competent, in accordance with the Competency Rule of the Uniform Standards of Professional Appraisal Practice, for the property type.

(g) A supervisory appraiser shall notify the Board immediately when supervision of a Trainee Appraiser has been terminated by the supervisory appraiser or the Trainee Appraiser.

(h) Prior to assuming duties as a supervisory appraiser, an appraiser who has been disciplined by the Board must receive approval from the Board.

(i) A supervisory appraiser may assume responsibility for more than three Trainee Appraisers under the following terms and conditions:

(1) The supervisor must apply for authority to supervise more than three Trainee Appraisers with the Board on forms approved by the Board for this purpose. This approval shall extend to the supervisor or supervisors, the facility and the training plan. Any approval issued hereunder shall specify a maximum number of trainees authorized.

(2) The supervisor must specify the location of the facility to be used for this purpose, which may not be a residence. The facility must have posted hours, approved by the Board, during which the facility will be open and a qualified supervisor present. During the operating hours, the facility and all records specified herein shall be subject to unannounced compliance inspection by a representative of the Board.

(3) The supervisor must prepare a training plan, based on the Core Curriculum and the Real Property Appraiser Body of Knowledge promulgated by the Appraiser Qualification Board of The Appraisal Foundation, appropriate to the level of licensure to which the trainee aspires and for which the supervisor is qualified. This training plan should, as a minimum, include learning objectives for the experience to be gained, a planned time line for further qualifying and continuing education required to bring the trainee to a fully qualified status, and a checklist for monitoring progress by the trainee toward meeting these objectives.

(4) Records maintained in the training facility must include the training plan, an appraisal log, a workfile for each appraisal assignment, and a progress checklist, each maintained on a contemporaneous basis, for each Trainee Appraiser. In addition, appropriate reference materials should be on hand, which must include the current edition of the USPAP.

(5) Approval of any supervisor or supervisors under this paragraph may be conditioned upon an interview of such supervisors by a representative of the Board. ~~Trainee-supervisor relationships existing as of July 13, 2005 that do not otherwise qualify under this paragraph shall remain permissible until January 1, 2008.~~

(j) Trainee appraisers must successfully complete a Board-sponsored course for trainees and supervisors; provided however, that trainee appraisers credentialed as of the effective date of this rule must successfully complete this course within one (1) year following the effective date of the rule.

[OAR Docket #09-880; filed 5-11-09]

**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 3. ELECTION PROCEDURES**

[OAR Docket #09-900]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

630:3-1-1 through 630:3-1-21 [AMENDED]

**AUTHORITY:**

Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.

**DATES:**

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

In 2008, the Oklahoma Scenic Rivers Commission undertook a comprehensive review of all but chapter 3 of its regulations, to make them clear and concise, and to conform to the Oklahoma Scenic Rivers Act, the Oklahoma Administrative Procedures Act and other applicable Oklahoma law. For consistency with last year's comprehensive review, similar revisions are now made in chapter 3 to eliminate redundancy and confusion, streamline procedures, and improve efficiency in order to better preserve the scenic rivers in their natural, scenic state.

**CONTACT PERSON:**

Ed Fite, Administrator (918) 456-3251

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**630:3-1-1. Purpose**

The rules of this Chapter are adopted pursuant to ~~Title paragraph D of 82 O.S. Sections 1451-1471~~ Section 1461. They establish the election procedures for elected commissioners, the costs of which are borne by OSRC, ~~are adopted as standards guiding the practice and procedures of the Oklahoma Scenic Rivers Commission and for the purpose of simplifying procedures, avoiding delays, saving expense, and facilitating administration of the Scenic Rivers Area for the Flint Creek and the Illinois River Scenic River and those portions of Barren Fork Creek within Cherokee County.~~

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## 630:3-1-2. Notice of filing period

The Commission OSRC shall provide ~~public~~ publish notice of the filing period; for ~~elect~~ commissioner candidates to the Oklahoma Scenic Rivers Commission, in a newspaper of general circulation, serving the respective counties affected by the election, at least twice with an interval of seven (7) days during the last week of October and the first two weeks of November, and/or by posting copies of such notice in at least five (5) public places within ~~the counties~~ each county affected by the elections.

## 630:3-1-3. Filing period and procedures by candidates

(a) The filing period for candidates shall be Candidates shall file at the principal office of the OSRC a completed "Declaration of Candidacy" form provided by the OSRC between 8:30 8:00 a.m. and 5:00 4:30 p.m., Monday through Wednesday of during the third week in November in the year that positions become available.

(b) ~~In order to be eligible for the December election, all candidates for Commissioner shall file a notarized Declaration of Candidacy within the filing period at the Commission's headquarters in compliance with these rules.~~

(c) ~~All candidates for election shall use the official Declaration of Candidacy forms which shall be available at the office of the Oklahoma Scenic Rivers Commission.~~

## 630:3-1-4. Notice of candidates and election

(a) ~~The Commission~~ If there are two or more candidates for an office, the OSRC shall provide public publish notice of ~~the candidates and the election~~ elections in a newspaper of general circulation, serving the respective counties affected by the elections, once a week for ~~at least two~~ consecutive weeks prior to election day. The notice shall ~~include, at a minimum,~~ list the names of the candidates, voting hours, ~~the~~ election date, and ~~polling voting~~ locations. If there is no candidate the Commission may then decide whether and when to conduct a special election.

(b) Polling locations will be open to qualified voters to cast ballots from 7:00 a.m. to 7:00 p.m. on the scheduled county representative(s), at large or special election dates.

## 630:3-1-5. Date and place of election

Elections for non-appointed members of the Commission shall be held on the first Tuesday in December, from 7 a.m. to 7 p.m., as said positions become available. The OSRC shall provide at least one polling place in each of the counties affected by the election.

## 630:3-1-6. Place of election [REVOKED]

(a) ~~There shall be at least one polling place in each of the counties within the jurisdiction of the Commission.~~

(b) Locations of polling places shall be determined by the Administrator based on the availability of proper facilities and convenience of the location for the voters.

## 630:3-1-7. Qualification for voting in election

(a) ~~In order to~~ To qualify to vote in ~~Commission~~ commissioner elections, all registered voters who also wish to vote for a candidate must reside, own real property or own a residential structure within 660 feet of a Scenic River, as specified in Title 82, Section 1461. To qualify, each registered voter must sign an OSRC affidavit for voter-qualifications in person or by mail with the OSRC at least 24 days before an election commences. Once registered, by submitting a ballot, registered voters certify that they remain eligible to vote. ~~person shall:~~

(1) ~~Meet requirements of Title 82 O.S., Section 1461.~~

(2) ~~Register with the Commission as provided in OAC 630:3-1-11 and 12, and~~

(3) ~~Sign an affidavit attesting that they meet all requirements at the time of voter registration.~~

(b) ~~A description of the Commission's jurisdiction shall be available in the office of the Oklahoma Scenic Rivers Commission.~~

## 630:3-1-8. Costs of election [REVOKED]

~~The Oklahoma Scenic Rivers Commission shall assume all costs of the election and election notice, including those costs of precinct officials necessary to conduct elections.~~

## 630:3-1-9. Special election

Should an elected-commissioner vacancy occur with more than 90 days remaining in its term, the OSRC may conduct a special election to fill the remainder of the vacant term. become necessary pursuant to OAC 630:2-1-7, it shall be conducted in the following manner:

(1) ~~Notice of the~~ The OSRC shall publish notice of a special election, the filing period (which shall be the second week after the week in which notice was first published), and the location shall be given in a newspaper of general circulation, serving the respective counties affected by the election, at least twice with an interval of seven (7) days during a three (3) week period, and/or by posting copies of such notice in at least five (5) public places within the counties affected by the election; in the same manner as described in rule 630:3-1-2, above.

(2) ~~The filing period for candidates shall be for a one week period immediately following the initial three week period in which such notice was given; Candidates shall file during the week specified in the notice in the same manner as described in rule 630-3-1-3, above.~~

(3) ~~The OSRC shall publish notice of the special election, date which shall be held on~~ the third Tuesday following the end of the filing period, in the same manner as described in rule 630:3-1-4, above;

(4) ~~The notice of candidates, election date, and location shall be given at the end of the filing period in the same manner as the original notice of election.~~

## 630:3-1-10. Loyalty Oath and Oath of Office for new members

Newly elected members of the Commission shall receive an Oath of Office and Loyalty Oath to be administered at the

next ~~regularly~~ scheduled Commission meeting following the election.

**630:3-1-11. Time for registration [REVOKED]**

~~In order to be eligible to vote, all persons must register with the Commission at least 24 days prior to a scheduled election. Persons must meet all of the eligibility requirements prior to registering.~~

**630:3-1-12. Procedures to register or update registration [REVOKED]**

~~Persons meeting the requirements of Title 82 O.S. Section 1461 may register to vote or update a registration to vote by:~~

- ~~(1) Submitting a completed voter registration application on the approved form to the Oklahoma Scenic Rivers Commission, P.O. Box 292, Tahlequah, OK 74465-0292.~~
- ~~(2) Completing a voter registration application on the approved form in the presence of administrative staff of the Commission at its headquarters located 2 miles north-east of Tahlequah, Oklahoma on State Highway "Scenic" 10 North.~~

**630:3-1-13. Absentee voting Prohibitions**

(a) Absentee voting shall not be permitted in Commission elections.

(b) Except for OSRC staff and notices, no person shall campaign, post campaign literature or poll voters within 300 feet of any ballot box during voting hours.

**630:3-1-14. Campaigning prohibited [REVOKED]**

~~No person shall be allowed to campaign within three hundred (300) feet of any ballot box while an election is in progress, nor shall any person be allowed within fifty (50) feet of any ballot box while an election is in progress, except election officials and other persons authorized by law. No printed material, other than that provided by the Commission, shall be publicly placed or exposed within three hundred (300) feet of any ballot box, while an election is in progress.~~

**630:3-1-15. Polling prohibited [REVOKED]**

~~Polling shall not be permitted within fifty (50) feet of any ballot box while an election is in progress.~~

**630:3-1-16. Certification of results-tie Counting of votes**

(a) When all the ballots have been counted, the Administrator shall certify the results. Notice of the certified results shall be publicly posted at Commission headquarters. Ballots shall be collected, counted and delivered to the principal office of the OSRC by the first Friday after the election.

(b) In the event of a tie vote for the winner, the Administrator shall conduct a recount in the presence of the candidates involved or their designee, if any of them desire to be present. notify each candidate of that fact and of the date and time for

a recount. Each candidate, or their designee, may be present and observe the recount. If the recount yields a tie, the Administrator will select the electee winner by lot.

(e) When an electee is to be selected by lot pursuant to the provisions of this section, the following procedures shall be observed;

(1) The Administrator shall, on or before the seventh day following the election, notify each of the tying candidates for which the vote was tied. The notices shall include the time, date and location of the recount and selection by lot. The notice shall be made in writing by certified mail and shall be postmarked not fewer than five (5) days prior to the meeting.

(2) A candidate may designate one person to attend on the candidate's behalf. The designation shall be made in writing, signed by the candidate, and submitted to the Administrator.

(3) The recount and selection shall be conducted on a weekday, holidays excepted, between the hours of 7:00 a.m. to 7:00 p.m.

(4) The Administrator shall, in full view of those present, clearly write or print the name of each tied candidate on a separate pieces piece of paper measuring approximately of equal size. The names of the candidates shall be written or printed on the same color and type of paper. The papers shall be folded in half one time so that the written names are not visible and shall be then placed into a container selected chosen by the Administrator.

(5) The Administrator shall draw, or may designate a person other than the candidates, designees, or other person directly interested in the election an OSRC staff member to draw, one paper, and the name of the electee person appearing on the first drawn paper shall be declared the winner. The Administrator shall then expose the other name or names not drawn to all witnesses present.

(c) At the conclusion of the ballot counting, the Administrator shall notify each candidate of the results, including the numbers of ballots cast for each candidate, and post the results at the principal office.

**630:3-1-17. Time for filing contest Election challenges**

(a) Any candidate whose name appeared on an election ballot may, at any time before 5:00-4:30 p.m. on the second Friday next following after an election, contest the announced results of the election for the reasons set forth in OAC 630:3-1-18 and 20 by filing a written petition with the Commission OSRC, and mailing a copy to each candidate. The petition shall be treated under rule 630:4-1-6 as for an interpretive opinion about the results of the election. Nothing in this rule shall be construed to prohibit any proceedings in district court, which are otherwise authorized by law, alleging irregularities or fraud in an election.

(b) If the petition seeks a recount, the Administrator shall, within five days after the petition is filed, conduct the recount, post the results at the principal office and notify the candidates and the Commission in writing. Ties shall be processed as in paragraph (b) of rule 630:3-1-16, above.

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(c) If the petition alleges some fraud or other irregularity, the Commission may order a new election only if the Commission finds, based on the record of the hearing, that fraud or a procedural irregularity materially affected the outcome of the election.

## **630:3-1-18. ~~Petition for recount~~ Certification of results**

(a) In the event a candidate requests a recount of the ballots cast in an election, it must set forth in the petition the county precincts which are to be recounted. When such petition is properly filed, it shall be the duty of the Administrator to conduct said recount and certify the results within five (5) days from the date of filing of said petition. If no petition is filed by the second Friday after an election, then the Administrator shall certify the results to the Commission.

(b) If a petition challenging the election is timely filed, then the Commission shall certify the results after determination under rule 630:4-1-6.

(bc) ~~notice~~ Notice of the certified results shall be posted in public view at the OSRC headquarters and transmitted in writing principal office and mailed to the candidates within 24 hours after certification.

## **630:3-1-19. Election contested-service of notice [REVOKED]**

(a) In all contests of elections, it shall be the duty of such contestant to serve a true copy of the petition upon the opposing candidate or candidates and any person directly affected by said contest.

(b) Service shall be made in person where possible, within twenty four (24) hours after the filing of the petition.

(c) If a tie vote occurs as a result of a recount of ballots, provisions of OAC 630:3-1-16 shall prevail in certifying the electee.

## **630:3-1-20. Election contested due to fraud or other irregularity [REVOKED]**

(a) In the event a candidate contests the correctness of the announced results of an election by alleging either fraud or any other irregularity in the conduct of the election, the Administrator shall set a hearing in accordance with the procedures for individual hearings set forth in OAC 630:4-5.

(b) The Commission may order a new election only if the Commission finds, based on the record of the hearing, that fraud occurred or that a procedural irregularity materially affected the outcome of the election.

## **630:3-1-21. Spoiled ballots**

Should a voter spoil any ballot in his effort to vote the same, the voter shall ~~fold~~ write "spoiled" and print and sign his or her name on the ballot card and return it to the clerk to exchange for a fresh ballot. Spoiled ballots shall not be counted. The clerk shall destroy said ballot card or cards in the presence of the voter and shall issue the voter another ballot card in the

~~same manner that the first one was provided. The voter must execute an affidavit prescribed by the Administrator in which the voter swears or affirms that he spoiled his original ballot card or cards, returned said ballot card or cards to the clerk, that the clerk destroyed the ballot card or cards in the voter's presence and the voter was issued a new ballot card or cards.~~

*[OAR Docket #09-900; filed 5-13-09]*

## **TITLE 630. SCENIC RIVERS COMMISSION CHAPTER 10. LICENSING AND USE PERMITS**

*[OAR Docket #09-901]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 1 - General Provisions and Licensing

630:10-1-4. User fees [REVOKED]

630:10-1-5. Commercial licensing [AMENDED]

630:10-1-7. Limitation on licensing of flotation devices [AMENDED]

Subchapter 2 - Public Access Areas

630:10-2-2. Camping fees [AMENDED]

630:10-2-4. Use of public access areas [AMENDED]

### **AUTHORITY:**

Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.

### **DATES:**

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

n/a

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

n/a

#### **ANALYSIS:**

The statutory \$1.00 user fee (paragraph B of 82 O.S. § 1470) was repealed on January 1, 2009, and the OSRC is revoking its analogous user fee rule because it no longer applies. Second, commercial operators should complete any outstanding obligations to the OSRC before receiving new commercial flotation devices. The third change is to simplify and clarify a summer weekend flotation restriction, without making any material change to past practices. For uniformity, the fourth change will assure that the OSRC camping fees are the same as those charged by Oklahoma Tourism and Recreation Department, which the OSRC has long intended. Finally, three more public access areas are proposed, at public request, to the four existing areas where the consumption of alcohol is prohibited.

#### **CONTACT PERSON:**

Ed Fite, Administrator (918) 456-3251

PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:

**SUBCHAPTER 1. GENERAL PROVISIONS AND LICENSING**

**630:10-1-4. User fees [REVOKED]**

~~The user fee assessed by paragraph B of 82 O.S. § 1470 shall be collected and administered as follows:~~

- ~~(1) Each person using a commercial flotation device must pay the statutory user fee to the commercial float operator.~~
- ~~(2) Each person using a private flotation device must purchase a wrist band by paying the statutory private user fee to the OSRC office, OSRC rangers, commercial float operators, or other authorized businesses.~~
- ~~(3) The Scenic Rivers Act allows property owners adjacent to the scenic river to own and operate one flotation device for their individual use without paying the user fee.~~
- ~~(4) Everyone not exempt by statute must pay the user fee before entering the waters of a scenic river. A River Ranger may require anyone not in an exempt or commercial flotation device or not wearing a wrist band when leaving the waters of a scenic river to pay the statutory fee.~~
- ~~(5) Commercial float operators and authorized businesses shall accurately record the number of users and user fees collected on tally sheets provided by the OSRC. The tally sheets and the fees collected each month shall be mailed or delivered to the OSRC by the 10th day of the following month or the user fees shall be in arrears and subject to the statutory late fee.~~

**630:10-1-5. Commercial licensing procedures, requirements, and annual use fees**

- (a) The statutory annual use fee per commercially owned and operated flotation device shall be paid at the time of licensing.
- (b) The license required on commercial float operations shall be an annual license covering a calendar year. Licenses shall be properly displayed on each flotation device prior to its use on the river.
- (c) Applications for new float licenses, not previously held by a commercial float operator, may be filed with the OSRC in January of each year. Commercial float operators shall file applications to renew their existing licenses during the month of September each year.
  - (1) Any commercial float operator that fails to submit a renewal application in September shall only be entitled to renew 85% of the previous number of licenses, and the other 15% shall be released in January of the following year as new licenses. No renewal application shall be accepted after November.

- (2) Any commercial float operator that applies to renew his licenses must pay the statutory annual use fees, and pay or complete any outstanding OSRC obligations, by the last working day of December or the application shall be denied and the number of licenses released as new licenses in January.
- (3) Any person may apply in January for new commercial flotation device licenses which may be available, up to the number provided in 630:10-1-7. The OSRC shall process the applications, divide the numbers of licenses among the proper applications and issue them in February.
- (4) Except for temporary licenses, new licenses shall not be issued unless the number of licenses renewed in the previous year was below the number authorized in 630:10-1-7.
- (d) Application for such licenses shall be made on the form prescribed by the OSRC which shall include:
  - (1) The name and address of the commercial float operation;
  - (2) The name and address of the owner or owners thereof;
  - (3) A description of lands owned or leased, and/or intended for use in the operation, including the launch and retrieval points;
  - (4) An inventory of usable flotation devices;
  - (5) A description of how the requirements of paragraph (h) of this section will be met; and
  - (6) An agreement to abide by all State laws and all OSRC rules and regulations.
- (e) Licenses shall be issued in such form as is prescribed by the Administrator, and shall be displayed on the right front (starboard bow) of flotation devices that have bows, or conspicuously on the outside surface area above the water line of flotation devices without a discernable bow.
- (f) Licenses granted by this Chapter shall be transferable only after application to and approval by the Administrator upon a finding that the transfer will not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.
- (g) The number of flotation devices to be licensed for commercial use shall be limited as provided in 630:10-1-7.
- (h) All commercial float operators must maintain clean and sanitary facilities, maintain in good working order their flotation devices offered for use, and also:
  - (1) Provide access to toilet facilities to the floating public.
  - (2) Provide trash bags and disposal information to all customers.
  - (3) Conspicuously post on business premises and at launch points warnings against tying flotation devices together, about trespass and safety, and that drunk and disorderly conduct is cause for arrest.
  - (4) All signs placed along the river corridor shall be informational in nature and shall comply to standards established by the OSRC.
  - (5) Display on each flotation device used the name of the enterprise and an identification number at least three (3) inches high and two (2) inches wide on both the right

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and left sides (port and starboard sides), or once if it has no sides.

(6) Provide reasonable assistance in river clean-up and navigational hazard removal in his float area at least once each week during all weeks his flotation devices are operated on the river.

(7) Provide, in each flotation device used, at least one wearable personal flotation device in good and serviceable condition for each person on board so placed as to be readily accessible and of a size suitable to the person who is or will be wearing it.

(i) Non-profit youth organizations may elect to obtain temporary licenses for their flotation devices as commercial flotation devices provided they do not exceed the float area restrictions of the scenic rivers as described in 630:10-1-7.

### 630:10-1-7. Limitation on licensing of flotation devices

(a) It is the intent of the OSRC in issuing commercial flotation licenses to protect the ecosystem and environment and the aesthetic, scenic, historic, archaeological, and scientific features of the scenic river areas as well as the public health and safety of individuals using the scenic river areas.

(b) It is the determination of the OSRC that at this time the scenic rivers cannot assimilate the damages to their ecosystems, environments, aesthetic, scenic, historic, archaeological, and scientific features if more than 3,900 licenses are issued. Further, the protection of public health and safety requires that the OSRC not grant additional licenses.

(c) The OSRC recognizes the current interests and property rights of persons with respect to flotation devices presently available for hire within its jurisdiction subject to the OSRC Commercial Float Area limitations provided hereinafter. The number of such devices shall be set at a maximum of 3,900 for the combined scenic river areas.

(d) Any licensing of flotation devices in excess of said 3,900 shall be subject to approval of the OSRC if the applicant reasonably demonstrates there will not be an adverse impact on the waterways within the jurisdiction of the OSRC. Such additional licensing shall be determined on the basis of density of current usage, number of licenses requested, and other considerations necessary for river protection.

(e) In the event the OSRC determines that the requested licenses may harm the ecosystem, environment, aesthetic, scenic, historic, archaeological or scientific features of the section of the river for which the licenses are sought, so that the health and safety of individuals floating on the river may be threatened by the addition of new flotation devices, the OSRC shall deny the number of licenses requested over 3,900 that it deems to be necessary to protect the scenic rivers. Any license issued above 3,900 in any calendar year shall be temporary, for a stated period of time, and shall not be renewed during the annual licensing process.

(f) Since May 1, 1987, the Illinois River scenic river area has been divided into the following sections for commercial flotation operation and licensing purposes:

(1) From the Arkansas-Oklahoma state boundary (Illinois River mile 0) southward to Round Hollow Public

Access Area (Illinois River mile 27.7) shall be known as OSRC Commercial Float Area One (OSRC CFA One).

(2) From Round Hollow Public Access Area (Illinois River mile 27.7) southward to the Comb's Bridge (Illinois River mile 36.1) shall be known as OSRC Commercial Float Area Two (OSRC CFA Two).

(3) From Comb's Bridge (Illinois River mile 36.1) southward to and including the confluence of the Barren Fork Creek with the Illinois River shall be known as OSRC Commercial Float Area Three (OSRC CFA Three).

(g) ~~Subject to the exception stated in (h) of this section, During weekends and holidays in May through September only the commercial float operations with licenses devices licensed for OSRC CFA Two may float commercial flotation devices within that section of the Illinois River on all Saturdays and Sundays from May 1 through October 1 of each year in OSRC Commercial Float Area Two. However, upon customer request commercial float operations without licenses for OSRC CFA Two may allow up to 20 of their commercial flotation devices during such times to combine a float in Commercial Float Area Two with their licensed area.~~

(h) ~~In the event commercial float operations with licenses for OSRC CFAs One and/or Three have customers who desire to rent commercial flotation devices from the beginning of OSRC CFA One to the end of OSRC CFAs Two or Three or to float from the beginning of OSRC CFA Two to the end of OSRC CFA Three, those customers are authorized to float through OSRC CFA Two subject to the limitation that no commercial float operation shall allow more than twenty (20) commercial flotation devices to float through OSRC CFA Two pursuant to this exception.~~

(i) The operation of a commercial flotation device within an OSRC Commercial Flotation Area in violation of 630:10-1-7, shall subject that commercial float operation to a fine not to exceed One Hundred Dollars (\$100.00). [82 O.S. Supp. 1991, Section 1470(A)]

## SUBCHAPTER 2. PUBLIC ACCESS AREAS

### 630:10-2-2. Camping fees

(a) Camping shall only be allowed in campsites that are located within Public Access Areas and are designated by the Administrator.

(b) ~~There shall be a camping fee of \$8.00 per night, or \$16.00 per night if the OSRC has provided water and electricity at the campsite. Camping fees shall be the same as the camping rates charged by the Oklahoma Tourism and Recreation Department. The OSRC shall post the current fee schedule. See, 82 O.S. § 1470(C).~~

(c) The regular camping fee shall be discounted 50%:

(1) where one or more campers are 62 years of age or older, as documented by a valid driver's license, state-issued identification card, or passport;

(2) where one or more campers are certified as totally (100%) disabled or blind, as documented by a Medicare card or other federal or state-issued instrument; or

- (3) for youth groups that provide at least 25 hours each year of beneficial service to the environment such as tree planting, refuse clean up or wildlife habitat improvement, as approved by the Administrator.
- (d) The Administrator may waive or suspend camping fees for certain periods in the public interest.

**630:10-2-4. Use of public access areas**

- (a) No person shall camp in a campsite under the jurisdiction of the OSRC without paying the fee established by this section.
- (b) Camping fee receipts shall be retained by campers for the duration of their stay and shall be available for review upon request of the Administrator, a Camp Host or a River Ranger.
- (c) Camping fees receipts entitle the named holder to use a campsite for the duration indicated on the receipt under the conditions set forth in this section. All camping fee receipts are non-transferable.
- (d) The daily fee covers use of campsites from 5:00 p.m. on the day of payment until 5:00 p.m. on the following day. Occupants shall vacate the campsite by removing their personal property from the campsite prior to 5:00 p.m. on the day they are scheduled to leave.
- (e) The following activities are prohibited in all public access areas:
  - (1) Excavation or leveling of the ground.
  - (2) Hanging a propane or gas operated lantern on any tree or plant.
  - (3) Leaving refuse or human waste at a campsite after departure.
  - (4) Camping within 25 feet of a water hydrant or within 100 feet of a stream, river or body of water, except where otherwise designated.
  - (5) Creating or sustaining unreasonable noise at a campsite as determined by the Administrator or a Scenic River Ranger considering the nature and purpose of the actor's conduct, the impact on other users, and other factors which would govern the conduct of a reasonably prudent person under the circumstances.
  - (6) Constructing permanent camping facilities or dwellings.
  - (7) Camping or parking vehicles outside of campsites and parking areas designated by the Administrator.
  - (8) Parking a vehicle in, blocking access to, or occupying any designated campsites without having first paid camping fees for that campsite.
  - (9) Using the utility services in a campsite or public access area without having first paid campsite or utility fees.
  - (10) Connecting more than one water, electrical or sanitary connection per campsite or connecting to a utility which exceeds its manufactured design or capacity.
  - (11) The placing or parking of 2 or more vehicles on any site not designed for more than one vehicle.
  - (12) Camping longer than duration of stay noted on the camping receipt or exceeding the time limits set forth in this subchapter without prior written approval from the Administrator.

- (13) Entering or remaining in a public access area for any purpose other than camping or authorized day use activities, except fishing.
- (14) Possession or use of fireworks or firearms in public access areas. The Administrator may authorize fireworks on the 4th of July.
- (15) Fires may only be built in fire pits or cookers established by the Commission.
- (f) Day use of public access areas for general recreational activities, such as swimming, picnicking, fishing, and boat launching is permissible without charge only during open hours as defined and posted by the Administrator.
- (g) Entering or remaining in a day use area during closed hours is prohibited for any purpose, except fishing.
- (h) Possession of an open container, or consumption, of alcohol (including 3.2 beer) is prohibited in ~~four~~ seven public access areas: Round Hollow, Todd, ~~and~~ US 62 Bridge Access on the Illinois River, ~~and~~ US 412 Bridge Access on Flint Creek, Lake Francis Dam Public Access Site, US 59 Illinois River Bridge Crossing Access Area, and Carnes Ford Area.
- (i) Violations of OSRC regulations or state law may result in the suspension or revocation of camping authorization or day use privileges. Other penalties prescribed by law may also apply.

[OAR Docket #09-901; filed 5-13-09]

**TITLE 630. SCENIC RIVERS COMMISSION  
CHAPTER 15. PROTECTION OF NATURAL  
RESOURCES**

[OAR Docket #09-902]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

630:15-1-14. Ice chest ~~restriction~~ restrictions [AMENDED]

**AUTHORITY:**

Oklahoma Scenic Rivers Commission; 82 O.S. § 1461, and the Scenic Rivers Act.

**DATES:**

**Comment period:**

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Failure of the Legislature to disapprove the rules resulted in approval on May 13, 2009.

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

# Permanent Final Adoptions

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## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

Only one change to this chapter is made, and that is to add a requirement that ice chests be capable of being secured to prevent the spilling of their contents in a scenic river.

## CONTACT PERSON:

Ed Fite, Administrator (918) 456-3251

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

### **630:15-1-14. Ice chest restriction restrictions**

No person shall carry an ice chest that is not secured to prevent spilling its contents or larger than 50-quart capacity on a scenic river.

*[OAR Docket #09-902; filed 5-13-09]*

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

*[OAR Docket #09-882]*

## RULEMAKING ACTION:

PERMANENT final adoption

## RULES:

Subchapter 3. Public Policy

Part 3. Taxpayer Identification

710:1-3-6 [AMENDED]

Part 11. Public Records

710:1-3-73 [AMENDED]

Subchapter 5. Practice and Procedure

Part 3. Description of Administrative Review and Hearings

710:1-5-10 [AMENDED]

Part 5. Administrative Proceedings Related to Tax Protests

710:1-5-27 [AMENDED]

710:1-5-37 [AMENDED]

710:1-5-38 [AMENDED]

## AUTHORITY:

68 O.S. § 203, Oklahoma Tax Commission

## DATES:

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n/a

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

Section 710:1-3-6 has been amended to clarify policy regarding the use of other identifying numbers for taxpayers and to provide for the use of only the last 4 digits of a taxpayer's social security number on returns, applications, and forms required to be filed with the Oklahoma Tax Commission.

Section 710:1-3-73 has been amended to clarify policy regarding the location of letter rulings made available for inspection by the public.

Section 710:1-5-10 has been amended to clarify tax protest procedures.

Section 710:1-5-27 has been amended to clarify policy regarding the representation of taxpayers in administrative proceedings by enrolled agents.

Section 710:1-5-37 has been amended to reflect the current procedure of the Administrative Law Judge's office that oral hearings are recorded by electronic media.

Section 710:1-5-38 has been amended to clarify policy regarding motions for summary disposition in administrative hearings.

## 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, 2009:**

## SUBCHAPTER 3. PUBLIC POLICY

### PART 3. TAXPAYER IDENTIFICATION

#### **710:1-3-6. Use of Federal Employer Identification Numbers, Social Security Numbers and other identification numbers mandatory**

(a) All returns, applications, and forms required to be filed with the Oklahoma Tax Commission (Commission) in the administration of this State's tax laws shall bear the **Federal Employer's Identification Number(s)**, ~~or~~ the **Social Security Account Number**, the Taxpayer Identification Number, ~~and/or other government issued identification number~~ ~~(or both)~~ of the person, firm, or corporation filing the item and of all persons required by law or agency rule to be named or listed. If more than one number has been issued to the person, firm, or corporation, then all numbers will be required.

(b) The requirement to provide the Social Security Account Number, the Taxpayer Identification Number, or other government issued identification number of corporate officers required on the Franchise Tax Return and corporate officers and members, who are natural persons, of limited liability companies required on the Business Registration Application can be satisfied by providing only the last four digits of the applicable number in the format 000-00-1234.

### PART 11. PUBLIC RECORDS

**710:1-3-73. Opinions and letter rulings**

(a) **Opinions not issued by the Commission.** An "opinion" is a formal document, generally prepared by legal counsel, expressing conclusions that interpret or apply the law to a set of assumed facts. As so defined, the Oklahoma Tax Commission does not issue **Opinions**. However, legal counsel may prepare such a document to advise the Commission or a taxing Division within the Commission.

(b) **"Opinion" defined.** Thus, an "opinion," with respect to the Oklahoma Tax Commission, means a written communication embodying formal legal advice, upon which the Commission may base, in whole or in part, administrative decisions, decisions in individual tax proceedings, or prospective policy decisions. Opinions, being advisory to the Commission, do not constitute authority by any party for challenging any matter pending before the Commission.

(c) **Opinion may impact policy, rulemaking.** To the degree that a policy of Commission, based upon such a legal opinion, impacts broad segments of taxpayers and is to be given future effect by the Commission, such policy may be promulgated as a Rule of the Commission.

(d) **Availability of opinions.** Such opinions as may be made available to the public, pursuant to the provisions of Section 302(A)(4) of Title 75, as further defined and limited by the terms of Section 24A.1, et seq. of Title 51, will be limited to those which are, or will be embodied in policy of the Commission.

(e) **"Letter ruling" described.** Tax Policy and Research Division and the Office of the General Counsel draft and issue letter rulings, which are informal written statements of policy or treatment of specific fact situations under Oklahoma tax law. Such a letter ruling may generally be relied upon only by the taxpayer to whom it is issued, provided that all facts have been accurately and completely stated, and that there has been no change in applicable law.

(f) **Requests for letter rulings.** Requests by individuals or groups of taxpayers for letter rulings will be honored by the Commission, at its discretion, and in consideration of the time and resources available to respond to such requests. Requests for letter rulings should be made to the Tax Policy and Research Division, Oklahoma Tax Commission, 2501 N. Lincoln, Oklahoma City, OK 73194.

(g) **Letter ruling may initiate rulemaking.** To the degree that a letter ruling impacts broad segments of taxpayers and is to be given future effect by the Commission, such letter ruling may become the basis for a Rule of the Commission.

(h) **Availability of letter rulings.** ~~Letter rulings may be viewed at the Tax Policy and Research Division, located on the Fifth Floor of Taxpayer Assistance Division at the M. C. Connors Building, 2501 North Lincoln Boulevard, Oklahoma City, Oklahoma, during normal business hours.~~

**710:1-5-10. Tax protests and claims for refund**

(a) A **protest** may be described as a formal, written challenge to a proposed tax assessment or to the denial of a claim for refund of taxes paid. The statutory requirements for perfecting a protest or claim for refund are governed, generally, by the provisions of the Uniform Tax Procedure Code (68 O.S. §§ 201 et seq.), except in the areas of Income Tax (Article 23 of Title 68 of the Oklahoma Statutes) and Estate Tax (Article 8 of Title 68 of the Oklahoma Statutes) which have additional, and in some instances, superseding, statutory requirements.

(b) There are several routes available, both formal and informal, to a taxpayer in objecting to an assessment. Prior to the filing of a protest, the issues may be resolved by further discussion with the assessing tax division. Challenged assessments or audits may be amended or adjusted by the tax Division involved, upon reasoned grounds and adequate documentation. Should issues remain unresolved after consulting with the assessing division, the taxpayer may file written protest with the taxing division. A protest must be "timely filed." That is, it must be filed on, or before, the statutory time provided for filing protests, to insure that the protestant-taxpayer preserves his legal rights to a full hearing of the matter and a route for appeal if the disposition of the protest is not resolved in his favor. In the absence of a formal written extension of time within which to file a protest, **proposed assessments which are not protested within the time prescribed by statute are considered final.** Any finally assessed tax in such a case which is paid to or collected by the Tax Commission is not subject to a claim for refund or hearing thereon, to the extent provided in 68 O.S. § 227(f). Thus, a taxpayer who receives a notice of proposed assessment of tax from the Tax Commission should not assume that it can be challenged later by way of a claim for refund, if a protest of the proposed assessment is not timely filed and the proposed assessment then becomes final. However, a taxpayer who fails to file a timely protest may, within one (1) year of the date the assessment becomes final, request the Tax Commission to adjust or abate the assessment pursuant to 68 O.S. § 221(e) and the provisions of Part 7 of this Subchapter.

(c) The following is a brief description of a typical protest that would take place within the framework of the Oklahoma Tax Commission administrative proceedings process.

(1) Initially, an audit is conducted by one of the various taxing Divisions of the Oklahoma Tax Commission pursuant to 68 O.S. § 221(a). Thereafter, a proposed assessment is issued to the taxpayer. If, in fact, the taxpayer disagrees with the proposed assessment, a protest may be filed, generally within sixty (60) days of the date of the assessment, pursuant to the provisions of 68 O.S. § 221(c).

(2) Except for the initial filing of a protest, which may be made with the taxing division, with the Office of the General Counsel, or with the office of the Administrative Law Judges, the office of the Administrative Law Judges serves as the "Court Clerk" for the administrative hearing process. The Administrative Law Judges are appointed by the Commissioners of the Oklahoma Tax Commission and act independently of the taxing Divisions and the Office of the General Counsel.

**SUBCHAPTER 5. PRACTICE AND PROCEDURE**

**PART 3. DESCRIPTION OF ADMINISTRATIVE REVIEW AND HEARINGS**

## Permanent Final Adoptions

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(3) Once a protest is received by the taxing Division, the Division will generally review the proposed assessment to determine whether further adjustments are appropriate. Additional discussion between the taxpayer and the Division may be requested in this regard. If issues still remain unresolved at the conclusion of this process, the protest is forwarded to the Administrative Law Judges' Office, where the protest is docketed and a Pre-Hearing Conference is scheduled between the taxpayer, the General Counsel's Office attorney who represents the taxing Division and an Administrative Law Judge.

(4) At this time, a case may be resolved through discussion and negotiation with the staff attorney and the protest or claim is formally withdrawn from the docket, at the request of the parties. This informal resolution may be described as either a withdrawn assessment or a withdrawn protest, depending upon the manner in which the issues were resolved.

(5) Generally, the manner in which a case is to be submitted is decided by the parties at the Pre-Hearing Conference. Other matters decided at this conference are the legal issues of the case and the manner of evidence or witnesses (or both) to be presented at any hearing. ~~When a protest or claim is not actively pursued, the case may be dismissed by the Commission. Dismissal forecloses the taxpayer from further challenging the assessment in question. Upon dismissal, the tax is considered due and owing from the date of assessment, including statutory penalties, if any, and interest accrued from the date of delinquency. Thus, taxpayers~~ Taxpayers are urged to respond to letters; appear or make alternate arrangements at scheduled pre-hearing conferences and hearings; file required briefs or position letters in a timely fashion; and in all respects pursue their legal rights diligently.

(6) Following the Pre-Hearing Conference, and assuming the case is not resolved, it is set for hearing. The Administrative Law Judge will preside at the hearing, wherein testimony and exhibits are received and a record is made. After consideration of the merits, the Administrative Law Judge will issue Findings, Conclusions and Recommendations.

(7) Following the issuance of the Findings by the Administrative Law Judge, the Commissioners may either adopt the Finding, or modify it, in part, or in whole. If the taxpayer has requested an en banc hearing, the Commission may grant it at this time. Once the Order of the Commission is issued, the Taxpayer has thirty (30) days within which to file an appeal with the Oklahoma Supreme Court.

(8) Detailed procedural rules governing a tax **protest** may be found in 710:1-5-21 through 710:1-5-48, which set out rules of Practice and Procedure before the Commission.

### PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

#### 710:1-5-27. Representation and participation in administrative proceedings

(a) **Representation.** In an administrative proceeding the taxpayer may represent himself at any stage of the proceeding or may be represented by:

- (1) an attorney;
- (2) an accountant;
- (3) an enrolled agent; or
- (4) a representative who has been approved by the Commission to represent the taxpayer.

(b) **Proper showing may be required.** If a taxpayer wants to be represented by someone other than himself, an attorney, ~~or an accountant, or an enrolled agent,~~ the Administrative Law Judge may require that such person, before being recognized as a representative of the taxpayer, make a proper showing that he or she is of good character and in good repute and possessed with necessary qualifications to enable the representative to render such services to the taxpayer. Upon such showing by the representative, the Administrative Law Judge will certify the representative.

(c) **Proof of authority.** Any person representing a taxpayer in any matter may be required at any time to show written proof, in a form satisfactory to the Commission, of his or her authority to represent such taxpayer in that matter.

(d) **Confidentiality of proceedings; participation of others.** Proceedings are not open to the public unless confidentiality has been waived by the taxpayer or his representative. Any person who is not a party, not employed by a party, or not called as a witness, must obtain the permission of the Administrative Law Judge before observing or participating during any stage of the proceeding. Under provisions of Title 68 O.S. § 205, the taxpayer has the right to enforce the confidentiality of the proceedings.

#### 710:1-5-37. Transcript of oral hearings; request for certified court reporter

Testimony offered under oath, comments of counsel and the Administrative Law Judge, offers of documentary evidence and rulings made during the course of an oral hearing shall be recorded ~~on tape by electronic media~~ which can be transcribed by the Administrative Law Judge's Office. A copy of the transcript of the hearing will be furnished to any party to the proceeding upon written request to the Administrative Law Judge and payment of a reasonable fee established by the Tax Commission. Upon request to the Administrative Law Judge by either party, the hearing will be recorded and transcribed by a certified court reporter. If a certified court reporter is requested, necessary arrangements for the presence of a reporter at a hearing, the cost thereof, and cost of transcribing will be borne by the requesting party who must furnish the Administrative Law Judge's Office with an original and the attorney for the Commission with a copy, of such transcript.

#### 710:1-5-38. Submission of case on briefs or on motion for summary disposition

(a) When a taxpayer in an administrative proceeding does not request an oral hearing, or the parties agree that an oral

hearing is not needed, the Administrative Law Judge will base the Findings, Conclusions and Recommendations on the position letters and briefs submitted by the parties. The Administrative Law Judge will mail notice of a date certain for each party to submit a position letter or brief setting out therein the statement of facts, issues to be determined, contentions and statutory and case law relied upon to support his contentions. The Administrative Law Judge may schedule a conference between the parties if it is deemed necessary to clarify the positions of the parties.

(b) A party may file a motion for summary disposition on any or all issues on the ground that there is no substantial controversy as to any material fact. The procedures for such motion are as follows:

(1) The motion for summary disposition shall be accompanied by a concise written statement of the material facts as to which the movant contends no genuine issue exists and a statement of argument and authority demonstrating that summary disposition of any or all issues should be granted. The moving party shall verify the facts to which such party contends no genuine controversy exists with affidavits and evidentiary material attached to the statement of material facts.

(2) If the protest has been set for hearing, the motion shall be served at least twenty (20) days before the hearing date unless an applicable scheduling order issued by the Administrative Law Judge establishes an earlier deadline. The motion shall be served on all parties and filed with the Office of the Administrative Law Judge.

(3) Any party opposing summary disposition of issues shall file with the Administrative Law Judge within fifteen (15) days after service of the motion a concise written statement of the material facts as to which a genuine issue exists and the reasons for denying the motion. The adverse party shall attach to the statement evidentiary material justifying the opposition to the motion, but may incorporate by reference material attached to the papers of the moving party. All material facts set forth in the statement of the movant which are supported by acceptable evidentiary material shall be deemed admitted for the purpose of summary disposition unless specifically controverted by the statement of the adverse party which is supported by acceptable evidentiary material.

(4) The affidavits that are filed by either party shall be made on personal knowledge, shall show that the affiant is competent to testify as to the matters stated therein, and shall set forth matters that would be admissible in evidence at a hearing. A party challenging the admissibility of any evidentiary material submitted by another party may raise the issue expressly by written objection or motion to strike such material.

(5) If the taxpayer has requested a hearing, the Administrative Law Judge will issue a notice to the parties scheduling the motion for a hearing limited to oral argument. If the taxpayer has not requested a hearing, the Administrative Law Judge will rule on the motion based on the submission of the parties, including the motion, opposition to the motion, and attachments thereto.

(6) If the Administrative Law Judge finds that there is no substantial controversy as to the material facts and that one of the parties is entitled to a decision in its favor as a matter of law, the Judge will grant summary disposition by issuing Findings of Fact, Conclusions of Law, and Recommendations. Such Findings of Fact, Conclusions of Law and Recommendations are subject to review by the Commission pursuant to OAC 710:1-5-10, 710:1-5-40 and 710:1-5-41. If a motion for summary disposition is denied, the Administrative Law Judge will issue an order denying such motion.

(7) If the Administrative Law Judge finds that there is no substantial controversy as to certain facts or issues, the Judge may grant partial summary disposition by issuing an order which specifies the facts or issues which are not in controversy and directing that the action proceed for a determination of the remaining facts or issues. If a hearing of factual issues is required, evidentiary rulings in the context of the summary procedure shall be treated as rulings in limine. Any ruling on partial summary disposition shall be incorporated into the Findings of Fact, Conclusions of Law, and Recommendations issued at the conclusion of the proceedings before the Administrative Law Judge.

[OAR Docket #09-882; filed 5-12-09]

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

[OAR Docket #09-883]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 4. Annual Valuation Mandate  
710:10-4-8 [AMENDED]
- 710:10-4-9 [AMENDED]
- Subchapter 7. Manufacturing Facilities  
710:10-7-6 [AMENDED]
- Subchapter 9. Manufactured Homes  
710:10-9-22 [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]
- Subchapter 15. Freeport Exemption  
710:10-15-2 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203 and 2902(H); Oklahoma Tax Commission

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Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2009

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n/a

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

Proposed amendments to **Subchapter 4**, "Annual Valuation Mandate", have been made to clarify policy and procedures regarding the various aspects of the annual valuation process and to add and update statutory and other references.

Proposed amendments to **Subchapter 7**, "Manufacturing Facilities", and **Subchapter 15**, "Freepoint Exemption" have been made consistent with the passage of State Question 741 at election held November 4, 2008 relating to the prohibition against granting ad valorem exemptions for any years prior to the filing of the original exemption application.

Proposed amendments to **Subchapter 9**, "Manufactured Homes", have been made to implement statutory changes as they relate to manufactured homes pursuant to Senate Bill 1770 which eliminated the October real property tax certificate sale.

Proposed amendments to **Subchapter 14**, "Full Fair Cash Value Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate" have been made in accordance with the passage of State Question 735 at election held November 4, 2008 creating an exemption from personal property tax for qualifying disabled veterans.

## 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, 2009:**

## SUBCHAPTER 4. ANNUAL VALUATION MANDATE

### **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 appraisal process shall be gathered, reviewed, and analyzed, for each county, for the previous year after any adjustments by the county assessor, county board of equalization, and county board of tax roll corrections, in order to make various compliance determinations. The non-exclusive factors listed in (1) through (11) 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 appraisal / 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 review 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. § 2829(C)]

(5) Review of all property subject to value limitation, to determine compliance with Constitutional, statutory, and administrative directives.

(6) Determination of compliance, based upon a comprehensive review and comparison of previously qualified prior year sales with actual fair cash value at time of sale. Analysis will be conducted in accordance with IAAO Standards on Ratio Studies, 1999 edition. Ref: Sections 5.3 and 10.7.

(A) Median/COD comparison between the current sales and between the previous actual fair cash value.

(B) Review of the numbers, types, nature, and location of properties changed overall, for the visual inspection area, and for the remainder of the county.

(C) Review of the date, numbers, type and nature of increases or decreases to actual fair cash value on all property.

(7) Determination of compliance, based upon a review of samples of agricultural, business, and ~~household other~~ personal property forms, renditions and valuations, ~~(where assessment of household personal property has not been abolished pursuant to Article X, Section 6(b) of the Oklahoma Constitution).~~

(8) Findings upon review of personal property samples for determination of whether annual and uniform actual fair cash value is being applied on all personal property classes and types. [See: 68 O.S § 2807; 2817; 2829 and 2844.]

(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. § 2829]

(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 per point and the use value methodology specified in 68 O.S. § 2817(C) for valuation of agricultural land and non-residential improvements.

(11) Findings based upon review to determine if the county is monitoring agricultural land use constant with 68 O.S. § 2820 on 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. §§ 2817, 2829, and 2830(B).
- (c) 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 appraisal procedures are not increasing the taxable value of capped property in excess of the five percent cap unless the property is improved or transferred. properly maintaining capped values within the five percent (5%) increase allowed unless the property is improved or transferred, and are not increasing the taxable value subject to the Constitutional Senior Valuation Limitation. [See: Article 10, Section 8C Okla. Const.]~~
  - (3) ~~The county's appraisal procedures are not increasing the taxable value of property subject to the Constitutional Senior Valuation limitation unless the property is improved or transferred. [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 approved 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 actual fair cash value countywide on an annual basis. See: OAC 710:10-4-8-6.~~
  - (10) ~~The county is using appropriate agricultural use value methodology for land and non-residential improvements, approved by the Oklahoma Tax Commission Ad Valorem Division and State Board of Equalization for valuation of agricultural classified properties.~~
  - (11) ~~The county is exclusively using the current Oklahoma Tax Commission approved forms for all taxpayer renditions of personal property. [See: 68 O.S. § 2835]~~

(10) The county is complying with all personal property classifications, annual valuation and assessment procedures. [See: 68 O.S. § 2817(A)(F); 2829; 2844(A)(B); A.G. Op. 00-23]

- (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. § 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**

**710:10-7-6. 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. Oklahoma Constitution Article 10 Section 22A prohibits the filing of an exemption application for any prior year(s) beginning January 1, 2009. The application must be made in the same year as the exemption is requested.

**SUBCHAPTER 9. MANUFACTURED HOMES**

**710:10-9-22. Collection of taxes on repossessed manufactured homes**

- (a) **County treasurer's authority to collect taxes on repossessed manufactured homes.** The Ad Valorem Tax Code allows the county treasurer to collect taxes due on a repossessed manufactured home separate from the land and improvement for the following years:
  - (1) The current assessment year; and
  - (2) The previous tax years.
- (b) **Collection of taxes by the county treasurer for the current year.** The county treasurer is authorized to collect taxes due for the current assessment year from a lawful reposessor of a manufactured home who holds a perfected security interest based on the value of the manufactured home apart from land and improvements when valued and assessed as real estate. The taxes due for the current year shall be calculated as follows:

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- (1) The assessed value of the manufactured home apart from land and improvements will be calculated;
  - (2) The homestead exemption will be calculated as determined in Section 710:10-9-10, if applicable.
  - (3) The mill levy for the previous year will be applied to determine the amount of taxes due for the current year if the current year's mill levy is not calculated when the application for a Manufactured Home Certificate 936 (OTC Form 936) is made.
  - (4) The calculation of the current year's taxes for a manufactured home using the current mill levy will be substantially the same as outlined in paragraphs (1) through (3) of this subsection.
- (c) **Collection of previous years' taxes by county treasurer before issuance of a tax certificate.** The county treasurer is authorized to collect taxes on the manufactured home apart from the land and improvements when valued and assessed for a previous year. This does not relieve the treasurer of the duty to assess any interest and penalties due on the portion of taxes allocated to the manufactured home.
- (d) **Determination of taxes after issuance of a tax certificate resale tax deed.**
- (1) The county treasurer shall issue a tax certificate resale tax deed to a successful bidder at an original tax sale if the following conditions are met:
    - (A) The ad valorem taxes are unpaid as of January first of the subsequent tax year;
    - (B) The county treasurer shall give notice of the sale of tax lien for delinquent taxes, by publication thereof once a week for the two (2) consecutive weeks immediately prior to the third Friday in September preceding the sale following the year the taxes were first due and payable, in some newspaper in the county, to be designated by the county treasurer. The sale will begin the first Monday in October; be held on the second Monday of June each year.
    - (C) If a manufactured home is involved in the original sale, the notice of sale published by the county treasurer pursuant to (B) of this paragraph shall contain the following language (See: 68 O.S. §3106): **"The sale hereby advertised involves a manufactured home which may be subject to the right of a secured party to repossess. A holder of a perfected security interest in such manufactured home may be able to pay ad valorem taxes based upon the value of the manufactured home apart from real property. If a secured party exercises this right, the holder of the tax sale certificate will be refunded the amount of taxes paid upon the value of the manufactured home."**
    - (D) The record owner as reflected by the tax rolls will be given notice by certified mail of the original sale; The county treasurer's office shall give notice of the sale stating the amount of delinquent taxes owed and informing the owner that the subject property will be sold as provided for in Section 3105 of title 68 if the delinquent taxes are not paid and

showing the legal description of the property being sold.

~~(E) The original sale is held on the first Monday in October between 9:00 a.m. and 4:00 p.m. by the county treasurer;~~

~~(F) The person bidding on redeeming the property pays the full amount of the taxes, penalty, interest and costs due and unpaid. If there is no successful bidder, the county acquires all the rights both legal and equitable that any other purchaser could acquire by reason of said purchase. A person may acquire the county's legal and equitable right in the property by paying to the county treasurer the amount of all taxes, penalties, interest, cost of sale and transfer. Thereupon, the county treasurer will assign and deliver a certificate of assignment resale tax deed to the purchaser. The county's right to the tax certificate deed is subject to a holder of a perfected security interest right to redeem the manufactured home for the sale by paying a pro rata sales of the taxes, interest, penalties and cost due and unpaid.~~

(2) The county treasurer is authorized to prorate the payment of taxes, interest, penalties and cost due and unpaid for a holder of a perfected security interest exercising his right to redeem a manufactured home apart by the land and other improvements (See: 68 O.S. § 3105; 3105.1; 3106).

(3) The county treasurer is authorized to collect taxes, interest, penalties and cost from a person redeeming a tax certificate from a successful bidder, a purchaser of a county certificate or the certificate in the name of the county.

(4) Any person holding a tax lien pursuant to 68 O.S. §§ 3101 to 3125 prior to April 28, 2008 shall be authorized to continue the tax lien or tax certificate.

### **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 and household personal property of qualified owners for ad valorem purposes.

(b) The "one hundred percent disabled veterans exemption" refers to the implementation of the constitutional ~~amendment~~ amendments added to the Oklahoma Constitution, Article 10, § 8E, by State Question 715, ~~and is~~ effective January 1, 2006 and Article 10, § 8D, by State Question 735, effective January 1, 2009. The amendment amendments directs direct county assessors to exempt the total amount of the actual fair cash value of the homestead real property and household personal property of any qualified person who has made proper application. The applicant's real 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]

**SUBCHAPTER 15. FREEPORT EXEMPTION**

**710:10-15-2. Application**

- (a) In order to be eligible for the "Freeport Exemption" the owner or owner's agent must apply at the county assessor's office in the county where the property was located on the assessment date of January 1.
- (b) The initial and any subsequent applications shall be made on Oklahoma Tax Commission Form 901-F, latest revision. Applications on non-approved Tax Commission forms or other submissions shall not be accepted by the county assessor.
- (c) Applications shall be filed during each year in which the tax is due, on or before March 15 or within thirty (30) days from and after the receipt of a notice of valuation increase, whichever is later.
- (d) Claims for previous years shall be declared null and void by the county assessor.
- (e) Eligibility for the "Freeport Exemption" shall be established by annually filing an application for exemption using Oklahoma Tax Commission Form 901-F latest revision, on or before March 15 or within thirty (30) days from the receipt of a notice of valuation increase. [See: 68 O.S. § 2902.2]
- (f) Effective January 1, 2009, the application must be made in the same year as the exemption is requested. The Oklahoma Constitution Article 10 Section 22A prohibits the filing of any exemption application in a subsequent year.

[OAR Docket #09-883; filed 5-12-09]

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

[OAR Docket #09-884]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 2. Low-Point Beer  
Part 1. General Provisions  
710:20-2-20 [AMENDED]

**AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. § 203; 37 O.S. § 586

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Section 710:20-2-20 has been amended to correct a scrivener's error and update statutory references.

**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, 2009:**

**SUBCHAPTER 2. LOW-POINT BEER**

**PART 1. GENERAL PROVISIONS**

**710:20-2-20. Keg identification seal requirements and recordkeeping for licensed retailers**

(a) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Beer keg"** means any brewery-sealed, single container that contains not less than four (4) gallons of low-point beer. [37 O.S. ~~Supp.2003, § 163.2~~ § 163.29]

(2) **"Licensed retailer"** means a retail dealer licensed to sell low-point beer in original containers for consumption off the premises. [37 O.S. ~~Supp.2003, § 163.2~~ § 163.29]

(3) **"Identification seal"** means any device approved by the Tax Commission which is designed to be affixed to beer kegs and which displays an identification number and any other information as may be prescribed by the Tax Commission. [37 O.S. ~~Supp.2003, § 163.2~~ § 163.29]

(b) **Identification seals required on kegs sold.** Every licensed retailer of low-point beer shall affix an identification seal to an outside surface of each beer keg as defined by 37 O.S. Section 163.29. The identification seal shall be affixed to the surface of the beer keg in a manner so as not to conceal

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any information pertaining to the brand name, brewery code, or container size.

(c) **Contents of identification seal.** The identification seal shall consist of a durable material and be in a form approved by the Compliance Division of the Oklahoma Tax Commission. The identification seal shall be attached at the time of sale and shall include the following information:

- (1) The licensed retailer's name, address, beer license number, and telephone number;
- (2) The beer keg number assigned by the licensed retailer; and,
- (3) A warning that intentional removal or defacement of the seal is a misdemeanor.

(d) **Recordkeeping requirements.** Records required of each beer keg sale shall include:

- (1) The purchaser's name and address;
- (2) The ~~driver's~~ driver license number or identification card number issued by the Department of Public Safety, a military identification card number, or the number from a valid United States or foreign passport;
- (3) The date and time of the purchase;
- (4) The purchaser's signature; and,
- (5) The beer keg identification seal number.

(e) **Retention of records.** The licensed retailer shall retain on file the records set out in (d)(1) through (d)(4) of this Section pertaining to the sale of each beer keg for a period of not less than one (1) year after the sale of a keg, and shall keep a record of the beer keg identification seal number set out in (d)(5) of this Section for one (1) year from the return of the keg.

*[OAR Docket #09-884; filed 5-12-09]*

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

*[OAR Docket #09-885]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 5. Procedures for Registration  
710:22-5-10 [NEW]  
Subchapter 7. Titles  
710:22-7-14 [NEW]

### **AUTHORITY:**

Oklahoma Tax Commission; 68 O.S. §§ 203; 63 O.S. §§ 4004 and 4030

### **DATES:**

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#### **Superseded Rules:**

Subchapter 5. Procedures for Registration  
710:22-5-10 [NEW]

#### **Gubernatorial Approval:**

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#### **Register Publication:**

26 Ok Reg 267

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08-1372

### **INCORPORATIONS BY REFERENCE:**

n/a

### **ANALYSIS:**

New Section 710:22-5-10 has been added to implement Section 1 of Senate Bill 1178 of the 51st Legislature, 2nd Regular Session, which authorizes the Oklahoma Tax Commission to record and maintain tribal vessel registration.

New Section 710:22-7-14 has been added to clarify policy regarding the application process for ownership of abandoned vessels or outboard motors.

### **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, 2009:**

## SUBCHAPTER 5. PROCEDURES FOR REGISTRATION

### 710:22-5-10. Tribal vessel registration information integration

(a) **Information integration process.** Federally recognized Indian tribes registering vessels in this state may provide specific ownership and registration information to the Oklahoma Tax Commission, under parameters established by the Commission. Upon receipt of such properly configured tribal vessel information, the Commission will incorporate it into the general vessel registration database.

(b) **Registration numbers provided to tribe.** To facilitate the reporting of tribal vessel information to the Commission, the Commission shall provide to the tribe a series of vessel registration numbers, to be distributed by the tribe to its vessel registrants. The vessel registration numbers will be assigned to the tribe following receipt by the Commission of the tribe's written request to participate in the vessel registration information reporting program.

(c) **Information required from tribe.** The extent of ownership and registration information provided for each vessel is to be in accordance with regulatory requirements of the United States Coast Guard and is to include:

- (1) Name and complete address of vessel owner;
- (2) Hull Identification Number (HIN) of vessel;

- (3) Vessel Registration Number assigned to the vessel by the tribe;
- (4) Year, make and model of vessel;
- (5) Horsepower of motor, when applicable (i.e. in-board or inboard/outboard);
- (6) Length of vessel, expressed in feet and inches;
- (7) Use, type, hull material, propulsion type and fuel type, provided pursuant to accepted United States Coast Guard terminology and utilizing the Oklahoma Tax Commission's corresponding number coding system;
- (8) Registration expiration, expressed as mmccyy (example: June 2009 = 062009);
- (9) Date of tribal transaction corresponding to the information provided; and
- (10) Tribal name.

(d) **Information format.** The required vessel information is to be provided to the Commission by the tribe in an electronic format outlined by the Commission. The electronic format requirements shall be made available by the Commission in printed form and provided to any requestor. In general, and subject to modification as system processes change, the vessel information is to be configured as follows:

- (1) File Transfer Protocol (FTP) transmission format; and
- (2) Flat file; text format; fixed block records.

(e) **Information reporting schedule.** Within ninety (90) days of being provided vessel registration numbers by the Commission, the tribe will provide to the Commission an electronic copy of the tribe's complete current vessel registration file. Thereafter, updates to the file are to be provided to the Commission by the tribe at least every thirty (30) days. At the option of the tribe, the file updates may contain either the entire vessel file, intended to completely replace all earlier information submitted by the tribe, or contain only vessel records that have been changed/updated since submission of the previous file.

(f) **Records correction.** It shall be the responsibility of the tribe to immediately provide to the Commission corrections to any inaccurate vessel information previously submitted to the Commission.

(g) **File records retention.** The Commission will retain individual tribal vessel registration information in the database until the registration for any vessel reflects a delinquent expiration of at least six (6) months.

(h) **Failure to properly report.** It shall be the responsibility of the tribe to report vessel information under the conditions outlined above. Should a tribe fail to comply with the information reporting guidelines outlined above, the Commission may, at its discretion, delete the tribe's vessel information from the Commission computer file and/or deny requests of the tribe for additional vessel registration numbers.

**SUBCHAPTER 7. TITLES**

**710:22-7-14. Abandoned vessels or outboard motors**

When a boat or outboard motor is found abandoned with no known owner, the finder may apply for ownership by submitting a statement of facts to the Oklahoma Tax Commission, detailing where, when and under what circumstances the boat or outboard motor was found abandoned. The Commission will forward the appropriate information to the Oklahoma Department of Public Safety and request their inspection of the boat or outboard motor. Upon completion of the inspection and issuance of a DPS letter of clearance, the Commission will issue titling instructions to the applicant.

[OAR Docket #09-885; filed 5-12-09]

**TITLE 710. OKLAHOMA TAX COMMISSION  
CHAPTER 45. GROSS PRODUCTION**

[OAR Docket #09-886]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 9. Exemptions and Exclusions  
Part 13. Deep Wells  
710:45-9-60 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203, and 1001(M); Oklahoma Tax Commission

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**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Section 710:45-9-60 has been amended to implement the provisions of Senate Bill 1658 (51st Legislature, 2nd Regular Session, 2008) which extends the qualification period to July 1, 2011 for an exemption of gross production tax associated with certain deep wells.

**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.**

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SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2009:

## SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

### 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 on or after July 1, 2002.** Deep wells spudded on or after July 1, 2002, 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 July 1, 2009.** 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, 2008-2011.** 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, 2008-2011.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

[OAR Docket #09-886; filed 5-12-09]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 50. INCOME

[OAR Docket #09-887]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 9. Refunds

710:50-9-8 [AMENDED]

Subchapter 15. Oklahoma Taxable Income

Part 3. Exemptions

710:50-15-34 [NEW]

Part 7. Credits against Tax

710:50-15-81 [AMENDED]

710:50-15-86 [AMENDED]

710:50-15-86.1 [AMENDED]

710:50-15-87 [AMENDED]

710:50-15-87.1 [AMENDED]

710:50-15-95 [AMENDED]

710:50-15-98 [AMENDED]

710:50-15-100 [AMENDED]

710:50-15-103 [AMENDED]

710:50-15-108 [AMENDED]

710:50-15-109 [NEW]

Subchapter 17. Oklahoma Taxable Income for Corporations

Part 5. Determination of Taxable Corporate Income

710:50-17-51 [AMENDED]

710:50-17-52 [NEW]

#### AUTHORITY:

68 O.S. §§ 203, 2357.41(F), 2357.67(F), 2357.104(C), 2357.201 and 2358;

Oklahoma Tax Commission

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March 12, 2009

##### Submitted to Senate:

March 12, 2009

##### Gubernatorial approval:

April 14, 2009

##### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2009

##### Final adoption:

May 7, 2009

##### Effective:

June 25, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes. All legislative references are to the Second Regular Session of the 51<sup>st</sup> Legislature (2008).

Section 710:50-9-8 has been amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

New Section 710:50-15-34 has been added to implement the provisions of House Bill 2693 which provides for an income tax exemption for death benefits paid upon the death of an Emergency Medical Technician killed in the line of duty. [68:2358]

Section 710:50-15-81 has been amended to implement the provisions of Senate Bill 1558 which extends the sunset provisions of the clean-burning motor vehicle fuel property conversion credit to December 31, 2009, and clarify policy regarding the one-time credit. [68:2357.22]

Sections 710:50-15-86, 710:50-15-86.1, 710:50-15-87 and 710:50-15-87.1 have been amended to reflect the provisions of Senate Bill 2129 which amends the definition of "Oklahoma business venture", "Oklahoma small business venture" and "Oklahoma rural small business venture" to include working capital (i.e., payroll, rent and utilities) as a qualified expense to meet the 50% expenditure requirement; requires that a shareholder, partner or member to whom a credit is allocated from an investment made with borrowed funds, must have an "unlimited and continuing" legal obligation to repay the borrowed funds; amends the recapture provisions to allow working capital to be included as a qualified expense to meet the 50% expenditure requirement; and amends the definition of "market-based liquidity event" to include a repayment by the Oklahoma business venture of indebtedness from net income or from proceeds of the sale of assets in the ordinary course of business.

Section 710:50-15-95 has been amended to implement the provisions of House Bill 1387 which extends the poultry litter credit in its current form to December 31, 2009 and amends the calculation of the credit for years 2010 through 2013. [68:2357.100]

Section 710:50-15-98 has been amended to implement the provisions of Senate Bill 1956 which amends the Biodiesel Facilities Credit to permit any allowed but unused credit to be carried over for five (5) additional years after the initial five (5) year period. [68:2357.67]

Section 710:50-15-100 has been amended to implement the provisions of Senate Bill 2129 which extends the sunset provisions for certain capital expenditures, qualified wages, and training expenses of a qualified business enterprise primarily engaged in data processing, computer systems design, or computer related services. [68:2357.201]

Section 710:50-15-103, pertaining to the income tax credit for railroad modernization, has been amended to implement the provisions of Senate Bill 1799 which allows a taxpayer to elect to claim three (3) times the credit specified for tax year 2008 for qualified expenditures made. [68:2357.104]

Section 710:50-15-108 has been amended to implement the provisions of Senate Bill 1956 which amends the existing income tax credit for rehabilitation expenditures on certain historic properties by modifying procedures for transferring credits, requiring the Tax Commission to track transferred credits and limiting the tax liability of subsequent transferees under certain circumstances. [68:2357.41]

New Section 710:50-15-109 has been added to implement the provisions of House Bill 3239 which provides for an income tax credit for qualified aerospace employers for compensation paid to qualified aerospace employees. [68:2357.303]

Section 710:50-17-51 has been amended to implement the provisions of Senate Bill 2034 and Oklahoma Tax Commission Order No. 2008-02-19-02 which pertains to the calculation of the Oklahoma accrued tax deduction for corporations.

New Section 710:50-17-52 has been added to implement the provisions of Senate Bill 2034 which prohibits the deduction of rent or interest paid to a capital real estate investment trust. [68:2358]

**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, 2009:**

**SUBCHAPTER 9. REFUNDS**

**710:50-9-8. Reissued vouchers for deceased taxpayer refunds or lost, stolen or forged vouchers**

(a) Income tax refunds which are issued in the name of a deceased taxpayer who is not represented by an executor or

executrix may be returned to the Refund Section of the ~~Central Processing Division~~ Taxpayer Assistance Division for reissuance in the name of the claimant, upon a determination that the claimant is the proper recipient. OTC Form 507, along with a A separate letter setting out the facts and signed by the claimant, must accompany any such claim.

(b) Claims for refunds that have been lost in the clearing process may be submitted to the State Treasurer's Office for reissue. Upon notification by the State Treasurer, the Refund Section of the ~~Central Processing Division~~ Taxpayer Assistance Division will reissue the voucher in the name of the taxpayer and forward to the holder in due course.

(c) Refund vouchers which have become lost, stolen or forged will be reissued by the Refund Section of the ~~Central Processing Division~~ Taxpayer Assistance Division after the taxpayer has properly executed an affidavit setting out the facts, and upon approval by the State Treasurer's office.

**SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME**

**PART 3. EXEMPTIONS**

**710:50-15-34. Exemption for death benefits of Emergency Medical Technicians**

In taxable years beginning after December 31, 2008, death benefits received as a result of the death of an Emergency Medical Technician are exempt from Oklahoma income tax.

**PART 7. CREDITS AGAINST TAX**

**710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property**

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, "motor vehicle" includes fork-lifts and other similar self-propelled vehicles. "Vehicle" shall not mean conveyor belts or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.

(b) **Limitations of eligibility.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S.Supp.1993, §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

(c) **Electric vehicle property.** For vehicles placed in service after December 31, 1995, the credit shall also be available

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for qualified electric vehicle property. "**Qualified electric vehicle property**" means a motor vehicle originally equipped to be propelled **only** by electricity or one which is also equipped with an internal combustion engine. For "qualified electric vehicle property" propelled only by electricity, the basis for the credit is the full purchase price of the vehicle. For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. The credit does not apply to vehicles known as "golf carts", "go-carts", or other motor vehicles which are manufactured principally for use off the streets and highways.

(d) **Sunset date.** This credit will only be available through tax years beginning before January 1, 2010.

### 710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits

(a) **Qualified Small Business Capital Company.** A qualified Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to companies in this state. The principal place of business of the qualified Small Business Capital Company must be located within Oklahoma. The capitalization of the qualified Small Business Capital Company must be at least One Million Dollars (\$1,000,000.00). [See: 68 O.S. § 2357.61 for further details on capitalization] The qualified Small Business Capital Company cannot invest more than twenty percent (20%) of its funds in any one company.

(1) **Credit available.** For taxable years beginning after December 31, 1997, and before January 1, 2012, there is a credit available against Oklahoma Income Tax (68 O.S. § 2355) and the tax levied on state and national banking associations and credit unions (68 O.S. § 2370) for investments in a qualified Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to twenty percent (20%) of the ~~cash amount invested~~ qualified investment in a qualified Small Business Capital Company, and may only be claimed in the tax year in which the qualified Small Business Capital Company invests funds in an Oklahoma Small Business Venture. The credit is limited to the amount of ~~funds~~ the qualified investment which is subsequently invested in an Oklahoma small business venture by the qualified Small Business Capital Company. ~~so invested.~~

(3) **Credit non-refundable, nontransferable; carry-over provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Small Business Capital Company is used by an Oklahoma Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified small business capital company. Further, the credit is not available for investments in which the Rural Small Business Capital Credit has been claimed.

(b) **Oklahoma Small Business Ventures.** An Oklahoma Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, or must intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further, the Oklahoma Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in conjunction with Qualified Small Business Capital Company Investment.** Investors in a Qualified Small Business Capital Company may also make an investment in an Oklahoma Small Business Venture, in conjunction with the investment by the Qualified Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to twenty percent (20%) of the ~~cash amount invested~~ qualified investment in an Oklahoma Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified small business:

(A) The investment must be made by a shareholder, member or a partner of the qualified Small Business Capital Company that has ~~invested funds~~ made a qualified investment in an Oklahoma Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in an Oklahoma Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with Qualified Small Business Capital Companies is limited to the lesser of ~~Two Hundred two hundred~~ percent (200%) of the ~~taxpayer~~ taxpayer's qualified investment in the qualified Small Business Capital Company or ~~Two Hundred two hundred~~ percent (200%) of the qualified investment made by the qualified Small Business Capital Company in the Oklahoma Small Business Venture.

(d) **Reporting requirements.** Each qualified Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Small Business Capital Company in Oklahoma Small Business Ventures.

(e) **Recordkeeping.** Each qualified Small Business Capital Company shall also make a written information report available to all investors in the qualified Small Business Capital Company. This information report shall show the name of the qualified Small Business Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act.* [68 O.S. § 2357.63A]

**710:50-15-86.1. Letter rulings pursuant to the Small Business Capital Formation Incentive Act**

The Oklahoma Tax Commission will only issue letter rulings pursuant to the Small Business Capital Formation Incentive Act (68 O.S. §§2357.61 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a "qualified small business capital company". The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified small business capital company:

(A) *A C Corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law;*

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state;

(D) The capitalization of the capital company is not less than One Million Dollars (\$1,000,000.00); and

(E) No more than twenty percent (20%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.61(7)(a)-(d)]

(2) A qualified small business capital company may request a letter ruling to determine whether a business in which it intends to invest meets the definition of an "Oklahoma small business venture". The capital company must give sufficient information to show the small business venture meets the following requirements:

(A) Within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of the business's employees or assets are in the state of Oklahoma;

(B) *Needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services;*

(C) *Is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:*

- (i) *Major Group 1 of Division A, and*
- (ii) *Major Group 2 of Division A;*

(D) *Qualifies as a small business as defined by the federal Small Business Administration; and*

(E) Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment to provide working capital for the active conduct of the trade or business or for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of paragraph 2 was made. [68 O.S. Supp 2006, §2357.61(5)(a)-(e)]

(3) A person or entity may request whether a transfer of funds meets the definition of a "qualified investment" under the Small Business Capital Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the Act.

(4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S. §2357.63D]

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(5) All other requests for rulings with respect to the Small Business Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to *OAC* 710:1-3-73.

### **710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits**

(a) **Qualified Rural Small Business Capital Company.** A Qualified Rural Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Rural Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to rural small business entities in this state. The principal place of business of the qualified Rural Small Business Capital Company must be located within Oklahoma and the capitalization must be at least Five Hundred Thousand Dollars (\$500,000.00). The qualified Rural Small Business Capital Company cannot invest more than twenty-five percent (25%) of its funds in any one rural small business entity.

(1) **Credit available.** For taxable years beginning after December 31, 2000, and before January 1, 2008, there is a credit available against the Oklahoma Income Tax levied by 68 O.S. § 2355, and the tax levied on state and national banking associations and credit unions by 68 O.S. § 2370, for investments in a qualified Rural Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to thirty percent (30%) of the ~~cash amount invested~~ qualified investment in a qualified Rural Small Business Capital Company, and may only be claimed in the tax year in which the capital company invests funds in an Oklahoma Rural Small Business Venture. The credit is limited to the amount of ~~funds so invested~~ the qualified investment which is subsequently invested in an Oklahoma rural small business venture by the qualified Rural Small Business Capital Company, and is unavailable for investments made in qualified Rural Small Business Capital Companies made **prior** to January 1, 2001.

(3) **Credit non-refundable, nontransferable; carry-over provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Rural Small Business Capital Company is used by an Oklahoma Rural Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified Rural Small Business Capital Company. Further, the credit is not available for investments in which the Small Business Capital Credit has been claimed.

(b) **Oklahoma Rural Small Business Ventures.** An Oklahoma Rural Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Rural Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, and must provide or intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further the Rural Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Rural Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in Oklahoma Rural Small Business Ventures in conjunction with investment by qualified Rural Small Business Capital Company.** Shareholders or partners in a qualified Rural Small Business Capital Company may also make an investment in an Oklahoma Rural Small Business Venture, in conjunction with the investment by the qualified Rural Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to thirty percent (30%) of the ~~cash amount invested~~ qualified investment in an Oklahoma Rural Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Rural Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed ~~ten (10)~~ three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified Rural Small Business Capital Company:

(A) The investment must be made by a shareholder, member or a partner of the qualified Rural Small Business Capital Company that has ~~invested funds~~ made a qualified investment in an Oklahoma Rural Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in the Rural Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Rural Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with qualified Rural Small Business Capital Companies is limited to the lesser of ~~Two Hundred two hundred~~ two hundred percent (200%) of the ~~taxpayer taxpayer's~~ qualified investment in the qualified Rural Small Business Capital Company, or ~~Two Hundred two hundred~~ two hundred percent (200%) of the qualified investment made by the qualified Rural Small Business Capital Company in the Rural Small Business Venture.

(d) **Reporting requirements.** Each qualified Rural Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Rural Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Rural Small Business Capital Company in Oklahoma Rural Small Business Ventures.

(e) **Recordkeeping.** Each qualified Rural Venture Capital Company shall also make a written information report available to all investors in the qualified Rural Venture Capital Company. This information report shall show the name of the qualified Rural Venture Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Rural Venture Capital Formation Incentive Act. [68 O.S. § 2357.74A]*

**710:50-15-87.1. Letter rulings pursuant to the Rural Venture Capital Formation Incentive Act**

The Oklahoma Tax Commission will only issue letter rulings pursuant to the Rural Venture Capital Formation Incentive Act (68 O.S. §§ 2357.71 et seq.) as provided herein:

(1) A person or entity may request a ruling to determine whether a company meets the definition of a "qualified rural small business capital company". The requesting party must provide sufficient information to demonstrate that the company meets the following requirements for a qualified rural small business capital company:

(A) *A C Corporation or a subchapter S corporation, as defined by the Internal Revenue Code of 1986, as amended, incorporated pursuant to the laws of Oklahoma, limited liability company or a registered business partnership with a certificate of partnership filed as required by law;*

(B) The capital company is organized to provide the direct investment of equity and near-equity funds to companies within the state of Oklahoma as outlined in its organizational instrument, bylaws, articles of

incorporation, or other agreement responsible for the governance of the capital company;

(C) The principal place of business of the capital company is located within this state;

(D) The capitalization of the capital company is not less than Five Hundred Thousand Dollars (\$500,000.00); and

(E) No more than twenty-five percent (25%) of the capital company's capitalization is invested in any one company at any time during the calendar year of the capital company. [68 O.S. Supp 2006, §2357.72(8)(a)-(d)]

(2) A qualified rural small business capital company may request a letter ruling to determine whether a business in which it intends to invest meets the definition of an "Oklahoma rural small business venture". The capital company must give sufficient information to show the rural small business venture meets the following requirements:

(A) *Has or will have within one hundred eighty (180) days after a qualified investment is made by a qualified small business capital company, at least fifty percent (50%) of its employees or assets in Oklahoma;*

(B) *Needs financial assistance in order to commence or expand such business which provides or intends to provide goods or services;*

(C) *Is engaged in a lawful business activity under any Industry Number appearing under any Major Group Number of Divisions A, C, D, E, F or I of the Standard Industrial Classification Manual, 1987 revision with the following exceptions:*

- (i) *Major Group 1 of Division A, and*
- (ii) *Major Group 2 of Division A;*

(D) *Qualifies as a small business as defined by the federal Small Business Administration;*

(E) *Intends to expend within eighteen (18) months of the qualified investment at least fifty percent (50%) of the proceeds of the investment to provide working capital for the active conduct of the trade or business or for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business for which the determination of the small business qualification pursuant to subparagraph (D) of this paragraph 2 was made, and*

(F) *Has its principal place of business within a nonmetropolitan area of the state and conducts the activity resulting in at least seventy-five percent (75%) of its gross annual revenue from a nonmetropolitan area of the state. [68 O.S. Supp 2006, §2357.72(6)(a)-(f)]*

(3) A person or entity may request whether a transfer of funds meets the definition of a "qualified investment" under the Rural Venture Capital Formation Incentive Act. The requesting party must provide sufficient information to establish that the transfer of funds meets the definition of qualified investment under the Act.

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(4) Requests for letter rulings issued pursuant to this Section are limited to paragraphs (1), (2) and (3) above. [68 O.S.2357.74D]

(5) All other requests for rulings with respect to the Rural Venture Capital Formation Incentive Act should be submitted separately and shall be issued pursuant to *OAC* 710:1-3-73.

### 710:50-15-95. Poultry litter credit

(a) **General provisions.** Effective for tax year beginning on or after January 1, 2005, and ending on or before December 31, 2009 an income tax credit is established for the purchase and transportation of poultry litter. The credit is five dollars (\$5.00) per ton of poultry litter purchased and transported. Any unused credit may be carried over for up to five (5) years.

(b) **Qualification.** In order to qualify for the credit the poultry litter must:

(1) Be purchased from a registered, Oklahoma-based poultry operation located within an environmentally sensitive and nutrient-limited watershed;

(2) Be used or spread in a watershed that is not environmentally sensitive and nutrient-limited; and,

(3) Be applied by a certified poultry waste applicator and in a manner consistent with the Animal Waste Management Plan.

(c) **Limitation.** The sum total of all such credits claimed cannot exceed Three Hundred Seventy-five Thousand Dollars (\$375,000.00) annually, for all claimers of the credit.

### 710:50-15-98. Credits for biodiesel production

(a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, 2013, 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, 2008 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, 2013.

(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, 2008. 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, 2013.

(e) **Credit for production after December 31, 2013.** For production of biodiesel after December 31, 2013 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.

(g) **Carryover.** Any credits allowed under this Section but not used may be carried forward as a credit against subsequent income tax liability for a period not exceeding five (5) years, beginning July 1, 2009.

**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~~ 2014 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) that 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 and for all subsequent fiscal years ending before June 30, 2013 is Three Hundred Fifty Thousand Dollars (\$350,000.00) per fiscal year. No additional credits are allowed after ~~this time period~~ the Fiscal Year ending June 30, 2013.

(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

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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

### 710:50-15-103. 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) for tax year 2007 and Two Thousand Dollars (\$2,000.00) for tax years 2008 ~~and beyond~~ 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. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election.

(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.

### 710:50-15-108. Credit for qualified rehabilitation expenditures

(a) **General Provisions.** The Credit for Qualified Rehabilitation Expenditures is one hundred percent (100%) of the

allowable federal rehabilitation credit provided for in Section 47 of Title 26 of the United States Code. All rehabilitation work to which the Credit for Qualified Rehabilitation Expenditures may be applied must be reviewed by the State Historic Preservation Office. The State Historic Preservation Office will forward the information to the National Park Service for certification in accordance with 36 C.F.R., Part 67. A certified historic structure may be rehabilitated for any lawful use or uses, including without limitation mixed uses and still retain eligibility for the credit provided for in this section.

(b) **Definitions.**

(1) **"Certified historic hotel or historic newspaper plant building"** means a hotel or newspaper plant building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to 68 O.S. § 2357.41.

(2) **"Certified historic structure"** means a building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to this section or a building located in Oklahoma which is certified by the State Historic Preservation Office as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places, or a local district that has been certified by the State Historic Preservation Office as eligible for listing in the National Register of Historic Places.

(3) **"Qualified rehabilitation expenditures"** means capital expenditures that qualify for the federal rehabilitation credit provided in Section 47 of Title 26 of the United States Code and that were paid after December 31, 2000. Qualified rehabilitation expenditures do not include capital expenditures for nonhistoric additions except an addition that is required by state or federal regulations that relate to safety or accessibility. In addition, qualified rehabilitation expenditures do not include expenditures related to the cost of acquisition of the property.

(c) **Provisions for tax years beginning after December 31, 2000 and ending before January 1, 2006.** Only certified historic hotel or historic newspaper plant buildings located in an increment or incentive district created pursuant to the Local Development Act (62 O.S. §§ 850 et. seq.) are eligible for the Credit for Qualified Rehabilitation Expenditures.

(d) **Provisions for tax years beginning on or after before January 1, 2006.** The Credit for Qualified Rehabilitation Expenditures is available for qualified rehabilitation expenditures incurred after January 1, 2006 in connection with any certified historic structure.

(e) **Provisions for claiming the credit.** Generally, the first year the Credit for Qualified Rehabilitation Expenditures is eligible to be claimed is the first tax year that the federal rehabilitation credit, provided for in Section 47 of Title 26 of the United States Code, is eligible to be claimed. For carryover of the credit, see carryover provisions below. Further the Credit for Qualified Rehabilitation Expenditures may only be claimed after the relevant local governmental body responsible for doing so issues a certificate of occupancy or other document that is a precondition for the applicable use of the building or structure that is the basis upon which the credit is claimed.

All requirements with respect to qualification for the credit authorized by Section 47 of Title 26 of the United States Code shall be applicable to the Credit for Qualified Rehabilitation Expenditures.

(f) **Carryover.** If the Credit for Qualified Rehabilitation Expenditures exceeds the amount of income taxes due or if there are no state income taxes due, the amount of the credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years following the qualified expenditures.

(g) **Transferability.** The Credit for Qualified Rehabilitation Expenditures 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.

(h) **Written transfer agreement requirements.** The 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. Subsequent transfers will require the transferor and transferee to 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 as well as a representation by the transferor that the transferor has neither claimed such credits for its own behalf nor conveyed said credits to any other transferee. Such filing of the written credit transfer agreement with the Oklahoma Tax Commission will perfect said transfer.

(i) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(j) **Repayment of disallowed credit.** Effective January 1, 2009, if the Credit for Qualified Rehabilitation Expenditures has been transferred and is subsequently reduced as the result of an adjustment by the Internal Revenue Service, the Oklahoma Tax Commission, or any other applicable government agency, only the transferor originally allowed the credit will be held liable to repay any amount of disallowed credit. Any subsequent transferee of the credit is not liable to repay the amount of disallowed credit.

**710:50-15-109. Credit for qualified employers and employees of the aerospace sector**

(a) **General provisions.** For tax years beginning after December 31, 2008 three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the aerospace sector. The three (3) credits are as follows:

- (1) Credit for qualified employers for tuition reimbursement to qualified employees.
- (2) Credit for qualified employers for compensation paid to qualified employees.
- (3) Credit for qualified employees.

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(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Aerospace sector"** is a private or public organization that is:

(A) a manufacturer of aerospace or defense hardware and/or software;

(B) provides aerospace maintenance, repair or overhaul;

(C) supplies parts to the aerospace industry;

(D) provides services and/or support relating to the aerospace industry;

(E) provides research and development of aerospace technology and systems, or

(F) provides education or training of aerospace personnel.

(2) **"Compensation"** includes salary or other remuneration, wages subject to withholding tax paid to either a part-time employee or full-time employee and payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid. Compensation does not include any employer-provided benefits, including but not limited to retirement, medical or health-care benefits; reimbursement for travel, meals, lodging or any other expense.

(3) **"Institution"** is any institution included within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.

(4) **"Qualified employer"** is an entity whose principal business activity involves the aerospace sector. This includes sole proprietors, general partnerships, limited partnerships, limited liability companies, corporations, or any other legally recognized business entity, or public entity.

(5) **"Qualified employee"** is any person newly employed by or contracting with a qualified employer on or after January 1, 2009 employed in Oklahoma. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employees do not include person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer.

(6) **"Qualified program"** is any program that awards undergraduate or graduate degrees and has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET)

(7) **"Tuition"** is the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program. Tuition does not include the cost of books, any other fees or the cost of room and board.

(c) **Credit for tuition reimbursement.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer. The undergraduate or graduate degree must be from a qualified program.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The credit is only allowed to be claimed in the tax year that the tuition was reimbursed to the qualified employee and may not exceed in any taxable year fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

(d) **Credit for compensation paid.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for compensation paid equals:

(A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located in this state.

(B) Five percent (5%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

(e) **Credit for qualified employees.**

(1) For taxable years beginning after December 31, 2008, a qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars (\$5,000.00) per year for a period of time not to exceed five (5) years.

(2) The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

(3) Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

**SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS**

**PART 5. DETERMINATION OF TAXABLE CORPORATE INCOME**

**710:50-17-51. Adjustments to arrive at Oklahoma taxable income for corporations**

The following is a partial list and not inclusive of all the allowable and unallowable adjustments that may be made to Federal taxable income to arrive at Oklahoma taxable income for corporations: [See: 68 O.S. § 2358]

(1) **Taxes based on income.** [See: 68 O.S. § 2358(A)(5)]

(A) Taxes based on or measured by income shall not be allowed as a deduction.

(B) Type of taxes that are based on or measured by income are:

- (i) State and Local Income Taxes,
- (ii) Foreign Income Taxes, and
- (iii) some Franchise Taxes that are based on or measured by income.

(2) **Federal income taxes.** Federal Income Taxes are not deductible.

(3) **Federal loss carryback/carryforward.** A Federal net operating loss carryover or carryback will not be utilized in determining Oklahoma taxable income. For the allowance of Oklahoma Net Operating Loss deduction refer to (4) of this Section.

(4) **Oklahoma net operating loss carryback/carryover.** An election may be made to forego the Net Operating Loss (NOL) carryback period. A written statement of the election must be part of the timely filed Oklahoma loss year return.

(A) **Oklahoma net operating loss.** [See: 68 O.S. § 2358(A)(3)]

(i) An Oklahoma Net Operating Loss (NOL) may be carried back or over in accordance with 26 U.S.C.A. § 172 until December 31, 1992. However, no Oklahoma NOL can be carried back to years beginning before January 1, 1981 unless there is a Federal NOL carryback from the same loss year to the same carryback year.

(I) For net operating losses incurred for the years beginning after December 31, 1992, and before December 31, 1993, the loss **carryback** shall be for a period of three (3) years;

(II) For net operating losses incurred for tax years beginning after December 31, 1993, and before December 31, 1994, the loss **carryback** shall be for a period of two (2) years;

(III) For net operating losses incurred for tax years beginning after December 31, 1994, and before December 31, 1995, the loss **carryback** shall be for a period of one (1) year;

(IV) For net operating losses incurred for tax years beginning after December 31, 1995, and before January 1, 2001, no loss **carryback** shall be allowed; and

(V) For net operating losses incurred for tax years beginning on or after January 1, 2001, the loss **carryback** shall be for a period as allowed in the Internal Revenue Code.

(ii) Any Oklahoma Net Operating Loss (NOL) carryback not allowed, due to no Federal loss carryback to the same year, may still be carried back to the years beginning after December 31, 1980, or carried over until utilized, without regard to a Federal loss.

(B) **Oklahoma net operating loss computation for carryback to years beginning before January 1, 1981.** The following shall apply to Oklahoma net operating loss before January 1, 1981:

(i) Consolidated federal filing: In the loss year, the percentage of the Oklahoma loss to all loss companies in the consolidation. (If no consolidated loss, there is no NOL allowable.)

(ii) Separate company federal filing: In the loss year, the percentage of the Oklahoma loss to Federal loss. (If no Federal loss, there is no NOL allowable.) This percentage is then applied to the Federal NOL (each loss year separately) when it is taken (absorbed) on the filed Federal Return. The Oklahoma NOL can be used in the same Oklahoma year it is used on the filed Federal Return year.

(5) **Oklahoma accrued income tax.** Oklahoma will allow a deduction for Oklahoma Accrued Income Tax. The Oklahoma Accrued Income Tax is computed by dividing Oklahoma Net Income by the number 21 (twenty-one) for tax years beginning after December 31, 1984, and the number 26 (twenty-six) for tax years beginning before January 1, 1985. For tax years beginning after December 31, 1989, the number 17.6667 shall be used. There is no deduction for Oklahoma Accrued Income Tax when Oklahoma Net Income is a loss. [See: 68 O.S. § 2358(A)(5)] When credits are allowed, the accrual of Oklahoma tax will not be allowed on the amount of Oklahoma taxable income that is covered by the credit, except for credits that have been acquired by transfer. The amount paid for credits that have been acquired by transfer can be used as a payment of tax for purposes of computing the deduction for Oklahoma accrued tax. Tax accrual is allowed on the amount of income for which tax is actually paid. The example in Appendix A of this Chapter shows how the accrual should be calculated. A schedule such as the example should be attached and submitted with Form 512.

(6) **Expenses allocated to nontaxable income.** 68 O.S. § 2358(A)(4) provides that deductions should be

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allocated to assets that may produce nontaxable income. When a corporation has an investment in subsidiaries, other corporation's bonds, U.S. Obligations or other types of securities that produce income which is excluded from Oklahoma income, an adjustment is required. The expense adjustment is used to more clearly reflect true income. The manner in which this adjustment is made is as follows: A fraction, or percentage, is computed by dividing the average of investment in assets, the income from which is nontaxable by the average of total assets. This result is then applied to certain expenses claimed on the return. Generally, interest expense is the only expense against which this result is applied. However, facts and circumstances may indicate that other expenses should be considered in this allocation. This adjustment will be considered in all cases where deemed appropriate. [See: 68 O.S. § 2358(A)(4)]

(7) **Interest income.**

(A) **U.S. obligations.** Interest income from U.S. obligations is excluded from Federal taxable income to arrive at Oklahoma taxable income. Interest income received from FNMA, GNMA, or the Internal Revenue Service is not income from an obligation of the U.S. government and cannot be excluded to arrive at Oklahoma taxable income.

(B) **Other interest income.**

(i) Interest income is to be directly allocated to the domiciliary situs of the taxpayer; except that interest income received from accounts receivable income shall be included in apportionable income.

(ii) There shall be added to Oklahoma taxable income, interest income on obligations of any state or political subdivision thereof which is not otherwise exempted pursuant to Federal laws or laws of this State, to the extent said interest is not included in federal taxable income or adjusted gross income.

(8) **Dividends.** Dividends are to be allocated to the domiciliary situs of the taxpayer. [See: 68 O.S. § 2358(A)(4)(b)]

(9) **Domestic International Sales Corporation (DISC) and Foreign Sales Corporation (FSC) Commission Expense.** Expenses incurred in producing DISC and FSC Dividend income shall be allocated on the same basis as the DISC and FSC Dividend income. [See: 68 O.S. § 2358(A)(4)]

(10) **Net oil and gas income.** Income or loss from oil and mining production or royalties, and gains or losses from sales of such property, shall be allocated in accordance with the situs of such property. General and administrative expenses will be allocated on the basis of Oklahoma direct expense to total direct expense. [See: 68 O.S. § 2358(A)(4)(a)]

(11) **Oklahoma 22% depletion.** Oklahoma depletion on oil and gas may be computed at twenty-two percent (22%) of gross income derived from each Oklahoma property during the taxable year.

(A) For tax years beginning January 1, 1997, and prior to December 31, 1999, and for tax years beginning on or after January 1, 2001, and ending on or before December 31, 2011, major oil companies, as defined by 52 O.S. § 288.2(4), shall be limited to fifty (50%) of net income for such property (computed without allowance for depletion).

(B) During years not specified herein, the Oklahoma depletion allowance, for all taxpayers, shall not exceed fifty (50%) of the net income of the taxpayer (computed without allowance for depletion) from the property.

(C) The percentage depletion calculated shall not be a duplication of the depletion allowed on the Federal Income Tax Return. [See: 68 O.S. § 2353(10)]

(12) **Net rental income and safe harbor leasing.** The following provisions apply to the treatment of net rental income and safe harbor leasing:

(A) Net Rental Income is separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) A schedule of Net Rental Income is required to be filed with the return showing gross income and all expenses (depreciation, repairs, taxes, interest, general and administrative expense, etc.).

(13) **Royalties; patents; copyrights.** [See: 68 O.S. § 2358(A)(5)]

(A) Income from patent or copyright royalties is apportionable.

(B) Income from which expenses have been deducted in producing such patent or copyright royalties in arriving at apportionable income (including the purchase of such patent or copyright royalties) shall be apportionable.

(14) **Capital gains or loss - 4797 gains or loss.**

(A) Gains (losses) from the sale or other disposition of unitary assets or any other assets used in the unitary enterprise are apportionable. [See: 68 O.S. § 2358(A)(5)]

(B) Gains (losses) from sale of property, the income from which is separately allocated shall also be separately allocated.

(15) **Partnership income or loss from corporate partners.**

(A) Partnership income or loss shall be separately allocated. [See: 68 O.S. § 2358(A)(4)]

(B) The Oklahoma distributive share of partnership income as determined under 68 O.S. § 2358 and 68 O.S. § 2362 shall be allocated to Oklahoma.

(16) **Overhead allocation.** The Commission may adjust or allocate overhead expenses to or from a parent or subsidiary, or between divisions in order to more accurately reflect the overhead expenses. [See: 68 O.S. § 2366]

(17) **Federal new jobs credit deduction.** For tax years beginning after December 31, 1980, the Federal New Jobs deduction is disallowed due to Oklahoma's own Investment/New Jobs Credit.

(18) **Deductions related to directly allocated income/loss.** Deductions incurred in producing income of a nonunitary nature shall be allocated on the same basis as the income. (Examples: Liquidation of subsidiaries, worthless stock loss, bad debts due subsidiaries on sale of stock, etc.) [See: 68 O.S. § 2358(A)(4)]

(19) **Intercompany eliminations.** There are no provisions to allow intercompany eliminations in computing the income of each company filing an Oklahoma Consolidated Return.

(20) **Other income.** Generally, other income, unless it is separately allocable under 68 O.S. § 2358(A)(4) is apportionable. [See: 68 O.S. § 2358(A)(5)]

(21) **Add-back of federal bonus depreciation for Oklahoma Income Tax purposes.** Generally, corporations claiming the federal bonus depreciation (as allowed under provisions of the federal *Job Creation and Workers Assistance Act of 2002* or the provisions of the federal *Economic Stimulus Act of 2008*) are required to add back a portion of the bonus depreciation and then claim it in later years for Oklahoma Income Tax purposes.

(A) Corporations filing Oklahoma Income Tax Returns will have to add back eighty percent (80%) of any bonus depreciation claimed under provisions of the federal *Job Creation and Workers Assistance Act of 2002* or the federal *Economic Stimulus Act of 2008*. Any amount added back can be claimed in later years. Twenty-five percent (25%) of the amount of bonus depreciation added back may be subtracted in the first taxable year beginning after the bonus depreciation was added back, and twenty-five percent (25%) of the bonus depreciation added back may be deducted in each of the next three succeeding taxable years.

(B) The provisions relating to the add-back of the federal bonus depreciation apply only to C-Corporations and are not applicable to corporations which have elected to be treated as Subchapter S Corporations pursuant to 26 U.S.C. § 1361 et seq. of the Internal Revenue Code, nor to Limited Liability Companies.

**710:50-17-52. Payment of rents and interest to a captive Real Estate Investment Trust (REIT)**

(a) **General provisions.** Taxpayers that make rent or interest payments to a captive real estate investment trust (REIT) must add back those expenses to arrive at Oklahoma taxable income. For purposes of this subsection, the constructive ownership rules of Section 318(a) of the Internal Revenue Code of 1986, as amended, as modified by Section 856(d)(5) of the Internal Revenue Code of 1986, as amended, will apply in determining the ownership of stock, assets, or net profits of any person.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Real estate investment trust" or "REIT"** is any entity as defined in Section 856 of the Internal Revenue

Code of 1986, as amended, as a real estate investment trust.

(2) **"Captive real estate investment trust"** is any real estate investment trust that has shares or beneficial interests that are not regularly traded on an established securities market and in which more than 50% of the voting power or value of the beneficial interests or shares are owned or controlled, either directly or indirectly, by a single entity treated as an association taxable as a corporation under the Internal Revenue Code of 1986, as amended, and is not exempt from federal income tax pursuant to the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended. "Captive real estate investment trust" does not include real estate investment trusts that are intended to be regularly traded on an established securities market, and that satisfies the requirements of Section 856(a)(5) and (6) of the U.S. Internal Revenue Code by reason of Section 856(h)(2) of the Internal Revenue Code.

(3) **"Association taxable as a corporation"** does not include the following entities:

(A) real estate investment trusts as defined in subsection (b)(1) other than a "captive real estate investment trust";

(B) qualified real estate investment trust subsidiaries defined under Section 856(i) of the Internal Revenue Code of 1986, as amended, other than a qualified REIT subsidiary of a "captive real estate investment trust";

(C) Listed Australian Property Trusts (meaning an Australian unit trust registered as a "Managed Investment Scheme" under the Australian Corporations Act in which the principal class of units is listed on a recognized stock exchange in Australia and is regularly traded on an established securities market), or entities organized as a trusts, provided that a Listed Australian Property Trust owns or controls, directly or indirectly, seventy-five percent (75%) or more of the voting power or value of the beneficial interests or shares of such trust;

(D) Qualified Foreign Entities, including corporations, trusts, associations or partnerships organized outside the laws of the United States and which satisfy the following criteria:

(i) at least seventy-five percent (75%) of the entity's total asset value at the close of its taxable year is represented by real estate assets, as defined in Section 856(c)(5)(B) of the Internal Revenue Code of 1986, as amended, thereby including shares or certificates of beneficial interest in any real estate investment trust, cash and cash equivalents, and U.S. Government securities,

(ii) the entity receives a dividend-paid deduction comparable to Section 561 of the Internal Revenue Code of 1986, as amended, or is exempt from entity level tax,

(iii) the entity is required to distribute at least eighty-five percent (85%) of its taxable income, as

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computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis, (iv) not more than ten percent (10%) of the voting power or value in such entity is held directly or indirectly or constructively by a single entity or individual, or the shares or beneficial interests of such entity are regularly traded on an established securities market; and (v) the entity is organized in a country which has a tax treaty with the United States.

[OAR Docket #09-887; filed 5-12-09]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 60. MOTOR VEHICLES

[OAR Docket #09-888]

### RULEMAKING ACTION: PERMANENT final adoption

#### RULES:

- Subchapter 3. Registration and Licensing
  - Part 1. General Provisions
    - 710:60-3-14 [AMENDED]
    - 710:60-3-24 [AMENDED]
    - 710:60-3-25 [NEW]
  - Part 5. Dealers
    - 710:60-3-54 [AMENDED]
    - 710:60-3-56 [AMENDED]
  - Part 7. Noncommercial Vehicles
    - 710:60-3-70 [AMENDED]
  - Part 9. Commercial Vehicles
    - 710:60-3-99 [AMENDED]
  - Part 11. Other Vehicles
    - 710:60-3-111 [AMENDED]
    - 710:60-3-115 [NEW]
  - Part 14. All-Terrain Vehicles, and Off-Road Motorcycles and Utility Vehicles
    - 710:60-3-140 [AMENDED]
    - 710:60-3-141 [AMENDED]
    - 710:60-3-142 [AMENDED]
- Subchapter 5. Motor Vehicle Titles
  - Part 1. General Provisions
    - 710:60-5-2 [AMENDED]
    - 710:60-5-6 [AMENDED]
  - Part 5. Certificates of Title
    - 710:60-5-53 [AMENDED]
    - 710:60-5-61 [NEW]
  - Part 7. Transfer of Title
    - 710:60-5-73 [AMENDED]
- Subchapter 7. Motor Vehicle Excise Tax
  - 710:60-7-4 [AMENDED]
- Subchapter 9. Motor Vehicle License Agents/Agencies
  - Part 1. General Requirements, Duties and Responsibilities of Motor License Agents
    - 710:60-9-2 [AMENDED]
  - Part 5. Specific Recordkeeping Duties
    - 710:60-9-52 [AMENDED]
  - Part 7. Specific Reporting Duties
    - 710:60-9-72 [AMENDED]
  - Part 13. Special Provisions for Application, Qualification, Appointment and Agency Operation Applicable to Certain Motor License Agents and Agencies
    - 710:60-9-134 [AMENDED]

### AUTHORITY:

47 O.S. §§ 1113, 1136, 1140, 1146, 1149, 1151.3 and 1151.4; 68 O.S. §203; Oklahoma Tax Commission

### DATES:

#### Comment Period:

January 15, 2009 to February 17, 2009

#### Public hearing:

February 18, 2009

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#### Submitted to Governor:

March 13, 2009

#### Submitted to House:

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#### Submitted to Senate:

March 13, 2009

#### Gubernatorial approval:

April 13, 2009

#### Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2009

#### Final adoption:

May 7, 2009

#### Effective:

June 25, 2009

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### ANALYSIS:

As part of the Commission's ongoing review of its rules, many proposed amendments to the existing rules have been made to clarify policy, improve readability, correct scrivener's errors, update statutory citation, insure accurate internal cross-reference and comply with statutory changes. All legislative references are to the Second Regular Session of the 51<sup>st</sup> Legislature (2008).

Section 710:60-3-14 has been amended to reflect the provisions of SB1389 which provides an exception to the transfer of ownership registration fee for unrecovered-theft titles and Section 710:60-5-2 has been amended to note the title certificate color designation for an unrecovered-theft title.

Section 710:60-3-24 has been amended to conform to current statutory authority relating to the exemption of utility vehicles from the waste tire recycling fee.

New Section 710:60-3-25 has been added to conform to current statutory authority relating to the special registration rate afforded certain active duty military personnel. [47:1127]

Section 710:60-3-54 has been amended to clarify policy regarding usage of out of state ownership reassignment sheets by licensed Oklahoma vehicle dealers. [47:1137.1]

Section 710:60-3-56 has been amended to reflect the provisions of SB1654 which provides for the purchaser of a new cab and chassis truck to place the temporary license plate in the rear window. [47:1137.3]

Section 710:60-3-70 has been amended and New Section 710:60-3-115 has been added to reflect the provisions of SB1384 which provides a definition for "medium-speed electric vehicle" and guidelines for the registration and titling of low-speed and medium-speed electrical vehicles. [47:1151.4]

Section 710:60-3-99 has been amended to reflect the provisions of SB1699 which references the laden weight at which certain trucks and truck tractors become subject to the federal heavy vehicle tax. [68:2103]

Section 710:60-3-111 has been amended to reflect the provisions of SB1511 which provides for optional private trailer registrations [47:1133.3] and to reflect the provisions of SB1998 which provides the definition of "mini-trucks" and the requirements to title and register mini-trucks. [47:1102; 1151.3]

Sections 710:60-3-140, 710:60-3-141 and 710:60-3-142 were amended to reflect the provisions of SB1793 which modified the definition of "all-terrain vehicle" and added a definition for "utility vehicle" and provided for the same type of mandatory titling and registration requirements as all-terrain vehicles.

Section 710:60-5-6 has been amended to correct a typographical error and clarify policy regarding application for a replacement title.

Section 710:60-5-53 has been amended and New Section 710:60-5-61 has been added to reflect the provisions of SB1389 which authorizes the issuance of either an unrecovered theft title or a salvage title to a qualifying insurance company that has paid a total loss on an unrecovered stolen vehicle. [47:1111]

Section 710:60-5-73 has been amended to conform to current statutory authority that all-terrain vehicles, off-road motorcycles, low-speed electrical vehicles and medium-speed electric vehicles are exempt from odometer disclosure requirements. [47:1102; 1105; 1107.2]

Section 710:60-7-4 has been amended to reflect the provisions of SB1699 relating to commercial trucks and truck tractors registering at laden weights of 55,000 lbs. or more. [68:2103]

Section 710:60-9-2 has been amended to clarify policy regarding notification of the Commission by motor license agents in the event of his/her residency relocation to another county.

Section 710:60-9-52 has been amended to clarify policy regarding the proper destruction of files and records containing confidential taxpayer information by motor license agents.

Section 710:60-9-72 has been amended to clarify the motor license agent semimonthly report preparation procedures due to the Commission's implementation of a document imaging process.

Section 710:60-9-134 has been amended to reflect the provisions of SB1714 which authorizes the Tax Commission to approve the location of a tag agency within a three mile radius of an existing agency if a naturally intervening geographic barrier within that radius causes the locations to be separated by not less than three miles of roadway by the most direct route. [47:1140(A)]

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, 2009:

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 1. GENERAL PROVISIONS

710:60-3-14. Transfer of ownership registration

Fee generally due on transfer of title; exceptions. A transfer of ownership registration fee is due when transferring any Oklahoma title with the following exceptions:

- (1) Name changes (same person only). This exemption would not apply to adding or dropping a name.
(2) Salvage vehicles - including going into salvage
(3) Licensed Oklahoma used dealers
(4) Manufactured homes
(5) Commercial Trailers-trailers
(6) Political Subdivision subdivision of the state
(7) Repossessions
(8) Charitable organization licensed through the Oklahoma Secretary of State's Office
(9) Unrecovered-theft vehicles

710:60-3-24. Waste tire fee collection by motor license agents

Waste tire fees are to be collected by the Motor Vehicle Division and motor license agents upon the initial registration of a

motor vehicle in this state. In addition to the statutorily authorized audits and reviews of motor license agent operations conducted by the Tax Commission, such collections are subject to inspection by the Department of Environmental Quality.

- (1) The fee is applicable to motor vehicles, with the following exceptions:
(A) Apportioned (IRP) vehicles;
(B) All-terrain vehicles; and
(C) Off-road motorcycles; and
(D) Utility vehicles.
(2) The fee is not applicable when a motor vehicle is being titled only.
(3) The fee is to be assessed per tire, including any spare tires carried in or on the vehicle, based on the tire rim size. Motor license agents retain a portion of the fee collected as their compensation, as set forth by statute.

710:60-3-25. Active duty military personnel registration

(a) Eligibility for registration rate. The following are eligible for a special armed forces annual vehicle registration rate:

- (1) Noncommercial vehicles owned by active duty reservists and active duty members of the National Guard. Reservists activated under annual training orders do not qualify for this reduced active duty military registration rate.
(2) Noncommercial vehicles owned by an Oklahoma resident, or spouse of an Oklahoma resident, stationed out of state due to an official military assignment.
(3) Noncommercial vehicles owned by the spouse, who resides in Oklahoma, of an active duty military service person serving in a foreign country.
(4) Manufactured homes owned by an out of state resident active duty military personnel stationed in Oklahoma.
(5) Manufactured homes owned by Oklahoma resident active duty military personnel, when the manufactured home is also located out of state. Manufactured homes located in Oklahoma and owned by Oklahoma military personnel are not entitled to the special military registration rate.

(b) Affidavit required. A properly completed U.S. Armed Forces Affidavit (OTC Form 779) must be presented by the applicant.

- (1) The affidavit requires the signature of the active duty military service person and the signature of an officer for the organization to which the military service person is assigned.
(2) When the active duty military service person is serving in a foreign country, the spouse may sign the affidavit under penalties of perjury. In this instance, certification by an officer of the U.S. Armed Forces organization is not required.
(3) An Oklahoma resident stationed in another state due to an official military assignment may authorize his/her parents to register his/her vehicle(s) on their behalf. A completed U.S. Armed Forces Affidavit, including an officer's certification, is required.

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(c) **Transfer of ownership.** When a vehicle is sold by a military service person to a purchaser who does not qualify for the military rate, the purchaser must register the vehicle from the date of ownership assignment at the new registration classification. If the vehicle is sold to another military service person qualifying for the special rate, the purchaser may transfer title into his/her name with no additional registration fee, upon presentation of a properly completed U.S. Armed Forces Affidavit.

### PART 5. DEALERS

#### 710:60-3-54. Used vehicle dealer's registration policy

(a) **Renewal not required; registration to be current when vehicle acquired.** A licensed used trailer dealer or used motor vehicle dealer is not required to renew the registration of a vehicle that expires on his lot while being held for resale, provided the registration was current when the vehicle was assigned to him. However, any dealer who is assigned a vehicle when it is in the registration penalty period must renew the registration for a full year, paying any penalty due. Manufactured home dealers are required to keep all manufactured homes registered. [See: 710:60-3-132, paragraph (5)]

(b) **Used vehicles acquired from other states.** Used vehicles from other states, acquired for resale by Oklahoma used dealers require an Oklahoma title in the dealership name. No registration is required. Used motor vehicles acquired from other states by licensed Oklahoma motor vehicle dealers may either be titled in the dealership's name, or ownership may be reassigned by the dealership on the out of state title. When reassigning an out of state title, the motor vehicle dealer must satisfy the inspection and dealer reassignment provisions of 47 O.S. § 1105. Oklahoma dealers may reassign on another state's reassignment sheet only when ownership was assigned to the Oklahoma dealer by a dealer in that other state, on that other state's reassignment sheet and attached to that other state's title. An Oklahoma dealer may not reassign ownership on another state's reassignment sheet if that sheet is attached to either an Oklahoma title, or any other state's title that does not correspond both to the reassignment sheet and the state in which the assigning out of state dealer is licensed.

(c) **Exemption from transfer registration fee; revenue stamps required.** Used Vehicle Dealers are exempt from the transfer registration fee when getting a transfer title in their name. However, each time a used dealer makes an assignment, a revenue stamp must be attached on the back of the Oklahoma Title. Commercial trailer dealers or manufactured home dealers are not required to attach tax stamps.

(d) **Removal of out-of-state license plates.** If a dealer obtains a vehicle with an out-of-state tag, it should be removed. If the vehicle has an Oklahoma tag, it shall remain on the vehicle.

(e) **Procedure upon sale of vehicle.** When a used dealer sells a vehicle, he shall advise the owners to title and register the vehicle within thirty (30) days. If the Oklahoma plate is still current, the new owner shall title, pay excise and a transfer registration fee. If, on the assignment date, the decal has

expired, the new owner must register from the month of assignment. The transfer registration fee would be due at the time of registration.

#### 710:60-3-56. New and used vehicle dealer temporary license plate

(a) **Design and printing of dealer temporary license plate.** Acquisition of motor vehicle dealer temporary license plates shall be the responsibility of the licensed dealer. The temporary license plate shall be designed in a size similar to the permanent Oklahoma license plate, but of a weatherproof plastic-impregnated substance.

#### (b) Design approval required.

(1) Approval by the Oklahoma Used Motor Vehicle and Parts Commission is required for the used dealer temporary license plate design.

(2) Approval by the Oklahoma Motor Vehicle Commission is required for the new dealer temporary license plate design.

(3) Used commercial trailer and travel trailer dealers must comply with the design requirements approved by the Oklahoma Used Motor Vehicle and Parts Commission.

(4) New commercial trailer and travel trailer dealers must comply with the design requirements approved by the Oklahoma Motor Vehicle Commission.

(c) **Placement of dealer temporary license plate on vehicle.** The temporary license plate shall be placed on the vehicle at the location provided for the permanent license plate. Provided, the purchaser of a new cab and chassis truck may place the temporary license plate in the rear window.

(d) **Issuance of temporary license plate.** Upon purchase of a vehicle from a licensed Oklahoma dealer, except by another licensed dealer, a temporary license plate is to be completed by the selling dealer and placed on the vehicle at the location provided for the permanent license plate.

(e) **Time periods valid.** The temporary license plates are valid for thirty (30) days following purchase.

(f) **Information required to be shown on temporary license plate.** The temporary license plate will show:

(1) The license number issued to the dealer each year by the Oklahoma Tax Commission, Oklahoma Used Motor Vehicle and Parts Commission, or Oklahoma Motor Vehicle Commission;

(2) Date the motor vehicle, commercial trailer, or travel trailer was purchased; and

(3) The company name of the selling dealer.

(g) **Use restricted.** The temporary license plates are to be used only for the purpose outlined by statute. Dealers must use their metal dealer plates for demonstrating, transporting or other normal business on any vehicle that does not have a current Oklahoma license plate.

### PART 7. NONCOMMERCIAL VEHICLES

**710:60-3-70. Noncommercial vehicles**

Annual registration rates are based on the number of years the vehicle has been registered pursuant to a five-tiered registration scheme approved by popular vote on August 22, 2000. The following vehicles are registered using this method.

- (1) **Automobiles.** "Automobiles" includes noncommercial trucks and vans and nonagricultural trucks.
- (2) **Travel Trailers trailers.** Travel trailers are any vehicular portable structure built on a chassis and used as a temporary dwelling for travel, recreational or vacation use. The dimensions of a travel trailer cannot exceed 40 feet in length (including hitch or coupling) or 8 feet in width.
- (3) **Motorcycles.** Motorcycles are defined as those vehicles designed and constructed to travel on not more than three (3) wheels, having a saddle or a single seat for the use of the rider.
- (4) **Recreational vehicles.** "Recreational Vehicle vehicle" means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this subsection such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities, water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable sleeping, toilet and kitchen facilities which are designed to be removed from such vehicle.
- (5) **Moped.** A moped is a motorized bicycle having pedals for aid in propulsion. mopeds are banned from limited access and interstate highways. Motorized bicycles are subject to all the provisions of the Motor Vehicle License and Registration Act. No dealer's license is required to sell them. If sales tax was paid upon purchase, no excise tax should be assessed when titling.
- (6) **Dirt bikes, minibikes, all-terrain vehicles (3 & 4 wheelers), and golf carts.** Dirt bikes, minibikes, all-terrain vehicles (3 & 4 wheelers), and golf carts are not street legal and are not to be titled and tagged for street or highway use in Oklahoma. All-terrain vehicles and off-road motorcycles meeting the criteria outlined in OAC 710:60-3-140 are subject to titling and registration, as therein specified. Golf carts owned by the Tourism and Recreation Department may be operated on streets and highways located within the boundaries of a state park by employees of the Department, or by employees of an independent management company on behalf of the Department.
- (7) **Low speed electrical vehicles.** "Low speed electrical vehicle" means any four wheeled electrical vehicle that is powered by an electrical motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour, but not greater than twenty

five (25) miles per hour, and is manufactured in compliance with the National Highway Traffic Safety Administration standards for low speed vehicles in 49 C.F.R. 571.500. Such vehicles may be titled and registered, with the registrant paying excise tax, rather than sales tax.

**PART 9. COMMERCIAL VEHICLES**

**710:60-3-99. Surface transportation assistance act guidelines**

- (a) **History of the act.** The Surface Transportation Assistance Act of 1982 provides that a state shall not register vehicles subject to the Federal Vehicle Use Tax without first having presented proof that such tax has been paid.
- (b) **Imposition of the tax.**
  - (1) **When tax is due.** The tax is imposed on the first use of any taxable highway motor vehicle on a public highway in the United States. The taxable year is July 1 through June 30 and the tax is due by the last day of the month following the month of the first taxable use.
  - (2) **Vehicles subject to tax.** Any commercial motor vehicle having a gross weight of ~~54,001~~ 55,000 pounds or more including the weight of any trailer or semitrailer used in combination therewith. Principally the tax covers trucks and truck-tractors used in combination with trailers and semitrailers. Very few single trucks weigh as much as ~~54,001~~ 55,000 pounds gross weight.
  - (3) **Definition of taxable gross weight.** The empty weight of a commercial motor vehicle plus empty weight of any trailer or semitrailer customarily used in combination therewith plus the weight of maximum load customarily carried.
- (c) **Tax exemptions and suspension.**
  - (1) The tax is suspended on vehicles to be used less than a specified minimum number of miles during the taxable year of July 1 through June 30. Owners of vehicles in this category must file Form 2290 and Schedule 1.
  - (2) Proof of payment is not required with the issuance of Temporary permits such as 72-hour permits, 30, 60, or 90 day registrations. It is required when raising weight to ~~54,001~~ 55,000 lbs. or more on an Additional Tax Receipt when the previous registered weight was less than ~~54,001~~ 55,000 lbs.
  - (3) Proof of payment is not required for the registration of Special Mobilized Machinery.
- (d) **Proof of payment for state registration purposes.**
  - (1) Effective October 1, 1985, a state must refuse to register a heavy commercial motor vehicle with a gross weight of 55,000 pounds or more (~~54,001 pounds in Oklahoma~~) until the owner presents proof that the heavy vehicle tax has been paid to the Internal Revenue Service. The tax is paid by filing Form 2290 which includes a Schedule 1 (Schedule of Taxable Highway Motor Vehicles). Form 2290 is furnished by the Internal Revenue Service.
  - (2) Proof of Payment is the original or photocopy of the received Schedule 1 (Form 2290) returned to the owner by

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the IRS as a receipt for payment of the tax. If the receipted original or photocopy of Schedule 1 is not available, the owners file copy of Form 2290 with Schedule 1 attached, as filed with the IRS, along with a photocopy of the front and back of the cancelled check covering the payment to the IRS is acceptable.

(3) Schedule 1 provides space for the listing of the Vehicle Identification Number (VIN) for 21 taxable vehicles, or the VIN for 9 vehicles for which the tax is suspended as covered in Part II of Schedule 1 of Form 2290.

(4) If a fleet is larger than 21 taxable vehicles, or, 9 vehicles for which the tax is suspended, and the name of the taxpayer on Schedule 1 of Form 2290 is the same as the registrant, the Schedule 1 may be accepted as proof without a separate listing of vehicle identification numbers provided the number of vehicles being registered is equal to or less than the number of vehicles shown on the Schedule 1.

(5) A vehicle may be registered without proof of payment of the tax if the person registering the vehicle presents the Manufacturer's Certificate or Certificate of Title indicating the vehicle was purchased within 60 days of the date the application is received for registration.

### PART 11. OTHER VEHICLES

#### 710:60-3-111. Miscellaneous vehicles; definitions

(a) **Farm trucks.** "Farm truck" means pickup, truck, or truck tractor used primarily for agricultural purposes. For purposes of farm truck registration eligibility "**pickup**" means a **small, light truck with an open back or box used for hauling and designed primarily for the carrying of property, rather than people and "truck" means a motor vehicle designed or converted primarily for carrying or hauling farm commodities, property, livestock, or equipment, rather than people.** To qualify for farm truck registration, the applicant must provide either a copy of Schedule F (or comparable form) of the previous year's Federal Income Tax Return, or an agricultural exemption permit (SMX number) assigned by the Oklahoma Tax Commission. Any person registering a farm truck, other than a pickup, must also complete and submit a "Declaration of Gross Vehicle Weight for Vehicle Registered with a Farm Tag" (OTC Form 786). If a laden weight of 55,000 pounds or more is listed, the owner must provide I.R.S. Form 2290 and a Schedule 1.

(b) **Farm trailers.** Farm trailers are not required to be registered. An optional farm trailer tag is available. These tags are for registration purposes only and a title may not be issued for them. If a serial number is stamped on the trailer, it will be used for the VIN on the registration. Otherwise, the Social Security number of the owner will be used. A monthly and yearly decal will be issued to expire one year from date of registration.

(c) **Buses.** Buses are classified as either Inter-City or Intra-City. The Inter-City buses operate between different cities.

The Intra-City buses operate within a given city. The rates for such vehicles are based on the seating capacity. All buses in these classifications must be licensed by the Oklahoma Corporation Commission.

(d) **Private school buses.** Private school buses are those privately owned buses used exclusively to transport school children.

(e) **Taxicabs.** Taxicabs are vehicles designed to carry not more than ten (10) people.

(f) **Rental vehicles.** Rental vehicles are vehicles acquired by rental companies not to be rented for more than ninety (90) days at a time. Such vehicles are entitled to special registration fees as set forth by statute.

(g) **Private trailers.** Private trailers are not required to be registered. An optional private trailer registration and license plate is available to owners of noncommercial boat and utility type trailers not being utilized in a commercial capacity. The fee is established by statute. This is an optional registration only transaction and no certificate of title may be issued. If a serial number is stamped on the trailer, it will be used for the vehicle identification number (VIN) on the registration record. Otherwise, the driver license number of the owner will be utilized. A monthly and yearly decal will be issued to expire one year from date of registration. As registration is optional, no delinquent registration fees or penalties are to be assessed.

(h) **Mini-truck.** "Mini-truck" means a foreign-manufactured import or domestic-manufactured vehicle powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters (1,000 cu cm) or less, which is sixty-seven (67) inches or less in width, with an unladen dry weight of three thousand four hundred (3,400) pounds or less, traveling on four or more tires, having a top speed of approximately fifty-five (55) miles per hour, equipped with a bed or compartment for hauling, and having an enclosed passenger cab. Any vehicle meeting that description is required to be titled and registered, as of November 1, 2008. Excise tax is not assessed on mini-trucks purchased prior to November 1, 2008.

(i) **Registration and titling guidelines.** Mini-trucks may be registered in the same manner and under the same classification guidelines as any other light truck. Mini-trucks are subject to the same titling and lien filing guidelines as other light trucks, with the exception of required documentation at time of initial titling. Those general titling documentary guidelines are as follows:

(A) **New mini-trucks purchased on or after November 1, 2008.** A properly assigned Manufacturer's Statement of Origin (MSO) and dealer's invoice (to establish purchase price) is required to apply for an Oklahoma title.

(B) **All other mini-trucks.** A properly assigned certificate of title or Manufacturer's Statement of Origin (MSO) is to be submitted, if available. If not available, the Commission may accept a notarized bill of sale, or other similar ownership instrument, as an alternative.

**710:60-3-115. Low-speed and medium-speed electrical vehicles**

(a) **Low-speed electrical vehicle.** Low-speed electrical vehicle means any four-wheeled electrical vehicle that is powered by an electrical motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour, but not greater than twenty-five (25) miles per hour, and is manufactured in compliance with the National Highway Traffic Safety Administration standards for low-speed vehicles in 49 C.F.R. 571.500. Such vehicles may be titled and registered at the option of the owner, with the registrant paying excise tax, rather than sales tax.

(b) **Medium-speed electrical vehicle.** Medium-speed electrical vehicle means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five (35) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards for low-speed vehicles in 49 C.F.R. 571.500. Titling and registration is mandatory for such vehicles, effective June 2, 2008.

(c) **Registration fee and excise tax assessment.** Low-speed and medium-speed electrical vehicles are eligible for any motor vehicle registration classification for which the vehicle type (i.e. passenger; truck) and owner qualify. Registration fees applicable to the registration classification and standard vehicle excise tax rates apply, unless the owner qualifies for a special rate or exemption.

(d) **Titling documentation.** In general, standard vehicle titling documentary requirements apply to low-speed and medium-speed electrical vehicles. However, when issuing an original title to a low-speed or medium-speed electrical vehicle that has never been titled previously, the Commission may accept a notarized bill of sale, or other similar ownership instrument, as an alternative to a properly assigned certificate of title or Manufacturer's Statement of Origin (MSO).

**PART 14. ALL-TERRAIN VEHICLES, AND OFF-ROAD MOTORCYCLES AND UTILITY VEHICLES**

**710:60-3-140. All-terrain vehicles, and off-road motorcycles and utility vehicles**

(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, unless statutorily exempted. Utility vehicles purchased, or on which ownership is transferred, on or after July 1, 2008 are required to be titled and registered, unless statutorily exempted.

(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 powered by an internal combustion engine,

manufactured and used exclusively for off-highway use, which is forty eight (48) inches or less in width, with an unladen dry weight of eight hundred (800) pounds or less, traveling on two four or more low-pressure tires, and having a seat designed to be straddled by the operator and handlebars for steering.

(2) **Off-Road Motorcycles (ORM's).** A motorcycle manufactured for and used exclusively off roads, highways, and any other paved surfaces. Small street or sidewalk mini-motorcycles or scooters are not included in this category.

(3) **Utility Vehicle.** A vehicle powered by an internal combustion engine, manufactured and used exclusively for off-highway use, equipped with seating for two or more people and a steering wheel, traveling on four or more wheels.

**710:60-3-141. Titling of all-terrain vehicles, and off-road motorcycles and utility vehicles**

(a) **General.** Only standard type titles, as referenced under 710:60-5-2, will be issued to ATV's, ~~or~~ ORM's or utility vehicles.

(b) **Information or processes not required.** The following do not apply to ATV's, ~~or~~ ORM's or utility vehicles:

- (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 license number or federal employer's identification number
- (6) Payment of waste tire fee at time of initial registration.
- (7) Transfer of ownership registration fee.

(c) **New Titling documents required on new ATV's or ORM's purchased on or after July 1, 2005. ~~Titling documents required if purchased on or after July 1, 2005.~~ and utility vehicles purchased on or after July 1, 2008.**

- (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 Titling documents required on used or new ATV's or ORM's purchased prior to July 1, 2005 and utility vehicles purchased prior to July 1, 2008. ~~Titling documents required.~~**

- (1) Assigned title/MSO; or
- (2) A completed Application for Oklahoma Title (701-6) 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.

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(e) **Exemptions from titling.** Holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 ~~are~~ were exempt from ATV and ORM titling requirements ~~until before~~ July 1, 2008. Until that date, such permit holders ~~may could~~ 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.~~ As set forth by statute, holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are no longer exempt from titling and registration requirements on ATV's or ORM's that are purchased, or change ownership, on or after July 1, 2008. Permit holders remain exempt from the assessment of excise tax on such transactions.

(f) **Chain of title ownership not required.** Due to ATV's and ORM's owned by agricultural permit holders being exempt from titling and registration requirements until July 1, 2008, breaks in the title document chain of ownership may occur. 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.**

(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- and new and used utility vehicles purchased on or after July 1, 2008. 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). The minimum excise tax amount is set by statute. Failure to obtain title and pay the corresponding levy of excise tax within thirty (30) days of acquiring ownership will result in the assessment of a delinquent excise tax penalty in the amount of \$.25 per day, accruing until paid or until equal to the tax amount due.

(2) **Exemptions.** Standard vehicle excise tax exemptions, outlined in OAC 710:60-7-3(b), apply to ATV's, ~~and~~ ORM's and utility vehicles. In addition, agricultural permit holders are exempt from excise tax, when titling their ATV, ~~or~~ ORM or utility vehicle, upon presentation of a valid agricultural permit.

(h) **Lien filing.** Lien filing procedures on ATV's, ~~and~~ ORM's and utility vehicles 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 or utility vehicles may be filed with only the previously outlined ownership documentation. Until July 1, 2008, any lien/security interest in an ATV or ORM that was perfected before July 1, 2005, and that has not been terminated shall remain perfected, and shall take priority over subsequently perfected lien/security interest in the same ATV even if a certificate of title has been issued on the same ATV on or after July 1, 2005 with a lien recorded.

### 710:60-3-142. Registration of all-terrain vehicles, ~~and~~ off-road motorcycles and utility vehicles

(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 or utility vehicle. Upon payment of the registration fee, an ATV, ~~or~~ ORM or utility vehicle registration decal will be issued to be affixed in clear view to the front of the ATV, ~~or~~ ORM or utility vehicle, 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) **Exception to registration.** Holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are exempt from ATV and ORM titling requirements until July 1, 2008. As set forth by statute, holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are no longer exempt from titling and registration requirements on ATV's or ORM's that are purchased, or change ownership, on or after July 1, 2008.

(c) **Optional Registration.** The following owners shall have the option of purchasing a nonrecurring registration.

(1) Until July 1, 2008, as outlined above, 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.

(d) **Registration penalties.** The following registration penalty assessments apply to those ATV's and ORM's purchased on or after July 1, 2005 and utility vehicles purchased on or after July 1, 2008:

(1) New ATV/ORM/utility vehicle: The maximum penalty allowed by statute applies on the 31<sup>st</sup> day following ownership assignment.

(2) Used ATV/ORM/utility vehicle: A penalty of Twenty-five Cents (\$.25) per day applies beginning the 31<sup>st</sup> day following ownership assignment and accruing to the maximum penalty allowed by statute.

## SUBCHAPTER 5. MOTOR VEHICLE TITLES

### PART 1. GENERAL PROVISIONS

#### 710:60-5-2. Types of certificates

(a) ~~Title Certificate~~ ~~Color Designation certificate~~ color designation. Oklahoma ~~has utilized~~ utilizes several different colors in ~~classifying~~ motor designating vehicle ~~titles~~ types. The title types and corresponding certificate colors are as follows:

(1) Standard Title (Green)

(2) Salvage Title (Red)

(3) Rebuilt Title (Orange)

(4) Junked Title (Blue)

(5) Classic Title (Green)

(6) Remanufactured Title ~~(Purple)~~ (No color designation at this time)

(7) Unrecovered Theft Title (Purple)

(b) ~~Title Suffix~~ **Designation suffix designation.** Letter suffixes are utilized to designate the sequence of Oklahoma certificates of title issued to a specific vehicle. The original Oklahoma title issued will have no suffix following the designated title number. All subsequent Oklahoma titles, regardless of type, issued to that vehicle will be designated by a letter suffix. The letter "a" will be assigned as a suffix to the first Oklahoma title issued following the original title, "b" to the next title issued, etc. Only the most recent Oklahoma certificate of title issued is considered valid.

**710:60-5-6. Undeliverable Oklahoma title**

Any owner of a vehicle who purchased a title, but never received the title through the U.S. Postal Services, may complete a statement of facts and receive a replacement title free of charge. The statement ~~must~~ should be completed no earlier than twenty (20) days and no later than ninety (90) days from the date of the title issuance.

**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~~ manufacturer's model on sale. July 1 is the generally accepted date that new model vehicles go on sale. For example, prior to July 1, 2006, the latest ~~manufacturers~~ manufacturer's model on sale were 2006 models. Therefore, during the one (1) year period ending June 30, 2006 (7/1/05 through 6/30/06), a ten year old vehicle would have been a 1997 (2006-9) model. During that period, 1996 and older models were exempt from the salvage requirements. Beginning July 1, 2006, 2007 model vehicles officially (per this guideline) went on sale, resulting in 1997 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 where the cost of repairing the vehicle for safe operation on the highway exceeds 60% of its market value, or pays a claim for a flood-damaged vehicle as defined in 47 O.S. § 1105, 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. 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.

(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. The ownership of any unrecovered vehicle which has been declared a total loss by an insurer because of theft shall be transferred to the insurer by an unrecovered-theft vehicle title; provided, the ownership of any such vehicle which has been declared a total loss by an insurer licensed by the Oklahoma Insurance Department and maintaining a multi-state motor vehicle salvage processing center in this state shall be transferred to the insurer by a salvage or an unrecovered-theft title without the requirement of a visual inspection of the vehicle identification number by the insurer. Upon recovery of the vehicle, the ownership shall be transferred by an original title, salvage title, or junked title, as may be appropriate based upon an estimate of the amount of loss submitted by the insurer.~~

(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) **Flood damaged 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 "Flood Damaged" 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.

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## 710:60-5-61. Unrecovered-theft title

An unrecovered-theft title may be issued to an insurance company that has paid a total loss on an unrecovered stolen vehicle. Provided, the ownership of any such vehicle which has been declared a total loss by an insurer licensed by the Oklahoma Insurance Department and maintaining a multi-state motor vehicle salvage processing center in this state shall be transferred to the insurer by a salvage or an unrecovered-theft title without the requirement of a visual inspection of the vehicle identification number by the insurer.

(1) **Documentation required.** The requesting insurance company must provide at least one of the following three (3) documents at time of application for an unrecovered-theft title:

- (A) Stolen vehicle report;
- (B) Insurer's proof of loss; or
- (C) Statement from insurer confirming unrecovered theft.

(2) **Subsequent recovery of vehicle.** When/if an unrecovered-theft titled vehicle is subsequently recovered, the appropriate title type (i.e. standard, salvage or junk) is to be issued, based on the amount of damage, if any. A letterhead statement from the insurance company, declaring the percentage of damage, is required to support the type of new title issued. Regardless of type, the new title will be branded "recovered-theft".

## PART 7. TRANSFER OF TITLE

### 710:60-5-73. Odometer disclosure

(a) **Federal Truth in Mileage Act.** Effective on all transfers of ownership of motor vehicles (see exceptions below) dated on or after April 29, 1989, specific odometer disclosure information is required. All transfers must contain the following:

- (1) Odometer reading at time of transfer (no tenths of mile).
- (2) The date of transfer.
- (3) The seller's printed name (must be individual - no company name), signature and address.
- (4) The buyer's printed name (must be individual - no company name), signature and address.
- (5) Vehicle information including make, model year, body type and VIN.
- (6) The seller shall also certify to the best of his/her knowledge whether the odometer reading:
  - (A) Reflects the actual mileage.
  - (B) Does not reflect the actual mileage.
  - (C) Is in excess of the mechanical limits of the odometer.

(b) **Exemptions.** Vehicles and situations which are exempt from the odometer disclosure requirements are:

- (1) Vehicles which are not self-propelled, such as trailers.
- (2) Transfers of new vehicles from dealer to dealer on the MSO.

(3) Vehicles which are ten (10) years old or older. To make this determination, subtract ten (10) from the current calendar year.

(4) Vehicles with a gross vehicle weight rating over 16,000 lbs. Any truck over 2 tons is exempt.

(5) Vehicles purchased in another country.

(6) Transfers resulting from involuntary divestitures, such as court orders and repossessions.

(7) Transfers to record a name change (same individual), only.

(8) Transfers between a revocable trust and a trustee of that trust.

(9) All-terrain vehicles and off-road motorcycles.

(10) Low-speed electrical vehicles.

(11) Medium-speed electric vehicles.

## SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

### 710:60-7-4. Excise tax on heavy-weight trucks and commercial trailers

(a) Any truck or truck-tractor carrying a laden weight or a combined laden weight of ~~54,001~~—~~55,000~~ lbs. or more, any cargo-carrying commercial trailer, and any frac tank shall pay a specified excise tax amount set forth by statute. This excise tax amount is due on original or transfer titles.

(b) This rate does not apply to Special Mobilized Machinery, forest product vehicles, trailers or semitrailers which have been manufactured, modified or re-manufactured for the purpose of providing services other than transporting cargo over the highways. Nor is rate described in this Section applicable to pickup trucks, vans, or sport-utility vehicles, which are assessed at the standard vehicle excise tax rate, regardless of laden weight.

## SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

### PART 1. GENERAL REQUIREMENTS, DUTIES AND RESPONSIBILITIES OF MOTOR LICENSE AGENTS

#### 710:60-9-2. Consanguinity; residency

(a) No person shall be appointed as a ~~Motor License Agent~~ motor license agent that is related by consanguinity (by blood relation) or affinity (by marriage) within the third degree to any member of the Oklahoma Legislature, to any person who has served as a member of the Oklahoma Legislature within the two year period preceding the date of appointment as a ~~Motor License Agent~~ motor license agent or to any employee of the Oklahoma Tax Commission.

(b) Any ~~Motor License Agent~~ motor license agent appointed according to the provisions of 47 O.S. §1114.2 shall have been a resident of the county in which his/her agency is located for a period of six (6) months prior to his/her appointment.

Provided, that if a ~~Motor License Agent~~ motor license agent moves his residence to a place outside the county, he/she shall forfeit his/her appointment. It shall be the duty of any motor license agent who establishes, or plans to establish, his/her residence in a county other than that in which his/her motor license agency is located to immediately notify the Oklahoma Tax Commission.

(c) A ~~Motor License Agent~~ motor license agent may relocate the agency to a county in which the agent does not reside, provided that the agency remains within the same municipality. Such a—relocation must be approved by the Oklahoma Tax Commission.

**PART 5. SPECIFIC RECORDKEEPING DUTIES**

**710:60-9-52. Maintenance of required indexes and files**

(a) **Files to be retained.** A ~~Motor License Agent~~ motor license agent shall maintain a file of all-agent copies of registrations, titles, reports, etc. all transaction receipts issued by that office, in numerical order by tax/fee receipt number, issued by that office, as well as semimonthly reports prepared by that office. This file is to include all items and reports issued by the current agent, or as well as the former agents for that agency, for the previous preceding two (2) years.

(b) **Disposition of files containing taxpayer information.** When disposing of files or records, the motor license agent is responsible for the proper destruction of any file or record containing confidential taxpayer information that was either generated by, or submitted to, his or her agency. The file or record is to be destroyed to the extent no such confidential information may be recovered from it. Acceptable options include:

- (1) Shredding;
- (2) Burning; or
- (3) Delivering to the Oklahoma Tax Commission for destruction.

**PART 7. SPECIFIC REPORTING DUTIES**

**710:60-9-72. Semimonthly reporting procedure**

(a) **Closing dates for report preparation.** All reports are to be ended on the fifteenth (15th) and the last day of the month. The original copy of the computer generated report is to be stapled to the completed Remittance Slip and sent in with the Motor Vehicle Report. The original copy of the computer generated Driver Licenses detail sheets are to be sent directly to the Department of Public Safety. One copy of each Drivers License transaction is to be submitted with the detail sheets.

(b) **Transaction documents.** ~~Transaction documents are to be bundled in two (2) separate groups. For ease of handling, the bundles should be banded together in groups of fifty (50) beginning with the smaller transaction number and ending with the larger transaction number. Except for manufactured home title cancellation transaction documents which are to be bundled separately and placed on top of the other semi-monthly report documents, transaction documents are to be placed in a report box separated into three (3) groups:~~

(1) ~~Title documents.~~ **Group 1: Transactions with supporting documents.** Transaction documents are to be placed in boxes provided by the Oklahoma Tax Commission, with a separator sheet placed between each separate transaction. Documents are not to be stapled or paper clipped.

(2) ~~Registration documents.~~ **Group 2 Transactions without supporting documents.** Transactions without supporting documents are to be placed on top of Group 1.

(3) **Group 3: Semi-monthly report and decal sheets.** Decal sheets are to be placed on top of Group 2. The semi-monthly report is to be placed in the box on top of the decal sheets.

(c) **When reports due; penalties for late report.** All agents are to prepare semimonthly reports to be received by the Oklahoma Tax Commission no later than ten (10) working days after the cutoff date of the report. If not received within that period, a penalty of 1% of the gross amount of the report shall be assessed. The penalty increases to 3% should the report not be received within another 5 days.

**PART 13. SPECIAL PROVISIONS FOR APPLICATION, QUALIFICATION, APPOINTMENT AND AGENCY OPERATION APPLICABLE TO CERTAIN MOTOR LICENSE AGENTS AND AGENCIES**

**710:60-9-134. Motor license agency location, staffing, equipment, office space, parking, and hours**

(a) The location of the applicant's agency shall not be within a three (3) mile radius of an existing agency unless the applicant assumes the location of an existing agency. The Oklahoma Tax Commission may, at its discretion, approve the relocation of an existing agency within a three mile radius of another existing agency only if a naturally intervening geographic barrier within that radius causes the locations to be separated by not less than three (3) miles of roadway by the most direct route.

(b) ~~No ~~Motor License Agent~~ motor license agent shall select a location owned by a member of the Oklahoma Legislature or to any person related to a member of the Oklahoma Legislature within the third degree of consanguinity (by blood relation) or affinity (by marriage).~~

(c) The number of agency employees is to be determined by the ~~Motor License Agent~~ motor license agent subject to the Oklahoma Tax Commission's approval.

(d) The ~~Motor License Agent~~ motor license agent shall maintain adequate equipment to accommodate the employees of the agency and sufficient seating arrangements for the taxpayers as determined by the Oklahoma Tax Commission.

(e) The Oklahoma Tax Commission shall determine the amount of office space the ~~Motor License Agent~~ motor license agent shall maintain to provide a working area for the employees which is separate from the waiting area of the public. However, the amount of such office space shall not be less than Eight Hundred (800) square feet.

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(f) The Oklahoma Tax Commission shall determine the amount of public parking the ~~Motor License Agent~~ motor license agent shall maintain. However, the number of parking spaces shall not be less than five (5) with at least one (1) space reserved for disabled persons.

(g) ~~Motor License Agents~~ license agents shall be responsible for all costs incurred by the Tax Commission when relocating an existing agency. Such payment may be waived by the Tax Commission in case of emergency or unforeseen business conditions beyond the control of the agent.

[OAR Docket #09-888; filed 5-12-09]

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

[OAR Docket #09-889]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
710:65-1-7 [AMENDED]  
Subchapter 3. Reports and Returns; Payments and Penalties; Records  
Part 1. General Provisions  
710:65-3-4 [AMENDED]  
Subchapter 7. Duties and Liabilities  
710:65-7-13 [AMENDED]  
710:65-7-15 [AMENDED]  
710:65-7-20 [NEW]  
Subchapter 9. Permits  
710:65-9-1 [AMENDED]  
Subchapter 13. Sales and Use Tax Exemptions  
Part 9. Computers; Data Processing; Telecommunications  
710:65-13-51 [AMENDED]  
Part 29. Manufacturing  
710:65-13-158 [NEW]  
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities  
710:65-13-170 [AMENDED]  
710:65-13-173 [AMENDED]  
710:65-13-177 [NEW]  
Part 39. Schools and Higher Education  
710:65-13-210 [AMENDED]  
Part 43. Social, Charitable, and Civic Organizations and Activities  
710:65-13-343 [AMENDED]  
710:65-13-345 [AMENDED]  
710:65-13-357 [NEW]  
710:65-13-358 [NEW]  
710:65-13-359 [NEW]  
710:65-13-360 [NEW]  
Part 65. Web Portals  
710:65-13-650 [AMENDED]  
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act  
710:65-18-3 [AMENDED]  
Subchapter 19. Specific Applications and Examples  
Part 1. "A"  
710:65-19-11 [AMENDED]  
Part 5. "C"  
710:65-19-44 [AMENDED]  
710:65-19-56 [AMENDED]  
Part 11. "F"  
710:65-19-114 [AMENDED]

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n/a

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n/a

#### ANALYSIS:

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 51st Legislature, 2nd Regular Session (2008).

Sections 710:65-1-7, 710:65-7-13, 710:65-19-56 have been amended to reflect the provisions of Section 12 of SB 1511 and Section 2 of HB 1387 which added the Central Master Conservancy District and the Department of Central Services when carrying out a public contract on behalf of the Oklahoma Department of Veteran Affairs to the sales tax exemption found at 68 O.S. § 1356(10).

Section 710:65-3-4 has been amended to update the mailing address of the Business Tax Electronic Filing Coordinator.

Section 710:65-7-15, dealing with vendor liability, has been amended to reflect the exempt status of sales to tax exempt organizations providing funding for medical scholarships, nonprofit local public or private school foundations, nonprofit foundations fundraising in support of the NRA and other organization that defend the Second Amendment of the U.S. Constitution and organizations providing end-of-life care and hospice service for use solely on construction projects. **[68:1361]**

New Section 710:65-7-20 has been added to Subchapter 7. Duties and Liabilities to reflect the exempt status of sales to qualifying organizations providing funding for the preservation of wetlands or habitats of wild ducks or preservation and conservation of wild turkeys. **[68:1361]**

Section 710:65-9-1 has been amended to clarify policy regarding sale tax permit revocation for failure to comply with recordkeeping requirements.

Section 710:65-13-51 has been amended to conform to current statutory authority regarding appeals from Oklahoma Tax Commission orders.

New Section 710:65-13-158 has been adopted to reflect the provisions of Section 3 of SB 1956 which created an exemption for sales of rolling stock-locomotives, autocars, and railroad cars- when sold or leased by the manufacturer. **[68:1357]**

Sections 710:65-13-170 and 710:65-13-173 have been amended in accordance with Commission policy regarding the applicability of sales and use tax refunds to the provision of certain medical equipment by hospitals, sanitariums, nursing homes and emergency medical care facilities to Medicare and Medicaid recipients.

New Section 710:65-13-177 has been adopted to implement the provisions of Section 2 of HB 1387 relating to sales for use solely on construction projects for tax exempt organizations whose purpose is to provide end-of-life care and access to hospice services to low-income individuals who live in a facility owned by the organization.

Section 710:65-13-210 has been amended to reflect the provisions of SB 1956 which exempts sales to or by nonprofit local public or private school foundations which solicit money or property in the name of any public or private school or public school district; **[68:1356]**

Section 710:65-13-343 has been amended to reflect the process in which to apply and obtain the sales tax exemption for youth athletic teams. [68:1356(44)]

Finally, several New Sections have been added to Part 43 to reflect new statutory exemptions: Section 710:65-13-357, dealing with sales of food and snacks items to or by tax exempt organizations providing funding for scholarships in the medical field, [HB1387], 710:65-13-358 regarding admission ticket sales by tax exempt entities organized for the purpose of supporting general hospitals licensed by the Department of Health, [HB1387], 710:65-13-359 regarding nonprofit foundations fundraising in support of the National Rifle Association and 710:65-13-360 relating to other organization that defend the Second Amendment of the U.S. Constitution and grassroots fundraising programs for nonprofit foundations which raise contributions in support of the NRA.

Section 710:65-13-345 has been amended in accordance with HB 1387 which expanded the sales tax exemptions for sales made by certain organizations during an auction event for funding the preservation of wetlands and habitats for wild ducks or preservation and conservation of wild turkeys to include sales to such organizations and struck the exemption requirement that sales by such organizations be made during an auction.

Section 710:65-13-650 has been amended consistent with the provisions of SB 2153 updating the North American Industrial Classification System (NAICS) for purposes of the sales tax exemption afforded web search portals. [68:1357(38)]

Section 710:65-18-3 has been amended to reflect the January 1, 2011 application of destination sourcing to florist.

Section 710:65-19-11 has been amended consistent with current Commission policy regarding the issuance of sales tax permits to and collection and payment requirements by automobile repairers, service centers and body shops.

Section 710:65-19-44 dealing with sales made to or by charitable, fraternal, civic and nonprofit organizations has been amended to clarify and revise the referenced rule in accordance with current statutory language.

Section 710:65-19-114 has been amended to correct a scrivener's error.

In addition, other rule changes may be made to clarify policy, improve readability, correct scrivener's errors, remove obsolete language, update statutory citation, and insure accurate internal cross-references.

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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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**710:65-1-7. Consumer/user defined; specific applications**

"Consumer" or "user" means a person to whom a taxable sale of tangible personal property is made or for whom a taxable service is performed.

(1) **Hospitals, sanitariums, nursing homes and emergency medical care.** Hospitals and sanitariums are primarily engaged in the business of selling services, and for the purposes of the Sales Tax Code are considered to be the consumers or users of all tangible personal property and services used in the operation of the institution. Thus, the gross proceeds derived from sales of tangible personal property and certain services to such institutions are subject to tax. This paragraph applies to all hospitals, sanitariums and nursing homes, including those owned

or operated by churches, fraternities, cooperatives, or any other organization, except those operated by the Federal Government, the State, or a political subdivision thereof.

(2) **Withdrawals from stock.** If any business purchases tangible personal property for resale, manufacturing or further processing and that business withdraws tangible personal property, either from its inventory or after such inventory has been manufactured or processed for its own use or consumption, that business has made a taxable sale and the value of the property withdrawn is taxable at its "sales value", as defined in OAC 710:65-1-2. The business withdrawing tangible personal property from inventory should include the "sales value" of such property in gross receipts or gross proceeds on its sales tax report for the month the property was withdrawn.

(3) **Contractors.** Contractors are consumers or users, and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop and improve real property. Examples of contractors subject to this paragraph are: painting contractors, road contractors, grading and excavating contractors, electrical contractors, plumbing contractors, and other persons engaged in a contractual arrangement to make improvements on real property. A person working for a salary or wage is not considered a contractor. The Sales Tax Code limits the ability of contractors to make purchases exempt from sales tax based on the exempt status of another entity to the following situations: [See: 710:65-7-6 and 710:65-7-13]

(A) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, or the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(B) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(C) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any live-stock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax.

(D) A contractor may make purchases of materials, supplies and equipment necessary to fulfill a contract, exempt from sales tax, for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(E) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to OAC 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(F) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(G) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(H) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(4) **Repairmen.** Repairmen are persons engaged in the business of repairing tangible personal property. Parts incidental to the repair service which are consumed/used in making repairs are taxable to the repairman as a consumer/user. [See: 68 O.S. § 1352]

## 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 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, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files an incomplete report, files his report after the date of delinquency, or fails to make full payment on or before the due date.

(1) If the vendor is participating in the Commission's electronic funds transfer and electronic data interchange program, the applicable remuneration is two and one-fourth ( $2\frac{1}{4}$ ) percent of the tax due.

(2) For all other vendors, the remuneration allowed shall be one and one-fourth ( $1\frac{1}{4}$ ) percent of the tax due.

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Business Tax Electronic Filing Coordinator, Oklahoma Tax Commission, P.O. Box 53374—269057, Oklahoma City, OK, 73152-3374 73126-9057, 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.**"

**SUBCHAPTER 7. DUTIES AND LIABILITIES**

**710:65-7-13. Vendors' responsibility - sales to contractors**

- (a) **General rule.** Contractors are defined by statute as consumer/users and must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment purchased to develop, repair, alter, remodel, and improve real property.
- (b) **Limited exceptions.** A contractor may make purchases based upon the exempt status of another entity only in the statutorily-limited circumstances described in this paragraph.
  - (1) A contractor who has a public contract, or a sub-contractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast

Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, ~~or~~ the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

- (2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax. However, the institution must be registered or accredited with the Oklahoma State Regents for Higher Education, the State Board of Education, or the State Department of Education.
- (3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [See: 710:65-7-11]
- (4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. Contractors claiming exemption for purchases to be used in a qualified campus construction project should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-210, and provide a copy of the letter to vendors, pursuant to subsection (g) of that rule. [See: 68 O.S. §1356(41)]
- (5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

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(6) A contractor, or a subcontractor to such contractor, with whom a church has duly entered into a construction contract may make purchases of tangible personal property or services exempt from sales tax which are necessary for carrying out such construction contract.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(8) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(c) **Documentation required for limited exceptions.** In the case of a sale to a contractor claiming exemption pursuant to subsections (b)(1), (b)(2), (b)(3), (b)(6) or (b)(8) of this Section, the vendor must obtain:

- (1) A **copy** of the exemption letter or card issued to one of the entities described in (b) of this subsection;
- (2) Documentation indicating the contractual relationship between the contractor and the entity; and,
- (3) Certification by the purchaser, on the face of each invoice or sales receipt, setting out the name of the exempt entity, that the purchases are being made on behalf of the entity, and that they are necessary for the completion of the contract.

### 710:65-7-15. 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 Camp Fire USA~~; [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; [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]

(31) Child care centers providing on site universal pre-kindergarten education; [See: 710:65-13-220]

(32) Tax exempt organizations which are shelters for abused, neglected, or abandoned children; [See: 710:65-13-355]

(33) Tax exempt organizations providing funding for medical scholarships; [See: 710:65-13-357]

(34) Nonprofit local public or private school foundations; [See: 710:65-13-210(m)]

(35) Nonprofit foundations in support of NRA and other like organizations; [See: 710:65-13-359]

(36) Grassroots fundraising programs in support of NRA; [See: 710:65-13-360]

(37) Construction projects for organizations providing end of life care and hospice service. [See: 710:65-13-178]

**710:65-7-20. Vendor's responsibility-sales to qualifying organizations providing funding for the preservation of wetland or habitats for wild ducks or preservation and conservation of wild turkeys**

In the case of sales made to organizations claiming exemption because the purchases are to be used for events the principle purpose of which is to provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation for wild turkeys, the vendor must obtain the items of information described in this Section:

(1) A copy of the purchasing organization's sales tax exemption card that was issued by the Oklahoma Tax Commission pursuant to Section 710:65-13-345; and

(2) A signed, dated statement by the purchaser listing the purchasing organization's name, address and telephone number which states that the purchases are to be used for events the principle purpose of which is to provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation for wild turkeys. The

statement must also contain the name, title and signature of a person authorized to legally bind the purchaser.

**SUBCHAPTER 9. PERMITS**

**710:65-9-1. Obtaining a sales tax permit to do business**

(a) **General provisions.** Every person desiring to engage in a business within this state who will regularly and continuously make sales subject to taxation from an established place of business, will make taxable seasonal sales, or make taxable sales through peddlers, solicitors or other salesmen who have no established place of business in Oklahoma must secure from the Commission every three (3) years a written sales tax permit for a fee of Twenty Dollars (\$20.00) prior to engaging in such business in this state. Each such person shall file with the Commission an application for a permit to engage in or transact business in this state, setting forth such information as the Commission may require. The application shall be signed by an owner or authorized representative of the business, and, in the case of a corporation, by an officer thereof.

(b) **Probationary permits.** Every vendor who is making an "initial application" for a sales tax permit and who otherwise qualifies based on a review of the information contained in the application for a sales tax permit and who does not currently hold a sales tax permit, or does not qualify to receive a non-probationary permit as those qualifications are described in this Section, will be issued a probationary permit as allowed by 68 O.S. §1364(B) and implemented by the procedures set out in this Section. When issued, the probationary permit will be effective for six (6) months and will be automatically renewed for an additional thirty (30) months, unless the applicant is given written notice of Tax Commission's refusal to renew the permit.

(c) **Issuance upon receipt of an "initial application."** An "initial application" means the first application by an entity for a sales tax permit. Upon receipt of an initial application for a sales tax permit by a person required to obtain a sales tax permit, the Commission may issue a probationary sales tax permit, based on its records, after determining that the applicant appears to be in compliance with all of the tax laws of this state and has, or will be, required to secure a sales tax permit based on the information contained in the application which was submitted.

(d) **Post-issuance review of probationary permit-holder.** Once a probationary permit has been issued, the Commission may conduct a compliance visit at the taxpayers place of business or at the location of the books and records of the applicant in Oklahoma, as those locations are set out in the initial application.

(1) The compliance visit may be made by a telephone call to the offices of the applicant if the Compliance Division Representative believes the information contained in the application may be verified in that manner or in the case where the applicant does not have an established place of business in Oklahoma or has an office located outside of Oklahoma.

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(2) The purpose of the compliance visit is to determine if the applicant qualifies for a sales tax permit and will include:

(A) Establishing that the taxpayer is engaged in business as a group one or group three vendor, and that the applicant's business activities are not solely those of a consumer-user and therefore the probationary permit should be automatically renewed.

(B) Determining that the applicant has maintained compliance with all tax laws of the state, rules of the Commission and recordkeeping requirements and offering assistance to aid the applicant in complying with the tax laws of the state, rules of the Commission and recordkeeping requirements where necessary.

(e) **Refusal of the Commission to renew the permit; notice, options available upon refusal.**

(1) If the compliance visit indicates that the applicant is ineligible; if the applicant fails to contact the Commission regarding a compliance visit, after attempted contact; ~~or~~ if other circumstances indicate that the applicant does not qualify; or if the applicant is not complying with the tax laws of this State, rules of the Commission and recordkeeping requirements, the Commission shall, prior to the end of the sixth month of the probationary period, give notice that the applicant's probationary permit will not be renewed.

(2) The notice shall be in writing and shall allow the applicant to request a hearing to show why he permit should be issued.

(3) Upon receipt of a request for a hearing, the Tax Commission shall set the matter for a hearing and provide notice of the date, time and place of the hearing to the applicant, along with a statement of the reason for refusal. At the hearing the applicant shall appear, state its qualifications for a permit, and provide proof of compliance with all state tax laws. The hearing will not be held sooner than 10 days from the date the notice is mailed.

(4) Proceedings related to the refusal to issue a sales tax permit shall be governed by OAC 710:1-5-100.

(f) **Compliance reviews not limited to probationary permits.** Nothing in this Section shall be construed so as prevent, or circumscribe in any fashion, the authority of the Oklahoma Tax Commission and its appointed agents and representatives, to examine and review the books and records of every taxpayer and business operation for compliance with the tax laws of this State, rules of the Commission and recordkeeping requirements. In all cases where a review results in a determination that the business may not be in compliance with the tax laws of this state, rules of the Commission and recordkeeping requirements a hearing to revoke or suspend any license or permit may be held pursuant to OAC 710:1-5-100, and any other action available by law to the Tax Commission to remedy the deficiency may be pursued.

(g) **Sales / Manufacturers Permit.** Each applicant who is engaged in manufacturing at a manufacturing site located in Oklahoma will be issued a Sales/Manufacturers Permit.

(h) **Special event permits.** Promoters or organizers of special events must apply for a special events permit at least

twenty (20) days prior to the event, provide forms to special event vendors for reporting sales tax collections, collect the sales taxes from the vendors, and remit them, along with daily sales tax reports to the Tax Commission within fifteen (15) days following the conclusion of the special event, pursuant to 710:65-9-8. [See: 68 O.S.Supp.2003, Section 1364.2]

### SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

#### PART 9. COMPUTERS; DATA PROCESSING; TELECOMMUNICATIONS

##### 710:65-13-51. Exemption for sales of computers, data processing, telephonic and certain related equipment and services to a qualified aircraft maintenance or manufacturing facility

(a) Sales of computers, data processing equipment, related peripherals and telephone, telegraph or telecommunications service and equipment for use in a qualified aircraft maintenance or manufacturing facility are exempt from sales and use tax.

(1) For purposes of this exemption, "**qualified aircraft maintenance or manufacturing facility**" is defined as any new or expanded business which adds at least Two Hundred Fifty (250) new full-time-equivalent employees, as certified by the Employment Security Commission. In order to qualify for the exemption, the construction cost of the new or expanded facility must exceed Five Million Dollars (\$5,000,000.00).

(2) For purposes of this exemption, the following will apply:

(A) "**Computer**" means an electronic device *that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.* [68 O.S.Supp.2003, § 1352]

(B) "**Data processing equipment**" includes machines which perform work using programmed instruction, and which singly or collectively have capabilities of memory, logic, arithmetic and/or communication and all machines used in support of machines possessing those capabilities;

(C) "**Related peripheral**" means input, output, processing, storage, software and communication facilities which are connected or related to a device in a system or network; and

(D) "**Telecommunications**" includes data transmission between a computing system and remotely located devices.

(3) The exemption shall include, but shall not be limited, to the following:

- (A) Computer
- (B) Terminal
- (C) Modem
- (D) Printer

- (E) Disk Drive
- (F) Video Display Terminal
- (G) Memory
- (H) Removable Disk
- (I) Fixed Disk
- (J) Bar Code Reader
- (K) Key Punch
- (L) CRT
- (M) Plotter
- (N) Card Reader/Punch
- (O) Tape Drive
- (P) Monitor
- (Q) Software
- (R) Telephone equipment
- (S) Telephone service
- (T) Telegraph equipment
- (U) Telegraph service
- (V) Dedicated lines

(4) The exemption shall not apply to the following:

(A) Supplies, such as:

- (i) Diskettes
- (ii) Tape
- (iii) Paper
- (iv) Pens
- (v) Ribbons
- (vi) Print Wheels
- (vii) Media Storage
- (viii) Storage Case
- (ix) Cleaning Product
- (x) Cleaning Kit
- (xi) Template
- (xii) Print-out Ruler
- (xiii) Label

(B) Furniture, such as:

- (i) Desk
- (ii) Chair
- (iii) Table
- (iv) Rack
- (v) Stand
- (vi) Acoustical Protector
- (vii) Shelving

(C) Accessories, such as:

- (i) Surge Protector
- (ii) Filter
- (iii) Radiation Shield
- (iv) Dust Cover
- (v) Static Dissipator
- (vi) Security System

(b) No exemption shall be granted if the qualified aircraft maintenance or manufacturing facility fails to file the documentation required below with the Commission within thirty-six (36) months of the date of purchase and the required certification issued by the Employment Security Commission within sixty (60) months of the date of first purchase.

(c) Pursuant to statute, the exemption for sales to an aircraft maintenance or manufacturing facility outlined above will be administered as a refund for state and local taxes paid by the

aircraft maintenance or manufacturing facility to the vendor or, in the case of use tax, self-remitted to the State of Oklahoma.

(d) All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specifications of the new or expanded facility, a complete description of the maintenance repair or manufacturing that will take place within the facility, and other information requested by the Commission. Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the Application will be forwarded to the Employment Security Commission for establishment of the entity's base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) For each purchase made, the entity who believes that it will be certified shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(1) Invoice indicating the amount of state and local taxes billed to the aircraft maintenance or manufacturing facility;

(2) Affidavit of the vendor of the tangible personal property that state and local sales tax reflected on that invoice has not been credited, rebated, or refunded to the aircraft maintenance or manufacturing facility, but rather, that the sales tax charged has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(3) All additional documentation required to be submitted by the Commission.

(f) At the option of the entity who believes it will be certified as a qualified aircraft maintenance or manufacturing facility, the documentation required in (e) of this Section can be filed monthly, quarterly, semi-annually, or annually. However, all documentation must be filed no later than thirty-six (36) months after the item is purchased. The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The entity submitting the documentation will similarly be notified that a claim has been approved.

(g) Each month, the Commission shall transfer from sales tax collected, to an account designated by the Commission, the estimated amount of claims approved the previous month.

(h) Upon completion of the new or expanded business and the addition of the employees as required by statute, the entity believing it falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the total cost of construction exceeded the sum of Five Million Dollars (\$5,000,000.00) required by law. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the

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Employment Security Commission who will review employees hired. Upon completion of the review by the Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(1) The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Commission. The qualified aircraft maintenance or manufacturing facility will also receive accrued interest upon the principal amount of the refund made as provided for by statute. [See: 68 O.S. §1357(16)]

(2) The following shall apply when a request for certification is denied:

(A) Any applicant whose request for certification is denied may, within ~~thirty (30)~~ sixty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or a duly authorized agent setting out:

- (i) a statement of denial as determined by the Commission;
- (ii) a statement of the applicant's disagreement with such denial, and
- (iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the ~~thirty (30)~~ 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 ten (10) days prior to the hearing. The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(D) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. The appeal must be perfected within thirty (30) days of the mailing of the order by filing a Petition in Error with the Clerk of the Supreme Court of the State of Oklahoma and by filing a designation of the record with the Secretary of the Commission at the same time the Petition in Error is filed. [NOTE: For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through 710:1-5-49). [See: 68 O.S. §§ 225, 1357.5, 1404.4]

### PART 29. MANUFACTURING

#### **710:65-13-158. Sales of rolling stock**

Sales of rolling stock-locomotives, autocars, and railroad cars-when sold or leased by the manufacturer are exempt from sales tax. 68 O.S. § 1357(41)

### **PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES**

#### **710:65-13-170. Medicines, drugs, hospitals, nursing homes, practitioners, and medical equipment and appliances, generally**

(a) **Drugs.** Sales of drugs, except for over-the-counter drugs, prescribed for the treatment of human beings by a person licensed to prescribe the drugs are exempt from sales tax. Ocular lenses, if permanently implanted through medical surgery, and sales of insulin and medical oxygen are also exempt from sales tax. [68 O.S. § 1357(9)]

(b) **Medical equipment, appliance, or device.** Except as set forth in 710:65-13-173, the sale or rental of medical equipment, appliances or devices is taxable. Examples of these taxable items are: syringes, replacement joints, bandages, oxygen regulators and tanks, crutches and wheelchairs.

(c) **Sales to hospitals, nursing homes and practitioners.** Sales of medical appliances, medical devices and other medical equipment to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, and practitioners are taxable when such items are furnished to their patients as part of the services provided. The institutions, companies and practitioners are considered to be the users or consumers. In-state vendors collect and remit the tax on sales of such property to the institutions, and use tax is due on out-of-state purchases. These institutions and practitioners primarily render services and are not liable for sales tax on receipts from meals, bandages, dressings, x-ray photographs, and other tangible personal property when used in rendering medical service to patients, regardless of whether the tangible items are billed separately.

(d) **Sales to medical benefits recipients, generally.** Unless otherwise prohibited by federal or state law, if a vendor of medical equipment and devices makes a sale to an individual, the sale is not considered to be made to a governmental agency or insurance company, even if the individual assigns the proceeds of an insurance policy to the vendor and the vendor receives payment directly from the insurance company or the governmental agency via the assignment.

(e) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.

**710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to medicare/medicaid program recipients**

(a) **General provisions.** Sales of medical appliances, medical devices and other medical equipment are exempt if all of the following requirements are met:

- (1) The item is a drug, medical appliance, medical device, or medical equipment as defined in 710:65-13-169.
- (2) The item is administered or distributed by a "practitioner" or purchased or leased, by or on behalf of an individual, pursuant to a prescription or work order of a practitioner; and
- (3) The item is furnished to a Medicare or Medicaid program recipient and the cost of said item will be reimbursed by Medicare or Medicaid.

(b) **Documentation required when reimbursement is made to vendor.** The documentation set out in (1) through (3) of this subsection must be obtained by the vendor and maintained as part of the vendor's records to substantiate the exemption claimed:

- (1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
- (2) A copy of the prescription or work order; and
- (3) A copy of the document which shows that the person on whose behalf the item is being purchased or leased is a Medicare or Medicaid patient.

(c) **Documentation required when reimbursement is made directly to the Medicare recipient.** The documentation set out in this subsection must be maintained as part of the claimant's records to substantiate the exemption claimed:

- (1) Name and address of the purchaser or lessee or person on whose behalf the item is being purchased or leased;
- (2) A copy of the prescription or work order;
- (3) A copy of the eligible recipient's Medicare card; and
- (4) A copy of the receipt or invoice issued by the vendor at the time of purchase, with a notation stating that the cost of the item is reimbursable by Medicare, but that Medicare will not be billed by the vendor.

(d) **Sales tax refund claims.** Under circumstances where hospitals, nursing homes, similar institutions and practitioners dispense or provide medical appliances, medical devices or medical equipment to Medicare or Medicaid patients, a refund may be claimed by the institution or practitioner for the sales taxes previously paid by the institution or practitioner on such items.

(e) **Examples of medical appliances, medical devices, and medical equipment.** A nonexclusive list of **medical appliances, medical devices, and medical equipment** is as follows:

- (1) **IPPB, circuits, devices and supplies.**
  - (A) Air oxygen mixers
  - (B) Emergency oxygen delivery units
  - (C) Manual resuscitators
  - (D) Nebulizers, tubing
- (2) **Oxygen equipment.**
  - (A) Cylinder stands, support devices

- (B) Cylinder transport devices (sheaths, carts)
- (C) Face masks
- (D) Liquid oxygen base dispenser
- (E) Liquid oxygen portable dispenser
- (F) Nasal cannulas
- (G) Oxygen concentrators
- (H) Oxygen cylinders
- (I) Oxygen fittings, accessories
- (J) Oxygen humidifiers
- (K) Oxygen tubing
- (L) Regulators, flowmeters
- (M) Tank wrench
- (3) **Respiratory therapy equipment.**
  - (A) Aerosol compressors (stationary and portable)
  - (B) Aspirators
  - (C) Percussors, vibrators
  - (D) Room humidifiers (with script)
  - (E) Ultrasonic nebulizers
  - (F) Volume ventilators, respirators and related device supplies

(ef) **Other examples.** The following nonexclusive list contains other examples of **medical appliances, medical devices, and medical equipment** that qualify for the exemption described herein:

- (1) Adhesive bandages
- (2) Alternating pressure mattresses
- (3) Alternating pressure pads
- (4) Alternating pressure pads
- (5) Anesthesia trays
- (6) Aneurysm clips
- (7) Arterial bloodsets
- (8) Artificial sheepskin
- (9) Aspirators
- (10) Atomizers
- (11) Autolit
- (12) Back cushions
- (13) Bathing aids
- (14) Bathing caps
- (15) Bathtub grab bars
- (16) Bathtub lifts
- (17) Bathtub seats
- (18) Bed pans
- (19) Bed rails
- (20) Bedside commodes
- (21) Bedside rails
- (22) Bedside tables
- (23) Bedside trays
- (24) Bedwetting prevention devices
- (25) Belt vibrators
- (26) Biopsy needles
- (27) Biopsy trays
- (28) Blood administering sets
- (29) Blood cell washing equipment
- (30) Blood pack holders
- (31) Blood pack trays
- (32) Blood pack units
- (33) Blood pressure meters
- (34) Blood processing supplies

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- (35) Blood tubing
- (36) Blood warmers
- (37) Bone fracture therapy devices
- (38) Breast pumps
- (39) Breathing machines
- (40) Canes
- (41) Cannula systems
- (42) Cardiac electrodes
- (43) Cardiac pacemakers
- (44) Cardiopulmonary equipment
- (45) Catheter trays
- (46) Cervical pillows
- (47) Chair lifts
- (48) Clamps
- (49) Commode chairs
- (50) Communication aids for physically impaired
- (51) Connectors
- (52) Contact lens cases
- (53) Contact lenses
- (54) Contact solution
- (55) Convoluted pads
- (56) Corrective eyeglasses
- (57) Cotton balls
- (58) Crawlers
- (59) Crutch cushions
- (60) Crutch handgrips
- (61) Crutch tips
- (62) Crutches
- (63) Crutches
- (64) Crutches, crutch pads, tips
- (65) Decubitus prevention devices
- (66) Decubitus seating pads, bed pads
- (67) Dentures
- (68) Dialysis chairs
- (69) Dialysis machines
- (70) Dialysis supplies
- (71) Dialyzers
- (72) Dietetic scales
- (73) Disposable diapers
- (74) Disposable gloves
- (75) Disposable underpads
- (76) Donor chairs
- (77) Drainage bags
- (78) Dressing aids, button loops, zipper aids, etc.
- (79) Dressings
- (80) Drug infusion devices
- (81) Dry aid kits for ears
- (82) Earmolds
- (83) Eating and drinking aids
- (84) EKG paper
- (85) Elastic bandages
- (86) Elastic supports
- (87) Electrodes
- (88) Emesis basins
- (89) Endo trach tubes
- (90) Enema units
- (91) Enteral and parenteral feeding equipment and supplies (tubes, pumps, containers)
- (92) Exercise devices
- (93) Eyeglasses
- (94) First-aid kits
- (95) Fistula sets
- (96) Fitted stroller
- (97) Foam seating pads
- (98) Foam slant pillows
- (99) Foam wedges
- (100) Gauze bandages
- (101) Gauze packings
- (102) Gavage containers
- (103) Geriatric chairs
- (104) Geriatric chairs
- (105) Grooming aids
- (106) Grooming aids, dental aids
- (107) Hand exercise equipment putty
- (108) Hand sealers
- (109) Head halters
- (110) Hearing aid carriers
- (111) Hearing aid repair kits
- (112) Hearing aids
- (113) Heart stimulators
- (114) Heat lamps
- (115) Heat pads
- (116) Hemodialysis devices
- (117) Hemolators
- (118) Hospital beds
- (119) Hospital beds
- (120) Hot water bottles
- (121) Household aids for the impaired
- (122) Hydraulic lifts
- (123) Hydro-collators
- (124) Hydro-therm heating pads
- (125) Hypodermic syringes and needles
- (126) I.V. administering sets
- (127) I.V. connectors
- (128) I.V. stands
- (129) I.V. tubing
- (130) Ice bags
- (131) Ident-a-bands
- (132) Incontinent garments
- (133) Incubators
- (134) Infrared lamps
- (135) Inhalators
- (136) Insulin infusion devices
- (137) Invalid rings
- (138) Iron lungs
- (139) Irrigation apparatus
- (140) Irrigation solutions
- (141) Karaya paste
- (142) Karaya seals
- (143) Kidney dialysis machines
- (144) Knee immobilizers
- (145) Laminar flow equipment
- (146) Latex gloves
- (147) Leg weights (rehab. related)
- (148) Leukopheresis pumps
- (149) Lift recliners

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| <p>(150) Lithotripter<br/> (151) Lumbosacral supports<br/> (152) Lymphedema pumps<br/> (153) Manometer trays<br/> (154) Massagers<br/> (155) Maternity belts<br/> (156) Medigrade tubing<br/> (157) Modulung oxygenators<br/> (158) Moist heat pads<br/> (159) Muscle stimulators<br/> (160) Muscle stimulators<br/> (161) Myelogram trays<br/> (162) Myringotomy tubes<br/> (163) Nebulizers<br/> (164) Needles<br/> (165) Nerve stimulators<br/> (166) Overbed tables<br/> (167) Oxygen equipment<br/> (168) Page turning devices<br/> (169) Pap smear kits<br/> (170) Paraffin baths<br/> (171) Patient lifts<br/> (172) Patient lifts slings<br/> (173) Patient safety vests<br/> (174) Patient transport devices, boards<br/> (175) Physicians instruments<br/> (176) Pigskin<br/> (177) Plasma extractors<br/> (178) Plasmapheresis units<br/> (179) Plaster (surgical)<br/> (180) Plastic heat sealers<br/> (181) Post-surgical bust forms<br/> (182) Posture back supports<br/> (183) Posture back supports for seating<br/> (184) Prescribed device repair kits<br/> (185) Pressure pads<br/> (186) Raised toilet seats<br/> (187) Reaching aids<br/> (188) Respirators<br/> (189) Restraints<br/> (190) Resuscitators<br/> (191) Sauna baths<br/> (192) Security pouches<br/> (193) Servipak dialysis supplies<br/> (194) Shampoo trays<br/> (195) Shelf trays<br/> (196) Shoulder immobilizers<br/> (197) Shower chairs<br/> (198) Shower grip bars<br/> (199) Shower seating<br/> (200) Side rails<br/> (201) Sitting and sleeping cushions<br/> (202) Sitz bath kit<br/> (203) Small-vein infusion kits<br/> (204) Specialized seating, desks, work stations<br/> (205) Specially built hospital beds<br/> (206) Specially designed hand utensils<br/> (207) Specimen containers</p> | <p>(208) Spinal puncture trays<br/> (209) Sponges (surgical)<br/> (210) Stairglides, lifts in home<br/> (211) Stairway elevators<br/> (212) Standing frames, devices and accessories<br/> (213) Steri-peel<br/> (214) Stethoscope<br/> (215) Stools<br/> (216) Stopcocks<br/> (217) Strap-on urinals<br/> (218) Suction equipment<br/> (219) Sun lamps<br/> (220) Surgical bandages<br/> (221) Surgical equipment<br/> (222) Suspensories<br/> (223) Sutures<br/> (224) Thermometers<br/> (225) Toilet aids<br/> (226) Toilet safety frames<br/> (227) Toilet seat rails<br/> (228) Toilet seat risers<br/> (229) Tourniquets<br/> (230) Trach tubes<br/> (231) Traction equipment<br/> (232) Traction stands, pulleys, etc.<br/> (233) Transcutaneous electrical nerve stimulators (tens unit)<br/> (234) Transcutaneous nerve stimulators<br/> (235) Transfer boards<br/> (236) Transfusion sets<br/> (237) Trapeze bars-bar stand<br/> (238) Trapezes<br/> (239) Tub sealers<br/> (240) Underpads<br/> (241) Urinals<br/> (242) Vacutainers<br/> (243) Vacuum units<br/> (244) Vaporizers<br/> (245) Venous blood sets<br/> (246) Vibrators<br/> (247) Walker accessories<br/> (248) Walkers<br/> (249) Walkers, including walker chairs<br/> (250) Walking bars<br/> (251) Walking canes, quad canes, accessories<br/> (252) Water beds<br/> (253) Wheel walkers<br/> (254) Wheelchairs<br/> (255) Whirlpools<br/> (256) Writing and speech aids for the impaired<br/> (257) X-ray film</p> <p>(£g) <b>Prosthetic devices.</b> A nonexclusive list of <b>prosthetic devices</b> is as follows:</p> <ol style="list-style-type: none"> <li>(1) Abdominal belts</li> <li>(2) Anti-embolism stockings</li> <li>(3) Arch supports</li> <li>(4) Arm slings</li> <li>(5) Artificial arteries</li> </ol> |
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- (6) Artificial breasts
- (7) Artificial ears
- (8) Artificial eyes
- (9) Artificial heart valves
- (10) Artificial implants
- (11) Artificial larynx
- (12) Artificial limbs
- (13) Artificial noses
- (14) Athletic supporters
- (15) Bone cement
- (16) Bone nails
- (17) Bone pins
- (18) Bone plates
- (19) Bone screws
- (20) Bone wax
- (21) Braces
- (22) Cast heels
- (23) Casts
- (24) Catheter devices and supplies
- (25) Catheters
- (26) Cervical braces
- (27) Cervical collars
- (28) Clavicle splints
- (29) Colostomy devices
- (30) Colostomy supplies and devices
- (31) Corrective braces
- (32) Corrective pessaries
- (33) Corrective shoes
- (34) Cosmetic gloves
- (35) Dorsolumbar belts
- (36) Dorsolumbar supports
- (37) Eyelid load prosthesis
- (38) Heart valves
- (39) Hernia belts
- (40) Ileostomy devices
- (41) Iliac belts
- (42) Mastectomy pads
- (43) Organ implants
- (44) Orthopedic implants
- (45) Orthopedic shoes
- (46) Orthotic supports (Bandages, belts, and similar supplies)
- (47) Ostomy devices
- (48) Pacemaker equipment
- (49) Pacemakers
- (50) Penile implants
- (51) Rib belts
- (52) Rupture belts
- (53) Sacroiliac supports
- (54) Sacrolumbar belts
- (55) Sacrolumbar supports
- (56) Space shoes
- (57) Splints
- (58) Splints, holders
- (59) Stoma appliances (colostomy, ileostomy, ureteros-tomy, catheters)
- (60) Stoma bags
- (61) Trusses

- (62) Ureostomy devices

### **710:65-13-177. Construction projects for organizations providing end-of-life care and hospice service**

(a) **Qualification for exemption.** Sales of tangible personal property and services for use solely on construction projects for organizations exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. 501(c)(3) whose purpose is to provide low income individuals who live in a facility owned by the organization end-of-life care and access to hospice services.

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or on-line at [www.oktax.state.ok.us](http://www.oktax.state.ok.us), along with the following information:

(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); and,

(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.

(d) **Sales to qualified organization limited to eligible, properly-documented transactions.** Only sales of goods or services for use solely on construction projects 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. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of *OAC 710:65-7-6* and *710:65-7-15*.

(e) **Sales under contract.** Sales to any person, including contractors and subcontractors, with whom a qualifying organization has duly entered into a construction contract necessary for carrying out such contract are exempt from sales tax.

(f) **Documentation and certification required.** In the case of sales to a person including contractors and subcontractors claiming exemption pursuant to this Section, the vendor must obtain:

(1) A copy of the exemption letter or card issued to the qualified organization;

(2) Documentation indicating the contractual relationship between the purchaser and the qualified organization; and

(3) Certification by the purchaser, on the face of each invoice or sales ticket, setting out the name of the exempt organization, that the purchases are being made for and on behalf of the organization, and that they are necessary for the completion of the contract.

## **PART 39. SCHOOLS AND HIGHER EDUCATION**

**710:65-13-210. Exemption for public and private schools and institutions of higher education**

(a) **Sales to schools.** Sales of tangible personal property or services to the following entities are exempt from taxation:

- (1) Private institutions of higher education.
- (2) Private elementary and secondary schools.
- (3) Members of the Oklahoma system of higher education.
- (4) Public school districts.

(b) **Scope of exemption.** The exemption in this subsection shall apply only if said institution or school is accredited by the State Department of Education, registered by the State Board of Education for purposes of participating in federal programs or accredited as defined by the Oklahoma State Regents for Higher education which are exempt from taxation pursuant to 26 U.S.C.A § 501(c)(3) of the Internal Revenue Code. Included in sales which are exempt are materials, supplies and equipment used in construction and improvement of buildings owned by said entities and operated for educational services.

(c) **Sales by a lease or lease-purchase agreement with a school district.** Sales of tangible personal property or services pursuant to a lease or lease-purchase agreement executed between a vendor and a school district are exempt from sales tax.

(d) **Sales under public contract.** Sales to any public school, institution of the Oklahoma system of higher education and to any person, including subcontractor, whom a public school or institution of the Oklahoma system of higher education has duly entered into a contract pursuant to law necessary for carrying out said contract are exempt from taxation.

(e) **Certification required.** Certification on the face of the invoice is required of persons making purchases on behalf of an entity listed in subsection (a). The invoice containing the certification must be retained by the vendor. Wrongful or erroneous certification may result in criminal punishment.

(f) **Campus or school construction.** Sales for use on campus or school construction projects for the benefit of either the institutions of the Oklahoma system of higher education, private institutions of higher education accredited by the Oklahoma State Regents for Higher Education, or for public schools or school-districts, are exempt when the projects are financed by or through the use of nonprofit entities exempt from taxation pursuant to the provisions of the Internal Revenue Code 26 U.S.C., § 501(c)(3).

(g) **Obtaining exemption for campus or school construction projects.** The general contractor shall request a letter of confirmation that the project qualifies for the exemption from the Taxpayer Assistance Division. Along with the request, the following must be supplied:

- (1) A letter from the institution confirming that the not-for-profit entity is financing the project and that the requestor is the general contractor for the project.
- (2) A copy of the IRS letter to the not-for-profit entity showing its exemption status.

(h) **Private schools tuition.** Tuition and educational fees paid to private institutions of higher education, private elementary and secondary institutions of education duly accredited by the State Board of Education or registered to participate in federal programs are exempt from sales tax. The institution must

be exempt from income taxation pursuant to the provisions of 26 U.S.C.A. § 501(c)(3) for this exemption to apply.

(i) **Sales in school cafeterias.** Sales of food in cafeterias or lunchrooms of elementary schools, high schools, colleges or universities which are operated primarily for teachers and pupils are exempt from taxation so long as the cafeteria or lunch room is not operated primarily for the public or for profit. Management companies operating for a profit who contract with a school, college or university to operate a lunchroom or cafeteria will be denied the exemption. Also, sales of food made on school premises but not in a cafeteria or lunchroom do not fall within the exemption provided by statute.

(j) **Sales of admission tickets.** That portion of the gross receipts received from the sale of admission tickets which is for the repayment of money borrowed by an accredited state-supported college or university for the purposes outlined in the statute is exempt from taxation if said amount is:

- (1) separately stated on the admission ticket; and
- (2) imposed, collected and used for the sole purpose of servicing the debt incurred by the college or university for capital improvements described in the statute.

(k) **Sales by school, student, parent organizations.** Private schools, public schools, public school boards, public school districts, and public school student organizations (to include parent organizations) can make sales of tangible personal property, including admission tickets and concessions at athletic events, for fund-raising projects to benefit the school or the organization without collecting and remitting sales tax. [See: 68 O.S. §§ 1356(13),(14)]

(l) **Sales to, or by, parent-teacher organizations.** Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code may make purchases and sales free from the levy of Oklahoma sales taxes. Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194 a completed Form 13-16-A along with an Internal Revenue Service determination letter recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3). Form 13-16A may be obtained from the Taxpayer Assistance Division or online at [www.oktax.state.ok.us](http://www.oktax.state.ok.us).

(m) **Sales to, or by, nonprofit local public or private school foundations.** Nonprofit local public or private school foundations which solicit money or property in the name of any public or private school or public school district may make purchases and sales of tangible personal property exempt from sales tax. Application for exemption is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at [www.oktax.state.ok.us](http://www.oktax.state.ok.us), along with the following information:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the foundation as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and

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(2) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:

- (A) Articles of incorporation;
- (B) By-laws;
- (C) Brochure; and
- (D) Notarized letter from the President or Chairman of the foundation.

**(n) Sales to career technology student organizations.** Career technology student organizations under the direction and supervision of the Oklahoma Department of Career and Technology Education may make purchases exempt from Oklahoma sales and use taxes and local sales and use taxes.

## PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

### 710:65-13-343. Exemption for qualified youth athletic teams

**(a)** Sales tax does not apply to the first \$15,000.00 of each year's sales, to or by, youth athletic teams, 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).

**(b) Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at [www.oktax.state.ok.us](http://www.oktax.state.ok.us), along with the following information:

- (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)(4); and,
- (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.

**(c) Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Taxpayer Assistance Division 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)(4); and,
- (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.

**(d) Exemption limited to eligible, properly-documented transactions.** Only the first \$15,000 of either sales or purchases of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption on its purchases and to know when it is required to charge sales tax on its sales. If sales tax is collected by the organization on sales which could have been exempt under the provisions of this section, the sales tax must be remitted to the Oklahoma Tax Commission. 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 taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations exempt from sales tax.

### 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 to or 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 events the principal purpose of which is to providing provide 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 purchases or sales which are made during an auction for an event, the principal purpose of which is to providing provide 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.

**(c) Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or online at [www.oktax.state.ok.us](http://www.oktax.state.ok.us), along with the following information:

- (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); and,
- (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.

**(d) Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform

contracts with qualifying organizations enumerated in 68 O.S. §1356(55)&(56) exempt from sales tax.

**710:65-13-357. Organizations providing funding for scholarships in the medical field.**

(a) **Qualification for exemption.** Sales tax does not apply to the sale of food and snacks items to or by organizations exempt from taxation pursuant to Internal Revenue Code, 26 U.S.C., Section 501(c)(3) who primary and principal purpose is providing funding for scholarships in the medical field.

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or on-line at [www.oktax.state.ok.us](http://www.oktax.state.ok.us), along with the following information:

- (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); and,
- (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.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food or snack items, 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.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying organizations enumerated in 68 O.S. §1356(71) exempt from sales tax.

**710:65-13-358. Exemption for sale of event tickets by organizations supporting general hospitals**

Sales of tickets for admission to events held by organizations exempt from taxation pursuant to the Internal Revenue Code, 26 U.S.C. 501(c)(3) that are organized for the purpose of supporting general hospitals licensed by the State Department of Health are exempt from sales tax. [68 O.S. § 1356(73)]

**710:65-13-359. Nonprofit foundations supporting NRA and other like organizations**

(a) **Qualifications for exemption.** Sales of property to a nonprofit foundation which raises tax deductible contributions in support of a wide range of firearms related public interest activities of the National Rifle Association of America and other organizations that defend and foster the Second Amendment are exempt from sales tax.

(b) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or on-line at [www.oktax.state.ok.us](http://www.oktax.state.ok.us), along with the following information:

- (1) A letter from the Internal Revenue Service (IRS) recognizing the foundation or organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3); and
- (2) A written description of the qualifying activities of the foundation or organization, as may be evidenced by copies of:
  - (A) Articles of incorporation;
  - (B) By-laws;
  - (C) Brochure; and
  - (D) Notarized letter from the President or Chairman of the foundation or organization.

(c) **Exemption limited to eligible, properly documented transactions.** Only property purchased by the foundation/organization, invoiced to the foundation/organization, and paid for by funds or check directly from the foundation/organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchase of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying foundations/organizations enumerated in 68 O.S. §1356(74)(a) exempt from sales tax.

**710:65-13-360. Grassroots fundraising programs supporting the NRA**

(a) **Qualification for exemption.** Sales of property to or by grassroots fund raising programs related to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms related public interest activities of the National Rifle Association.

(b) **Exemption limited to eligible, properly documented transactions.** Only those purchases or sales which are made in relation to events to raise funds for nonprofit foundations which raise tax deductible contributions in support of firearms related public interest activities of the National Rifle Association will qualify for the exemption described in this Section.

(c) **Application process.** Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, available from the Division or on-line at [www.oktax.state.ok.us](http://www.oktax.state.ok.us), along with a written description stating the activities of the organization, as evidenced by copies of:

- (1) Articles of incorporation;
- (2) By-laws;
- (3) Brochure; or,
- (4) Notarized letter from the President or Chairman of the organization.

**PART 65. WEB PORTALS**

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### 710:65-13-650. Exemption for sales of tangible personal property and services to a web search portal

(a) **General provisions.** Exempted from sales tax are *sales of goods, wares, merchandise, tangible personal property, machinery and equipment to a web search portal located in this state which derives at least eighty percent (80%) of its annual gross revenue from the sale of a product or service to an out-of-state buyer or consumer. For purposes of this paragraph, "web search portal" means an establishment classified under NAICS code ~~518112~~ 519130 which operates web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format.*

(b) **Where to apply.** To qualify for the exemption, the entity operating the web search portal must apply in writing to ~~the Director's Office~~, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, OK 73194, requesting an exemption letter.

(c) **Application.** Application for exemption may be made by filing a signed, sworn affidavit with the Commission, stating:

- (1) The name, address, and federal employer's identification number of the applicant and the name and title of the person signing for the applicant;
- (2) A statement that the entity which owns the establishment derives at least eighty percent (80%) of its annual gross revenue from the sale of products or services to out-of-state buyers or consumers, a statement of the entity's annual gross revenues, and the percentage of the annual gross revenues derived from sales made to out-of-state buyers and consumers, determined for the most recently completed income tax year;
- (3) A statement that the applicant is primarily engaged in the activities appropriate to NAICS code ~~518112~~ 519130;
- (4) The signature of a person authorized to bind the applicant, signed under penalty of perjury before a notary; and
- (5) Such additional information as the Commission may require to confirm eligibility.

(d) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying the exemption will be forwarded to the applicant.

(e) **Issuance, scope, limitations of certification letter.** The letter of certification issued by the Commission will become effective as of the date of the letter and will remain effective until revoked. The letter is valid only for property actually purchased by the qualifying entity, invoiced to that entity, and paid for by funds or check directly from the qualifying entity.

(f) **Purchases by contractors.** Purchases of taxable 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 entities which are certified 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 certified entity.

(g) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance under the provisions of this Section and 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 710:1-5-49 of the permanent rules of the Commission.

## SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

### 710:65-18-3. Sourcing of retail sales

For those sales that are not sales of mobile telecommunications services and are not the lease or rental of tangible personal property other than transportation equipment, the sales shall be sourced to the location for which city and county sales taxes will be charged in the following manner:

(1) *When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;*

(2) *When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller. Provided, this [paragraph] shall not apply to florists until ~~January 1, 2009~~ January 1, 2011. Prior to that date, all sales by florists shall be sourced to its business location;*

(3) *When the provisions of paragraphs (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;*

(4) *When the provisions of paragraphs (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and,*

(5) *When none of the previous rules of paragraphs (1), (2), (3) or (4) of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any*

location that merely provided the digital transfer of the product sold. [68 O.S.Supp.2003, § 1354.27(A)]

**SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES**

**PART 1. "A"**

**710:65-19-11. Automotive transactions**

(a) ~~Automobile painting.~~ The painting of automobiles is a service by the painter. Receipts from such painting are not sales taxable. Paint, supplies, etc., used or consumed by the painter are taxable when sold to or purchased by him.

(b) ~~Automobile repairers.~~ Automobile repairmen or service centers, including body shops, are vendors of repair parts for motor vehicles if they purchase parts, mark them up and itemize parts by article and price. They should segregate on the invoices to their customers and in their records, the marked up selling price of the parts, the charges for repair labor, and the charges for installation labor and other services. If the labor and other services are not thus shown separately from the selling price of the parts it will be presumed that the entire charge represents the sale price of the parts. Automobile repairers, service centers and body shops ("Repairers") are vendors of repair parts and as such must hold an Oklahoma sales tax permit and collect, report and remit the applicable state and local sales tax on the sales price of any parts, accessories, or other tangible personal property which they furnish to customers in connection with the repair, service, or enhancement of their customers' automobiles.

(e**b**) ~~Parts utilized by the repairer.~~ Parts utilized by the repairer, including body shops, incidental to the repair service and not itemized and charged separately are considered to be used, not sold, by the repairman and are subject to sales or use tax at the time purchased by the repairman. If the repairman does purchase these items exempt and later uses the items, they are subject to sales tax on their "sales value", as defined in OAC 710:65-1-2, at the time the items are withdrawn from inventory by the repairman for consumption or use. If instead, the repairman includes a "shop charge" on the bill or invoice to the customer, as a method of billing the customer for the incidental items that were purchased exempt from tax, the "shop charge" is subject to sales tax. [See: 68 O.S. §§1352, 1357] Repairers, holding a sales tax permit, may purchase parts and materials sold in connection with automobile repair, exempt from sales tax. Charges for labor to install the parts, accessories and similar property are not subject to tax if such charges are separately stated on the customers' invoices; otherwise, the total charges are subject to tax. Repairers are considered consumers of supplies e.g., shop rags, safety glasses, masking tape, tools, equipment, and related materials that are not incorporated by Repairer into its customer's automobile when the repair service is performed and therefore sales or use tax is due and payable at the time of purchase of such items.

(d) ~~Automotive bodyshops.~~ While body shops are automotive repairers in connection with the purchase and sale of repair parts used in making repairs to vehicles, they are the consumers of sandpaper, buffers, rags, masking tape, prime body filler, paint, tools, and related supplies used by them in the repair and/or painting of motor vehicles and therefore sales or use tax is due and payable upon the purchase of such items by the bodyshops.

(e**c**) ~~Wheel balancing.~~ The balancing of wheels of automobiles is a service by the balancer. Receipts from such wheel balancing are not taxable. Where the customer is not separately invoiced for the wheel weights used by a balancer, they are considered to be tangible personal property consumed by the wheel balancer and are taxable when sold to him.

(f**d**) ~~Sales of weights used by wheel balancers.~~ Sales of weights used by wheel balancers for which a separate charge is made to their customers, are sales for resale, provided the wheel balancer has a valid sales tax permit.

**PART 5. "C"**

**710:65-19-44. Sales made to or by charitable, fraternal, civic, educational societies and non-profit organizations**

(a) ~~Sales "to".~~ Sales to non-profit, charitable, fraternal, civic and educational societies are subject to sales tax unless specifically exempt by the Sales Tax Code. Examples of organizations which are specifically exempt are the Council Organizations or similar state supervisory organizations of the Boy Scouts of America, Girl Scouts of U.S.A., and ~~the Campfire Girls and Boys Camp Fire USA.~~

(b) ~~Sales "by".~~ The gross proceeds derived from sales of tangible personal property, admission charges, and taxable services by fraternal, civic or educational societies or organizations are taxable within the meaning of the Act.

(c) ~~Examples.~~ Examples of such organizations are as follows: Fraternal organizations, veterans organizations, Masonic Lodges, I.O.O.F. Lodges, W. O. W. Lodges, K. of P. Lodges, Knights of Columbus Lodges, B.P.O.E. Lodges, ~~Y.W.C.A., and Y.M.C.A.,~~ American Legion, Lions Club, Rotary Club, Chambers of Commerce, Kiwanis Clubs and other civic organizations. Examples of taxable transactions are as follows:

- (1) If a Masonic Lodge conducts a dance and charges admission therefore, the gross proceeds derived from the sale of such tickets are subject to tax.
- (2) If Kiwanis or any other civic organization sponsors a rodeo and receives a certain percentage of the gross receipts they will be required to report and remit the tax on the gross proceeds derived from sales of tickets of admission thereto.
- (3) ~~If the Y.W.C.A. or Y.M.C.A. operates a cafeteria, the gross proceeds derived from the sales by such cafeteria are subject to the tax. Likewise, if they rent rooms, the gross receipts derived from such services are subject to the tax.~~

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(4) Donations in the form of tangible personal property of items purchased exempt for resale to fraternal, religious, civic, charitable or educational societies or organizations are taxable to the donor as a consumer/user.

(d) **Exemptions and exclusions.**

(1) Provided, however, services of printing, copying or photocopying performed by a scientific and educational library sustained by dues paid by members sharing the use of such services with students interested in geology, petroleum, engineering or the like are specifically excluded from taxation.

(2) ~~Provided, further, that effective July 1, 1989, the~~ The first Seventy-five Thousand Dollars (\$75,000) of gross receipts by an organization exempt from taxation pursuant to Section 501(c)(4) of the Internal Revenue Code received for the sale of tickets and concessions at athletic events is specifically exempt from taxation so long as no sales tax is collected from the purchaser. Sales in excess of Seventy-five Thousand Dollars (\$75,000) or gross receipts from the sales of anything other than tickets and concessions at athletic events are subject to taxation. Each organization falling within the exemption must file sales tax reports for each period, reporting total gross sales and then indicating as exempt the amount of sales of tickets and concessions made during the period. All sales of tickets and concessions in excess of \$75,000.00 are subject to taxation.

### 710:65-19-56. Contractors and subcontractors

(a) **Definition.** The term "**contractor**" as used in this Section means both contractors and subcontractors and includes, but is not limited to, building, grading and excavating, electrical, plumbing, heating, painting, drilling, decorating, paper hanging, air conditioning, ventilating, insulating, sheet metal, steel, masonry, carpentry, plastering, cement, road, bridge, landscape, and roofing contractors. The term contractor also includes any person engaged in a contractual arrangement for the repair, alteration, improvement, remodeling or construction of real property. A person working for a salary or wage is not considered a contractor.

(b) **General provisions.** As consumer/users, contractors must pay sales tax on all taxable services and tangible personal property, including materials, supplies, and equipment, purchased to develop, repair, alter, remodel, and improve real property.

(c) **Exempt transactions.** A contractor may make purchases based upon the exempt status of another entity **only** in the statutorily-limited circumstances described in this Section:

(1) A contractor who has a public contract, or a subcontractor to that public contract, with an Oklahoma municipality, county, public school district, an institution of the Oklahoma System of Higher Education, a rural water district, the Grand River Dam Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Municipal Power Authority, the City of Tulsa-Rogers County Port Authority, the Broken Bow Economic Development Authority, the Muskogee City-County Port Authority, the

Oklahoma Ordnance Works Authority, the Durant Industrial Authority, the Ardmore Development Authority, ~~or the Oklahoma Department of Veterans Affairs, the Central Oklahoma Master Conservancy District, or Department of Central Services only when carrying out a public construction contract on behalf of the Oklahoma Department of Veterans Affairs~~ may make purchases of tangible personal property or services, which are necessary for carrying out the public contract, exempt from sales tax.

(2) A contractor who has entered into a contract with a private institution of higher education or with a private elementary or secondary institution, may make purchases of tangible personal property or services, including materials, supplies and equipment used in the construction of buildings owned and used by the institution for educational purposes exempt from sales tax.

(3) A contractor who has contracted with an agricultural permit holder to construct a facility which will be used directly in the production of any livestock, including facilities used in the production and storage of feed for livestock owned by the agricultural permit holder, may make purchases of materials, supplies and equipment necessary to fulfill the contract, exempt from sales tax. [See: 710:65-7-6 and 710:65-7-11]

(4) A contractor may make purchases exempt from sales tax for use on campus construction projects for the benefit of institutions of the Oklahoma State System of Higher Education or private institutions of higher education accredited by the Oklahoma State Regents for Higher Education. The projects must be financed by or through the use of nonprofit entities which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(5) A contractor may make purchases of machinery, equipment, fuels, and chemicals or other materials, exempt from sales tax, which will be incorporated into and directly used or consumed in the process of treatment of hazardous waste, pursuant to *OAC* 710:65-13-80. Contractors claiming exemption for purchases to be used to remediate hazardous wastes should obtain a letter certifying the exemption status from the Tax Commission by following the procedures set out in 710:65-13-80, and provide a copy of the letter to vendors, pursuant to subsection (f) of that rule.

(6) A contractor or a subcontractor to a construction contract, which has been duly entered into between a contractor and a church, may make purchases, exempt from sales tax of tangible personal property or services necessary for carrying out the construction contract. A vendor wishing to be relieved of liability to collect the tax should follow the requirements of subsection (c) of *OAC* 710:65-7-13.

(7) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property which is to be *consumed or incorporated in the construction or expansion of a facility for a corporation organized under Section 437 et seq. of Title 18 of the Oklahoma Statutes as a rural electric cooperative* exempt from sales tax.

(8) A contractor, or a subcontractor to such contractor, may make purchases of tangible personal property or services pursuant to a contractual relationship with a child care center, qualified for exemption pursuant 68 O.S. § 1356(69), for construction and improvement of buildings and other structures owned by the child care center and operated for educational purposes exempt from sales tax.

(d) **Fabrication by contractors.** A contractor may fabricate part or all of the articles to be used in construction work. For example, a sheet metal contractor may partly or wholly manufacture roofing, cornices, gutter pipe, furnace pipe, furnaces, ventilation or air conditioning ducts or other items from sheet metal purchased and used pursuant to a contract for the construction or improvement of real property. In such a contract the purchase by the contractor is a purchase by a consumer or user and the contractor is required to pay the sales or use tax at the time of purchase. This is so, whether the articles fabricated are used in the alteration, repair or reconstruction of an old building, or in new construction.

**PART 11. "F"**

**710:65-19-114. Funeral homes**

(a) Embalmers and persons providing funeral services are engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers (other than those purchased with advance funds) and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

(b) If an embalmer or provider of funeral services separately itemizes charges in accordance with the rules of the Federal Trade Commission, for tangible personal property, taxable services and nontaxable services, sales tax is to be collected, reported and remitted on the gross receipts from the sale of tangible personal property and services including the following:

- (1) Casket or other receptacle
- (2) Burial container
- (3) Clothing
- (4) Marker
- (5) Flowers
- (6) Other tangible personal property
- (7) Other taxable services

(c) If an embalmer or provider of funeral services offers package prices for various types of funerals is, tax is to be collected, reported and remitted on the gross receipts from the sale of tangible personal property and taxable services included in the package. For purposes of determining the amount of gross receipts of tangible personal property and taxable services included in the package, the embalmer or provider of funeral services shall calculate tax based upon the prices listed by the embalmer or provider of funeral services on the Casket Price List, Outer Burial Container Price List, General Price List, or Statement of Funeral Goods and Services Selected prepared by the embalmer or provider of funeral services which he prepares

in conformity with the rules of the Federal Trade Commission that are in effect at the time the package is purchased. **EXAMPLE:** Package includes casket, outer burial container, hearse, family vehicle, embalming and other professional services at a cost of \$3,000.00. The casket included in the package is listed by the embalmer or provider of funeral services on his Casket Price List at \$1,500.00 and the outer burial container is listed on the Outer Burial Container Price List at \$600.00. Sales tax must be collected, reported and remitted on gross receipts in the amount of \$2,100.00 for this package.

(d) The embalmer or provider of funeral services is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The embalmer or provider of funeral services should present the supplier with a sales tax permit as set out in these rules. An embalmer or provider of funeral services is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items used in preparation of human remains or the provision of other nontaxable services. [See: 68 O.S. ~~Supp.~~ 1992, § 1354(C)(2)]

*[OAR Docket #09-889; filed 5-12-09]*

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

*[OAR Docket #09-890]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 2. Cigarette Stamp Tax  
710:70-2-11 [AMENDED]  
710:70-2-12 [REVOKED]  
710:70-2-13 [REVOKED]  
Subchapter 5. Excise on Tobacco Products  
710:70-5-12 [AMENDED]  
710:70-5-13 [AMENDED]

**AUTHORITY:**

68 O.S. §§ 203 and 322, Oklahoma Tax Commission

**DATES:**

**Comment Period:**

February 2, 2009 to March 6, 2009

**Public hearing:**

March 9, 2009

**Adoption:**

March 10, 2009 (Commission Order No. 2009-03-10-05)

**Submitted to Governor:**

March 13, 2009

**Submitted to House:**

March 13, 2009

**Submitted to Senate:**

March 13, 2009

**Gubernatorial approval:**

April 14, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2009

# Permanent Final Adoptions

## Final adoption:

May 7, 2009

## Effective:

June 25, 2009

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## ANALYSIS:

Sections 710:70-2-11 and 710:70-5-13 were amended to reflect recent internal changes within the Tax Commission. The duties and responsibilities of the Audit Division have been transferred to the Compliance Division.

Sections 710:70-2-12 and 710:70-2-13 have been revoked because they are no longer necessary as a compliance tool due to the new compacts signed by the Governor.

Section 710:70-5-12 has been amended consistent with statutory provisions relating to tax rates imposed on Class B cigars and Commission policy regarding classification of little cigars.

## 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, 2009:**

## SUBCHAPTER 2. CIGARETTE STAMP TAX

### PART 1. GENERAL PROVISIONS

#### 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 Compliance 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 [REVOKED]

(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.~~

(e) ~~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 (1/12th) 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, including, 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)].

**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 [REVOKED]**

(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.

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(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.

## SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

### 710:70-5-12. Oklahoma tobacco products tax rates

(a) **Inventories in stock.** The rates set out in this Section shall only be applicable to inventories acquired on or after January 1, 2005.

(b) **Rates effective January 1, 2005, applicable to non-tribal sales.** The non-tribal rates are:

- (1) For little (Class A) cigars: \$0.036 each.
- (2) For Class B cigars: ~~\$0.11~~ \$0.10 each.
- (3) For all other (Class C) cigars: \$0.12 each.
- (4) For smoking tobacco: Eighty percent (80%) of the Factory List Price.
- (5) For chewing tobacco: Sixty percent (60%) of the Factory List Price.

(c) **Classification of little (Class A) cigars.** The term "little cigar" shall mean cigars of all descriptions made of tobacco, or any substitute therefore, and weighing not more than three (3) pounds per thousand. Absent evidence to the contrary cigars with a ring size of 20 or less shall be considered little cigars.

### 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~~ Compliance 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 #09-890; filed 5-12-09]

## TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 90. WITHHOLDING

[OAR Docket #09-891]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 1. General Provisions  
710:90-1-6 [AMENDED]  
Subchapter 3. Returns and Payments  
710:90-3-10 [AMENDED]

### AUTHORITY:

Oklahoma Tax Commission; 68 O.S. § 203

### DATES:

### Comment Period:

January 15, 2009 to February 24, 2009

**Public hearing:**

February 25, 2009

**Adoption:**

March 10, 2009 (Commission Order No. 2009-03-10-07)

**Submitted to Governor:**

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**Submitted to House:**

March 12, 2009

**Submitted to Senate:**

March 12, 2009

**Gubernatorial approval:**

April 14, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2009

**Final adoption:**

May 7, 2009

**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

Section 710:90-1-6 has been amended to delete an obsolete reference to "Method 1" tax.

Section 710:90-3-10 has been amended to conform to current statutory authority regarding the rate of withholding on royalty payments on or after 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, 2009:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**710:90-1-6. Supplemental wages**

(a) **Treatment of supplemental wages combined with regular wages.** An employer who pays supplemental wages combined with regular wages and does not specify or separate the amount of each should withhold Income Tax as if the total payment were a single payment for a regular payroll period. Supplemental wages include bonuses, commissions, overtime pay, vacation pay, sick leave pay, back pay, retroactive wage increases or payment for nondeductible moving expenses.

(b) **Treatment of supplemental wages paid separately or combined in single payment.** Supplemental wages which are paid separately or combined in a single payment and the amount of each is specified, are subject to withholding according to one of the following methods:

(1) If you withhold tax from the regular wages use one of these two methods for supplemental wages:

(A) Withhold at the highest applicable rate set out in ~~Section 2355(A)(1), Method 1~~ 68 O.S. Section 2355(B)(1) for Oklahoma Income Taxes for the taxable year, or;

(B) Add the supplemental and regular wages for the most recent payroll period. Calculate the tax as if the total constitutes a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages.

(2) If tax was not withheld from an employee's regular wages, the provisions set out in (1)(B) of this subsection should be used. This situation would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages.

(c) **Treatment of overtime, vacation, and sick pay.** Overtime pay, vacation pay, and sick pay are subject to Withholding Tax as if a regular wage payment. If paid in addition to the regular wage, it is considered a supplemental wage.

**SUBCHAPTER 3. RETURNS AND PAYMENTS**

**710:90-3-10. Income tax withholding - oil and gas royalties**

(a) Effective for royalty payments made on or after October 1, 2000 and before July 1, 2006, any remitter who distributes revenue to a non-resident royalty interest owner is required to deduct and withhold Oklahoma income tax from each payment being made with respect to production of oil and gas in Oklahoma. The amount of income tax to be withheld is six and three-fourth's percent (6.75%) of the gross royalty amount paid. Effective for royalty payments made on or after July 1, 2006, the rate of withholding for any remitter who distributes revenue to a non-resident royalty interest owner is five percent (5%) with respect to production of oil and gas in Oklahoma

(b) For purposes of this Section, "**remitter**" means any person who distributes revenue to royalty interest owners; "**gross royalty**" means that amount which is reported for federal income tax purposes on IRS Form 1099; "**non-resident royalty interest owner**" means any person who is not a current or permanent resident of Oklahoma who retains a non-working interest in oil or gas production; and "**oil**" and "**gas**" shall have the meaning as the terms are defined in 68 O.S. § 1001.2.

(c) Remitters are required to file an Oklahoma Tax Commission Form OW-9B and pay the Oklahoma income tax withheld on a quarterly basis, pursuant to this subsection:

(1) For royalty payments made during January, February, and March, the amount withheld is due no later than April 30;

(2) For royalty payments made during April, May, and June, the amount withheld is due no later than July 30;

(3) For royalty payments made during July, August, and September, the amount withheld is due no later than October 30; and

(4) For royalty payments made during October, November, and December, the amount withheld is due no later than January 30 of the following year.

(d) The remitter is also required to provide non-resident individual royalty owners and the Oklahoma Tax Commission an annual written statement showing the name of the remitter, to whom the royalty was paid, the amount of the royalty payment and the amount of Oklahoma income tax withheld. Further, the

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statement must also furnish the royalty owner's name, address, and social security number or Federal Employer Identification Number. This annual filing with the Oklahoma Tax Commission may be done separately, or in conjunction with the annual reporting requirement under 68 O.S. § 2369, if applicable to the remitter.

(e) Any non-resident royalty interest owner 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 royalty interest owner will be entitled to a refund of the amount of the overpayment.

*[OAR Docket #09-891; filed 5-12-09]*

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

*[OAR Docket #09-892]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 5. Waste Tire Recycling  
710:95-5-9 [AMENDED]

### **AUTHORITY:**

27A O.S. § 2-11-401.6; 68 O.S. § 203; Oklahoma Tax Commission

### **DATES:**

#### **Comment Period:**

January 15, 2009 to February 24, 2009

#### **Public hearing:**

February 25, 2009

#### **Adoption:**

March 10, 2009 (Commission Order No. 2009-03-10-06)

#### **Submitted to Governor:**

March 13, 2009

#### **Submitted to House:**

March 13, 2009

#### **Submitted to Senate:**

March 13, 2009

#### **Gubernatorial approval:**

April 14, 2009

#### **Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in approval on May 7, 2009

#### **Final adoption:**

May 7, 2009

#### **Effective:**

June 25, 2009

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

n/a

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

n/a

#### **ANALYSIS:**

Section 710:95-5-9 has been amended consistent with current statutory provisions relating to the transactions and vehicles to which waste tire fees are applicable.

#### **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, 2009:**

## SUBCHAPTER 5. WASTE TIRE RECYCLING

### **710:95-5-9. Examples**

(a) **Transactions to which fee is applicable.** The waste tire recycling fee applies to the transactions and vehicles indicated in (1) through ~~(8)~~ (7) of this subsection:

- (1) ~~All-terrain vehicles.~~
- ~~(2)~~ Cars and light trucks.
- ~~(3)~~ Motorcycles and mopeds.
- ~~(4)~~ School buses and automobiles owned by schools.
- ~~(5)~~ Tires sold to governmental agencies.
- ~~(6)~~ Tires sold for farm tagged motor vehicles.
- ~~(7)~~ Tires sold for commercial trucks, truck-tractor (semi-trucks), and trailers.
- ~~(8)~~ First registration in Oklahoma of automobiles, motorcycles, mopeds, or trucks, including farm tagged motor vehicles and commercial motor vehicles which are not Registered under the International Registration Plan.

(b) **Transactions to which fee is not applicable.** The waste tire recycling fee does not apply to the transactions and vehicles indicated in (1) through ~~(11)~~ (13) of this subsection:

- (1) Airplanes.
- (2) Bicycles.
- (3) Riding lawn mowers.
- (4) Wheelbarrows.
- (5) Push mowers.
- (6) Farm tractors.
- (7) Implements of husbandry.
- (8) Forklifts.
- (9) Devices designed and adapted to be used exclusively for agricultural, horticultural, or livestock-raising purposes, including:
  - (A) Farm tank-type wagons of less than 1200 gallons capacity;
  - (B) Trailers and semitrailers exclusively used to and from the farm to market; and
  - (C) Utility, all-terrain vehicles of less than 1500 pounds which are equipped and used for farm or ranch operations.
- (10) Tires sold for backhoe, grader, and other construction machinery.
- (11) First registration in Oklahoma of vehicles registered under the International Registration Plan.
- (12) All-terrain vehicles.
- (13) Off-road motorcycles.

*[OAR Docket #09-892; filed 5-12-09]*

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

[OAR Docket #09-1027]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 11. Withdrawal from Membership and Refund of Deposits  
715:10-11-7 [AMENDED]  
Subchapter 15. Service Retirement  
715:10-15-26 [AMENDED]

**AUTHORITY:**

70 O.S. Section 17-101, et seq., especially Section 17-106; Board of Trustees

**DATES:**

**Comment period:**

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**Public hearing:**

February 17, 2009

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March 4, 2009

**Submitted to House:**

March 4, 2009

**Submitted to Senate:**

March 4, 2009

**Gubernatorial approval:**

March 24, 2009

**Legislative approval:**

Failure of the Legislature to disapprove the rules resulted in the approval on April 29, 2009

**Final adoption:**

April 29, 2009

**Effective:**

June 25, 2009

**SUPERSEDED EMERGENCY ACTIONS:**

**Superseded rules:**

Subchapter 11. Withdrawal from Membership and Refund of Deposits  
715:10-11-7. [AMENDED]  
Subchapter 15. Service Retirement  
715:10-15-26. [AMENDED]

**Gubernatorial approval:**

November 12, 2008

**Register publication:**

26 Ok Reg 318

**Docket number:**

08-1447

**INCORPORATIONS BY REFERENCE:**

n/a

**ANALYSIS:**

715:10-11-7 is being amended to ensure continued compliance with Internal Revenue Code Section 401(a)(31) (Rollovers). This rule addresses rollovers from the Teachers' Retirement System to other eligible retirement plans.

715:10-15-26 is being amended to ensure continued compliance with Internal Revenue Code Section 415 (Limitations on Benefits). This rule addresses Internal Revenue Code Section 415 limits as they apply to TRS.

**CONTACT PERSON:**

Kim Bold, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-2223

**PURSUANT TO THE ACTIONS DESCRIBED 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, 2009:**

**SUBCHAPTER 11. WITHDRAWAL FROM  
MEMBERSHIP AND REFUND OF DEPOSITS**

**715:10-11-7. Rollovers from OTRS to other eligible  
retirement plans**

(a) Notwithstanding any other provision of the administrative code, ~~a member, a member's spouse, or a member's former spouse who is the alternate payee under a qualified domestic order, as defined in OAC 715:10-25-1, that otherwise would limit a distributee's election to make a direct rollover, a distributee~~ may elect at the time and in the manner prescribed by the Board of Trustees, to have all or a portion of an eligible rollover distribution paid directly to another eligible retirement plan as a direct rollover as required under Internal Revenue Code Section 401(a)(31) and the regulations thereto.

(b) The following definitions shall apply for purposes of the words and phrases used in this Section:

(1) An "eligible rollover distribution" includes any distribution of all or any ~~taxable~~ portion of the defined benefit balance to the credit of ~~a member, a member's spouse, or the members' former spouse who is the alternate payee under a qualified domestic order, as defined in OAC 715:10-25-1, the distributee,~~ except that an eligible rollover distribution does not include the following:

(A) any distribution that is one of a series of substantially equal periodic payments, paid not less frequently than annually, made for the life or life expectancy of the ~~member and the member's spouse~~ distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary.

(B) any distribution that is one of a series of substantially equal periodic payments for a specified period of ten years or more.

(C) any distribution to the extent such distribution is required under Internal Revenue Code Section 401(1)(9).

(D) the portion of any distribution that is not includable in gross income.

(E) any distributions during a year that are reasonably expected to total less than \$200.

(F) ~~any distribution from the tax sheltered annuity program. Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p) and OAC 715:10-25-1.~~

(G) Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, such portion may be transferred only

(i) to an individual retirement account or annuity described in Internal Revenue Code Section

408(a) or (b) or to a qualified defined contribution plan described in Internal Revenue Code Section 401(a) that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible;

(ii) on or after January 1, 2007, to a qualified defined benefit plan described in Internal Revenue Code Section 401(a) or to an annuity contract described in Internal Revenue Code Section 403(b), that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible; or

(H) on or after January 1, 2008, to a Roth IRA described in Internal Revenue Code Section 408A.

~~(2) An "eligible retirement plan" includes an individual retirement account or annuity described in Internal Revenue Code Sections 408(a) or (b), an annuity plan described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a) that is willing to accept the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the member's spouse, an eligible retirement plan only includes an individual retirement account or an individual retirement annuity in Internal Revenue Code Sections 408(a) or (b), any of the following that accepts the distributee's eligible rollover distribution:~~

~~(A) an individual retirement account described in Internal Revenue Code Section 408(a);~~

~~(B) an individual retirement annuity described in Internal Revenue Code Sections 408 (b);~~

~~(C) an annuity plan described in Internal Revenue Code Section 403(a);~~

~~(D) a qualified trust described in Internal Revenue Code Section 401(a);~~

~~(E) effective January 1, 2002, an annuity contract described in Internal Revenue Code Section 403(b);~~

~~(F) effective January 1, 2002, a plan eligible under Internal Revenue Code Section 457(b) that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from the retirement system; or~~

~~(G) effective January 1, 2008, a Roth IRA described in Internal Revenue Code Section 408A.~~

(3) A "distributee" means a member, a member's spouse, or a member's former spouse who is the alternate payee under a qualified domestic order, as defined in Internal Revenue Code Section 414(p) and OAC 715:10-25-1. Before January 1, 2002, in the case of an eligible rollover distribution to the member's spouse, an eligible retirement plan only includes an individual retirement account or an individual retirement annuity

described in Internal Revenue Code Sections 408(a) or (b). Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by Internal Revenue Code Section 401(a)(9)(E). However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity (or, effective January 1, 2008, a Roth IRA) established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(4) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

(c) Eligible rollover distributions may be paid to not more than two eligible retirement plans, as selected by the distributee, when a direct rollover is elected.

### SUBCHAPTER 15. SERVICE RETIREMENT

#### **715:10-15-26. Code Section 415 limits as applied to TRS**

(a) Notwithstanding any other provision of the administrative code, contributions paid to and benefits paid from the retirement system shall not exceed the maximum contributions and benefits permissible under Internal Revenue Code Section 415. Solely for purposes of calculating and complying with the limitations under Internal Revenue Code Section, a member's compensation for a year shall be the member's taxable income as reported by the member's employer on the Form W-2 that is filed with the Internal Revenue Service for the year in question. For 415 testing purposes, the limitation year is the calendar year.

#### **(b) Participation in Other Qualified Plans: Aggregation of Limits**

(1) The 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in Internal Revenue Code Section 414(j) maintained by the member's employer in the retirement system shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one (1) plan.

(2) The 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in Internal Revenue Code Section 414(i) maintained by the member's employer in the retirement system shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one (1) plan.

#### **(c) Basic 415(b) Limitation.**

(1) Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in Internal Revenue Code Section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in Internal Revenue Code Section 415(b)(1)(A), subject to the applicable adjustments in Internal Revenue Code Section 415(b) and

subject to any additional limits that may be specified in the retirement system. In no event shall a member's benefit payable under the retirement system in any limitation year be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to Internal Revenue Code Section 415(d) and the regulations thereunder.

(2) For purposes of Internal Revenue Code Section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to after-tax employee contributions (except pursuant to Internal Revenue Code Section 415(n)) and to rollover contributions (as defined in Internal Revenue Code Section 415(b)(2)(A)). The "benefit attributable" shall be determined in accordance with Treasury Regulations.

**(d) Adjustments to Basic 415(b) Limitation for Form of Benefit.** If the benefit under the retirement system is other than the form specified in subsection (c)(2), then the benefit shall be adjusted so that it is the equivalent of the annual benefit, using factors prescribed in Treasury Regulations.

(1) If the form of benefit without regard to any automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the Internal Revenue Code Section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount [determined using the assumptions specified in Treasury Regulation section 1.415(b)-1(c)(2)(ii)] that takes into account the additional benefits under the form of benefit as follows:

(2) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) does not apply [a monthly benefit], the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced Limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(A) The annual amount of the straight life annuity (if any) payable to the member under the retirement system commencing at the same annuity starting date as the form of benefit to the member, or

(B) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption (or the applicable statutory interest assumption) and the applicable mortality tables described in Treasury Regulation section 1.417(e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Rulings 2001-62); or

(3) For a benefit paid in a form to which Internal Revenue Code Section 417(e)(3) applies [a lump sum benefit], the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced Internal Revenue Code Section 415(b) limit applicable at the annuity starting date

which is the "least of" when adjusted in accordance with the following assumptions:

(A) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(B) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5 percent interest assumption (or the applicable statutory interest assumption) and the applicable mortality table for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(C) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(3) (the 30-year Treasury rate (prior to January 1 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)) and the applicable mortality rate for the distribution under Treasury Regulation section 1.417(e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent Revenue Ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05.

**(e) Benefits Not Taken into Account for 415(b) Limitation.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(1) Any ancillary benefit which is not directly related to retirement income benefits;

(2) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity;

(3) Any other benefit not required under Internal Revenue Code Section 415(b)(2) and Treasury Regulations thereunder to be taken into account for purposes of the limitation of Internal Revenue Code Section 415(b)(1).

**(f) Other Adjustments in 415(b) Limitation.**

(1) In the event the member's retirement benefits become payable before age sixty-two (62), the limit prescribed by this section shall be reduced in accordance with Treasury Regulations pursuant to the provisions of Internal Revenue Code Section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (\$160,000) (as adjusted) annual benefit beginning at age sixty-two (62).

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(2) The reductions provided for in (1) above shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(g) **Less than Ten (10) Years of Service Adjustment for 415(b) Limitations.** The maximum retirement benefits payable to any member who has completed less than ten (10) years of service shall be the amount determined under subsection (c) multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten (10). The reduction provided by this subsection cannot reduce the maximum benefit below 10%. The reduction provided for in this subsection shall not be applicable to pre-retirement disability benefits or pre-retirement death benefits.

(h) **Ten Thousand Dollar (\$10,000) Limit.** Notwithstanding the foregoing, the retirement benefit payable with respect to a member shall be deemed not to exceed the 415 limit if the benefits payable, with respect to such member under the retirement system and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars (\$10,000) for the applicable limitation year and for any prior limitation year and the employer has not any time maintained a qualified defined contribution plan in which the member participated.

(i) **Effect of COLA without a Lump Sum Component on 415(b) Testing.** Effective on and after January 1, 2009, for purposes of applying the limits under Internal Revenue Code Section 415(b) (the "Limit") to a member with no lump sum benefit, the following will apply:

(1) a member's applicable Limit will be applied to the member's annual benefit in the member's first limitation year without regard to any cost of living adjustments under Oklahoma statutes;

(2) to the extent that the member's annual benefit equals or exceeds the Limit, the member will no longer be eligible for cost of living increases until such time as the benefit plus the accumulated increases are less than the Limit; and

(3) thereafter, in any subsequent limitation year, a member's annual benefit, including any cost of living increases under Oklahoma statutes, shall be tested under the then applicable benefit Limit including any adjustment to the Internal Revenue Code Section 415(b)(1)(A) dollar limit under Internal Revenue Code Section 415(d), and the regulations thereunder.

(j) **Effect of COLA with a Lump Sum Component on 415(b) Testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable Limit will be applied taking into consideration cost of living increases as required by Internal Revenue Code Section 415(b) and applicable Treasury Regulations.

(k) **Section 415(c) limitations on contributions and other additions.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of \$40,000 (as adjusted pursuant to Internal Revenue Code Section 415(d)) or 100% of the member's compensation.

(1) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(2) For purposes of applying Internal Revenue Code Section 415(c) and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation section 1.415(c)-2, or successor regulation; provided, however, that member contributions picked up under Internal Revenue Code Section 414(h) shall not be treated as compensation.

(3) Solely for purposes of calculating and complying with the limitations under Internal Revenue Code Section 415, a member's compensation will be defined as wages within the meaning of Internal Revenue Code Section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under Internal Revenue Code Sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under Internal Revenue Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Internal Revenue Code Section 3401(a)(2)).

(A) However, for limitation years beginning after December 31, 1997, compensation will also include amounts that would otherwise be included in compensation but for an election under Internal Revenue Code Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Internal Revenue Code Section 132(f)(4).

(B) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of  $2\frac{1}{2}$  months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the member's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation or other leave that the member

would have been able to use if employment had continued.

(C) Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

(4) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of subsection (k) shall not exceed the annual limit under Internal Revenue Code Section 401(a)(17).

(l) **Service Purchases under Section 415(n).** Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the retirement system, then the requirements of Internal Revenue Code Section 415(n) will be treated as met only if:

(1) the requirements of Internal Revenue Code Section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of Internal Revenue Code Section 415(b), or

(2) the requirements of Internal Revenue Code Section 415(c) are met, determined by treating all such contributions as annual additions for purposes of Internal Revenue Code Section 415(c).

(3) For purposes of applying this section, the retirement system will not fail to meet the reduced limit under Internal Revenue Code Section 415(b)(2)(C) solely by reason of this subparagraph and will not fail to meet the percentage limitation under Internal Revenue Code Section 415(c)(1)(B) solely by reason of this section.

(4) For purposes of this section the term "permissive service credit" means service credit

(A) recognized by the retirement system for purposes of calculating a member's benefit under the retirement system,

(B) which such member has not received under the retirement system, and

(C) which such member may receive only by making a voluntary additional contribution, in an amount determined under the retirement system, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

(5) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding paragraph (4), subparagraph (B), may include service credited in order to provide an increased benefit for service credit which a member is receiving under the retirement system.

(6) The retirement system will fail to meet the requirements of this section if

(A) more than five years of nonqualified service credit are taken into account for purposes of this subparagraph, or

(B) any nonqualified service credit is taken into account under this paragraph before the member has at least five years of participation under the retirement system.

(7) For purposes of paragraph (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to

(A) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentalality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in Internal Revenue Code Section 415(k)(3)),

(B) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in subparagraph (A)) of an education organization described in Internal Revenue Code Section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(C) service as an employee of an association of employees who are described in subparagraph (A), or

(D) military service (other than qualified military service under Internal Revenue Code Section 414(u)) recognized by the retirement system.

(8) In the case of service described in paragraph (7), subparagraph (A), (B), or (C), such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which Internal Revenue Code Section 403(b)(13)(A) or Internal Revenue Code Section 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer):

(A) the limitations of paragraph (6) will not apply in determining whether the transfer is for the purchase of permissive service credit, and

(B) the distribution rules applicable under federal law to the system will apply to such amounts and any benefits attributable to such amounts.

(10) For an eligible member, the limitation of Internal Revenue Code Section 415(c)(1) shall not be applied to reduce the amount of permissive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the retirement system as in effect on August 5, 1997. For purposes of this paragraph an eligible member is an individual who first became a member in the retirement system before January 1, 1998.

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(11) Nothing in this subsection (l) shall provide any additional rights to purchase service credit in the retirement system that are not otherwise expressly provided for under other provisions of these rules or Oklahoma statutes.

**(m) Modification of Contributions for 415(c) and 415(n) Purposes.** Notwithstanding any other provision of law to the contrary, the retirement system may modify a request by a member to make a contribution to the retirement system if the amount of the contribution would exceed the limits provided in Internal Revenue Code Section 415 by using the following methods:

(1) If the law requires a lump sum payment for the purchase of service credit, the retirement system may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under Internal Revenue Code Section 415(c) or 415(n), pursuant to OAC 715:10-5-4.

(2) If payment pursuant to subparagraph (1) will not avoid a contribution in excess of the limits imposed by Internal Revenue Code Section 415(c) or 415(n), the retirement system may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution. The rules applicable to picked-up service purchases under OAC 715:10-5-35 are not subject to this subsection.

**(n) Repayments of Cashouts.** Any repayment of contributions (including interest thereon) to the retirement system with respect to an amount previously refunded upon a forfeiture of service credit under the retirement system or another governmental plan maintained by the retirement system shall not be taken into account for purposes of Internal Revenue Code Section 415, in accordance with applicable Treasury Regulations.

**(o) Reduction of Benefits Priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's benefit under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans, and next, by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided, however, that necessary reductions may be made in a different manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

[OAR Docket #09-1027; filed 5-21-09]

## TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #09-1079]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. State Technical Assistance, Supervision, and Services

780:10-3-2 [AMENDED]

780:10-3-3 [AMENDED]

780:10-3-4 [AMENDED]

780:10-3-8 [AMENDED]

Subchapter 5. Finance

780:10-5-4 [AMENDED]

Subchapter 7. Local Programs, Career Majors or Instructional Positions:

Applications; Student Accounting; Evaluation

780:10-7-1 [AMENDED]

780:10-7-3 [AMENDED]

### AUTHORITY:

Oklahoma State Board of Career and Technology Education; 70 O.S. Supp. 2008, § 14-103, 70 O.S. 2001 § 14-104, as amended.

### DATES:

#### Comment Period:

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March 26, 2009

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March 30, 2009

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Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2009

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July 1, 2009

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n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### 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, 2009:**

### SUBCHAPTER 3. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

**780:10-3-2. Career guidance and counseling, career information, disability services, integrated academics, innovation support services, 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 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 career 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~~ The Oklahoma Department of Career and Technology Education shall collect ~~all~~ relevant statistical data related to financial aid activities at technology centers and report this information where appropriate. ~~This operational unit~~ The Oklahoma Department of Career and Technology Education shall also administer the Oklahoma GI Bill program ~~which that~~ provides tuition assistance to qualified Vietnam-era veterans.

(d) **Innovation Support Services.** The Department shall provide support for the alignment of Oklahoma education innovation and improvement initiatives through the services of the Innovation Support Services Liaisons. The Innovative Support Services Liaisons shall provide technical assistance and services focused on the High Schools That Work ten key practices, guidance and instruction for improved student achievement along with leadership from the Technology Center Services Division to create a culture of high expectations to local education agencies and/or technology centers for school improvement with raised student achievement. The ISS Division/Liaisons shall accomplish its purpose by providing:

- (1) Support for education innovation.

- (2) Lead and participate in technical assistance visits and provide technical review visits with follow-up.

- (3) Assist in locating and using resources and materials.

- (4) Provide guidance for implementing career pathways, plans of study, improved instruction, and services supported by the Oklahoma Department of Career and Technology Education.

- (5) ISS Liaisons shall serve local education agencies ~~or technology centers~~ designated by the Oklahoma Department of Career and Technology Education. The local education agency ~~or technology center~~ shall request the assistance and shall designate a local administrator, counselor, or instructor 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 *CareerTech* programs in local education agencies. The Department will also provide guidance and assistance for the field to assist students with transition from high school to a technology center as well as transition from technology centers to postsecondary education and/or work.

(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.

**780:10-3-3. Instructional materials development and dissemination**

(a) **Purpose.** The Curriculum and Instructional Materials Center (CIMC) and the Testing Division shall develop, warehouse, and disseminate instructional materials.

(b) **In-state sales.** The Department curriculum and instructional materials shall be made available for purchase in state upon request according to the prices designated in the CIMC catalog or online catalog. All prices are subject to change without notice.

(c) **Out-of-state sales.** The Department will review the Out-of-State Pricing Policy annually and establish a pricing structure for selling the instructional materials developed by the agency.

(d) **Ordering.** Orders for CIMC materials shall be made using the catalog order form, by telephone, fax, or Internet. All orders for Testing Division products will be filled following standard CIMC ordering procedures.

- (1) Mail orders.

- (A) **Inclusion of item number and title in orders.** When using the order form in the CIMC catalog, both the item number and the title shall be included to avoid processing errors.

- (B) **Payment.** All school and other institutional orders shall be accompanied by an official purchase order number, credit card number, or personal check.

- (2) Telephone orders.

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- (A) **Placing an Order.** Telephone orders may be placed by calling the Curriculum Customer Service Division of the Oklahoma Department of Career and Technology Education.
- (B) **Order confirmation.** An authorized purchase order or credit card number shall be available when the order is placed.
- (3) **Fax orders.** All fax orders shall contain items to be purchased and a purchase order or credit card number.
- (4) **Internet orders.** All orders taken from the CIMC home page Internet catalog should be mailed, e-mailed, or faxed to Curriculum Customer Service
- (e) **Shipping charges.** Shipping charges shall be included in the invoice statement for all materials.
- (f) **Payments.**
- (1) **Invoices and payments.** All orders with an authorized purchase order number shall be invoiced within five (5) working days after the materials have been shipped. Payment of materials shall be upon receipt of invoice.
- (2) **Individual and for-profit company purchases.** Individual and for-profit company purchases shall be shipped upon receipt of a check, credit card, or money order for the amount of purchase plus sales tax (only if Oklahoma customer) plus shipping.
- (3) **Acceptable currency.** Checks shall be drawn upon a United States bank and payable in United States currency.
- (4) **Credit card purchases.** Any purchase can be shipped upon authorization of the following credit cards: VISA, MasterCard, and Discover.
- (5) **International orders.** All orders received from out of the continental United States shall be shipped upon receipt of a valid credit card number or United States money order for the amount of purchase plus 20 percent for shipping.
- (6) **Online Curriculum.** Payment for curriculum delivered through the CTLN or other online partners will be in accordance with the published payment policies of CIMC.
- (7) **Online testing.** Access to the department's online testing system will be free to in-state CareerTech programs educators. Access to this system will be available to all other users at established rates upon receipt of an official purchase order number, credit card number, or personal check.
- (g) **Authorization to return materials.**
- (1) **In-state return.** In-state customers shall request authorization to return materials. Upon approval, the materials shall be returned prepaid, in resalable condition, within 90 days from the invoice statement date.
- (2) **Out-of-state return.** Out-of-state customers shall request authorization to return materials. Upon approval the materials shall be returned prepaid, in resalable condition, within 30 days from the invoice statement date.
- (3) **Stipulations for full credit.** The following stipulations apply to all in-state and out-of-state returns:
- (A) **Authorization.** After authorized returned goods are received, full credit will be issued for current editions of materials that are unmarked and in resalable condition. Items returned to the CIMC that are not in resalable condition, are not within the approved return period, or are not authorized for return will be returned to the purchaser without credit.
- (B) **Shipping costs.** Original shipping costs must be paid by purchaser on all returns unless there was an error by CIMC customer service or warehouse.
- (C) **Shipping guidelines.** After receiving authorization, the materials should be shipped to Oklahoma Department of Career and Technology Education, Instructional Materials Warehouse, 1201 North Western, Stillwater, Oklahoma 74074.
- (D) **Invoice number.** The invoice number on which the materials were billed should be included with the returned materials.
- (E) **Restocking fee.** Materials returned outside the stipulations for full credit and authorization will be assessed a 15% restocking fee.
- (h) **Damaged materials.**
- (1) **Credit.** For credit to be authorized, Curriculum Customer Service shall receive notification of damaged materials within five days of receipt of materials. Credit for goods in defective condition will be 100 percent of invoice price or free replacement.
- (2) **Damage incurred in transit.** If materials were damaged in shipment, claims must be filed against the carrier. The CIMC is not responsible for damage incurred in transit.

### 780:10-3-4. Information Commons

- (a) **Objectives.** The Information Commons shall be responsible for the following activities:
- (1) Providing current career and technology education materials and services designed to meet the informational requirements of Department personnel and *CareerTech* educators in the state of Oklahoma; and,
- (2) Providing assistance to persons doing research in the field of *CareerTech* education.
- (b) **Services.** The Information Commons shall accomplish its objectives by providing the following services:
- (1) Searches of the Information Commons collection using the on-line database. Searches may be initiated by phone, fax, Internet e-mail, or walk-in requests;
- (2) Searching commercial on-line databases and the Internet if needed;
- (3) Promoting new acquisitions to *CareerTech* educators in Oklahoma through a monthly acquisitions list; and,
- (4) Utilizing interlibrary loans as need dictates.
- (c) **Circulation.**
- (1) **Patrons.** The Information Commons shall circulate materials primarily to Department personnel, career and technology faculty, and students at any Oklahoma college or university, and to *CareerTech* educators in Oklahoma.

(2) **Researchers.** Materials may be circulated to persons doing research in the field of career and technology education, subject to recall if needed by Department personnel.

(3) **Circulation periods for printed materials.**

(A) **One-month circulation; renewals.** Printed materials, except high-demand materials, shall be circulated for one month and may be renewed in written or verbal form if there are no holds on the materials.

(B) **High-demand materials.** High-demand materials will be checked out for a two-week period only.

(C) **Fines; replacement copy charges.** No fines will be charged on late materials, but if materials are lost, a replacement copy charge will be issued to the responsible party. No additional materials will be loaned to that particular party until such previously stated charges are paid, or overdue materials are returned.

(D) **Interlibrary loan fines.** Materials obtained through interlibrary loans are subject to fines assessed by the lending library. If these materials are returned late, the fines will be the responsibility of the person requesting the interlibrary loan.

(d) **Gifts.** The Information Commons may accept gifts of materials. Upon acceptance, these materials become property of the Information Commons and will be evaluated according to the Information Commons's selection criteria and then added or disposed of accordingly.

(e) **Collection development.**

(1) **Selection.** Materials are considered for purchase on requests and recommendations from the Oklahoma Department of Career and Technology Education staff, from catalogs and advertisements of publishers, and from professionally prepared selection aids. Criteria for selection of materials for purchase are considered on the basis of the subject matter with emphasis on career and technology education, the reputation of the author/artist/publisher, the publication year, and the price. The Information Commons tries to accommodate all requests for job-related materials from the staff, but it has the responsibility of adhering to the budget restraints of the Department. Some requests may be evaluated by the Information Commons staff and determined to be too expensive or unrelated to vocational education or CareerTech education and will not be purchased.

(2) **Weeding.** Materials on Oklahoma career and technology education will be retained indefinitely in the "Historical Collection." All other materials in the Information Commons collection will be reviewed on an ongoing basis according to age, space, usage, and relevance. If the items have not been checked out in the last year or if technological changes have rendered the items obsolete, they will be evaluated and may be discarded.

**780:10-3-8. Planning**

(a) **Development of state plans.** The Department shall be responsible for developing annual and long-range state plans

for the direction of career and technology education in the state of Oklahoma.

(b) **Applications.** The Department will be responsible for disseminating and collecting local applications for comprehensive school programs and/or instructional positions, services, and activities to local education agencies and other eligible recipients.

(c) **Review of new program requests.** The Department shall have the responsibility to review all new program or instructional position requests for comprehensive schools and career major, instructional position and course requests for technology centers and make recommendations regarding approval or nonapproval of state funding based on statewide and local job demand data and local need.

(d) **Special projects.** The Department shall coordinate and develop special projects as assigned by the State Director.

**SUBCHAPTER 5. FINANCE**

**780:10-5-4. Program Instructional funding**

(a) **Secondary and full-time adult programs career majors in technology centers.**

(1) **Formula payments.** The State Board will fund a portion of the cost of programs—instruction 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, number of instructors employed on a full-time basis, transportation, availability of funds, provision of appropriate student services for all students and appropriate state and federal laws in developing the annual technology center funding budget.

(2) **Formula adjustment.** The failure of a program technology center 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 *CareerTech* 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 *CareerTech* programs shall receive the program assistance monies annually. These monies shall be used to support the additional costs of the *CareerTech* program limited to the purchase of equipment, instructional delivery and supplies, and staff development.

(3) **Equipment matching funds.** New *CareerTech* 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.

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- (5) **CareerTech teacher contracts.** CareerTech 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 CareerTech 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) **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.
- (d) **Business and Industry Services programs.** The Department shall reimburse Business and Industry Services ~~programs~~ initiatives based on the availability of funds and approved by the Business and Industry Services Division.
- (e) **Skills Centers programs.** The Department shall reimburse Skills Centers programs based on the availability of funds and approved by the Skills Centers Division.
- (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.
- (g) **Apprenticeship.** Local education agencies conducting apprenticeship-related training programs shall qualify for reimbursement at a rate approved by the Department.
- (h) **Work-site learning.** Approved work-site learning activities ~~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.
- (i) **Program closures Reduction in instruction and/or student services due to changes in funding.** The Oklahoma Department of Career and Technology Education may also recommend ~~closure for secondary and postsecondary education programs~~ reduction in instruction and/or student services 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~~ reduction in instruction and/or student services based on economic factors, ~~vocational need, duplication, of programs, school-to-work connection-school to industry articulation,~~ student demand, student placement, student completion/retention, performance measures and/or ~~and program~~ standards and the decision of the Board shall be final.

### **SUBCHAPTER 7. LOCAL PROGRAMS CAREER MAJORS OR INSTRUCTIONAL POSITIONS: APPLICATION; STUDENT ACCOUNTING; EVALUATION**

#### **780:10-7-1. Application; approval; contract for programs or career majors**

##### **(a) Local Application for CareerTech Programs and/or Career Majors.**

(1) **Description.** Any comprehensive school district, technology center or other eligible recipient requesting funds for CareerTech education programs, career majors, instructional positions, services and/or activities must submit an annual Local Application and Assurances of Compliance for Secondary and Full-time Adult Career and Technology Education Programs. ~~which includes a listing of programs being funded and assurances of compliance.~~ Approval and return of the Assurances of Compliance to the Department indicates the school district's intent to form a contract for CareerTech education programs, career majors, instructional positions, services and/or activities and comply with all terms set forth in the local application. For comprehensive schools only, this application includes a listing of programs and/or instructional positions.

(2) **Application Dates.** The local application shall be mailed from the Department to the superintendent of each comprehensive school district on or around March 1 for the next fiscal year. The local application shall be returned by the deadline indicated on the application.

(3) **Contents.** The local application gives comprehensive school districts the opportunity to verify ongoing programs and/or career majors, request new or expanded programs and/or career majors, or request the deletion or reduction of programs and/or career majors.

(4) **Additions and revisions.** Additions and/or revisions may be made to the local application any time during the fiscal year. Changes or revisions must be sent by the comprehensive school to the Department.

(5) **Special funding.** Any special discretionary funds available for programs or projects shall be awarded on a proposal basis with all eligible recipients being notified. The criteria for selection will be stated in a "Request for Proposals." Selection of funding recipients will be based upon the stated criteria.

##### **(b) Criteria for approval of secondary and full-time adult programs and/or career majors.** The criteria for approving secondary (grades 7 through 12) and full-time adult programs

and/or career majors in comprehensive schools and technology centers shall include the following:

- (1) Employment opportunities for ~~program~~ completers;
  - (2) Availability of students;
  - (3) Impact upon other *CareerTech* ~~programs offerings~~;
  - (4) Availability of similar programs and/or career majors;
  - (5) Facilities and equipment;
  - (6) Program or career major priority; and,
  - (7) Availability of funds.
- (c) **Contract for *CareerTech* programs or career majors.**
- (1) **Description.** All comprehensive school districts approved by the State Board to receive reimbursement for *CareerTech* secondary ~~and full-time adult~~ programs and/or career majors must submit the signed "Contract for Secondary ~~and Full-Time Adult~~ *CareerTech* Programs," which includes a listing of programs and/or career majors being funded. Approval and return of the contract and the Salary and Teaching Schedule, as indicated in (3) below, by the school district to the Department indicates the school district's willingness to comply with all terms set forth in the contract.
  - (2) **Contract dates.** The "Contract for Secondary ~~and Full-Time Adult~~ *CareerTech* Programs" will be mailed from the Department on or around October 1 of the current fiscal year to the superintendent of each comprehensive school district. The contract is to be presented to the local board of education for approval before being returned to the Department by the date.
  - (3) **Salary and Teaching Information Schedule.** The Salary and Teaching Schedule is a part of the contract for *CareerTech* programs for comprehensive school districts, ~~technology centers, and other recipients~~ Comprehensive schools must complete and return the "Salary and Teaching Schedule" for each *CareerTech* ~~teacher-instructional position~~ in the ~~school~~-district. The form must be completed to indicate teaching schedule, OCAS class codes, numbers of students enrolled, teacher salary, beginning and ending date of employment, and expiration date of teacher's certificate. The ~~form~~ "Salary and Teaching Schedule" must be signed by the appropriate individuals and returned to the Department by September 30 before any funding can be provided. Technology centers will submit salary information to the Department by October 15.

**780:10-7-3. Standard; accreditation; review**

- (a) **Minimum standards.**
- (1) **Establishment; ~~program~~ funding.** As appropriate, Minimum minimum standards shall be established by the State Board for postsecondary and secondary *CareerTech* programs, career majors and/or courses. These standards shall be comprehensive, reflecting state and federal mandates as they relate to quality *CareerTech* education. ~~Program funding~~ Funding approval is contingent upon ~~programs~~ meeting minimum standards or making satisfactory progress toward meeting those standards.

(2) **Standards.** ~~Program standards~~ Standards shall include the following:

- (A) STANDARD I-Instructional Planning and Organization
- (B) STANDARD II-Instructional Materials Utilization
- (C) STANDARD III-Qualified Instructional Personnel
- (D) STANDARD IV-Enrollment and Student-Teacher Ratio
- (E) STANDARD V-Equipment and Supplies
- (F) STANDARD VI-Instructional Facilities
- (G) STANDARD VII-Safety Training and Practices
- (H) STANDARD VIII-Advisory Committee and Community Relations
- (I) STANDARD IX-Leadership Development
- (J) STANDARD X-Coordination Activities (excluded in Technology Education, TechConnect and most Skills Centers programs)
- (K) STANDARD XI-Student Accounting and Reports

(3) **Revisions.** The standards are revised periodically based upon input from appropriate sources and relevant data regarding factors that influence student learning and the quality of *CareerTech* ~~programs~~ education. Any such revisions will be taken to the State Board for approval.

(4) **Dissemination.** The standards will be disseminated to *CareerTech* personnel throughout the state. ~~Results of program evaluations~~ Evaluation results will be considered in the processes of planning and funding programs.

(5) **Program Evaluation and Improvement.** Each instructor shall annually review the progress of the program or career major based on the accountability measures developed as required by P. L. 109-270 which include:

- (A) Student attainment of challenging State established academic and technical skill proficiencies.
- (B) Student attainment of a secondary school diploma or its recognized equivalent, a proficiency credential in conjunction with a secondary school diploma, or a postsecondary degree or credential.
- (C) Placement in, retention in, and completion of postsecondary education or advanced training, placement in military service, or placement or retention in employment.
- (D) Student participation in and completion of career and technology (vocational and technical) education programs or career majors that lead to nontraditional training and employment.

(6) **Monitoring.** Programs, courses or career majors not meeting minimum standards will be monitored on an annual basis. If a technology center, skills center or comprehensive school has programs, career majors, courses and/or services not meeting evaluation standards, an annual status report addressing completed and/or pending corrective actions will be submitted to the Accreditation Division for review no later than the last Friday in March.

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During the month of April, the Accreditation Division will notify the school in writing whether the status report was approved or disapproved.

- (7) **Technical assistance.** The Department staff will provide technical assistance to help *CareerTech* programs, courses and/or career majors meet the standards established by the State Board and other accrediting agencies.
- (b) **Postsecondary accreditation.**
- (1) **Approval/accreditation agency.** For the purpose of determining eligibility for federal student financial assistance programs administered by the U.S. Department of Education, the Oklahoma State Board of Career and Technology Education is recognized by the United States Secretary of Education for the approval/accreditation of all public postsecondary *CareerTech* institutions and programs, courses and career majors that are not offered for college credit or under jurisdiction of the Oklahoma State Regents for Higher Education.
- (2) **Adopted procedures.** Schools seeking and maintaining postsecondary approval/accreditation status shall follow the State Board's adopted procedures as prescribed in the publication **Approval, Evaluation and Accreditation Procedures for Schools with Postsecondary Programs—Technology Centers**. This publication shall be made available to interested parties from the Accreditation Division of the Department.
- (3) **Noncompliance of corrective action plan.** The State Board shall have the authority to assume the administration and supervision of any technology center that after being placed on "Probationary Accreditation Status" continues to be in noncompliance of the corrective action plan as approved by the State Board.
- (c) **Secondary evaluation.** Substandard secondary *CareerTech* education programs or career majors shall be formally evaluated, utilizing minimum program or career major standards, as adopted by the State Board.
- (d) **Review of substandard programs or career majors.**
- (1) **Probationary status.** A *CareerTech* program or career major may be placed on a probationary status if:
- (A) The program or career major fails to meet ~~program~~ standards and the deficiencies are documented in writing as a result of a ~~program~~ visit or a team evaluation, and/or
- (B) The program or career major does not meet the specifications as outlined in the **Rules for Career and Technology Education**.
- (2) **Written notification.** Written notification of probationary status that identifies the deficiencies and outlines recommended steps for ~~program~~ improvement shall be given to the school administration.
- (3) **Reevaluation.** A program or a career major on probationary status shall be reevaluated within one year.
- (A) **Removal of probation.** If the documented deficiencies have been corrected upon reevaluation, the probationary status shall be removed.
- (B) **Reevaluation failure.** If the program in a comprehensive school has failed to make improvement on documented deficiencies upon reevaluation,

a report shall be made in writing to the division's appropriate Associate State Director ~~of Educational Services Department~~ and the program may be recommended for ~~program~~ closure or reduction in funding for the following school year. If the career major in a technology center has failed to make improvement on documented deficiencies upon reevaluation, a report shall be made in writing to the Associate State Director of Field Services.

(i) **Written notification; appeal.** The division's appropriate Associate State Director ~~of Educational Services Department~~ will notify, in writing, the superintendent of the comprehensive school in which the program, instructional position or career major is located that the Department is recommending closure or reduction in funding for the program or career major for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program or career major improvement. The Associate State Director of Field Services will notify, in writing, the superintendent of the technology center in which the career major is located that the Department is recommending a reduction in funding for the instructional position for the following school year. An appeal process will be included for those superintendents who can show evidence of projected program or career major improvement.

(ii) **Recommended program and/or career major closures.** The division's appropriate Associate State Director ~~of Educational Services~~ will make a presentation of recommended program closures, if any, in comprehensive schools for State Board approval at the March board meeting. The Associate State Director of Field Services will make a presentation of recommended career major closures, if any, in technology centers for State Board approval at the March board meeting.

(e) **Evaluation of recipients receiving federal funds.** Programs or career majors of eligible recipients receiving federal funds under P. L. 109-270 shall be evaluated annually. Such contracts and agreements shall be in accordance with state and federal laws.

[OAR Docket #09-1079; filed 5-26-09]

## TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. TECHNOLOGY CENTERS

[OAR Docket #09-1080]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

Subchapter 3. Technology Centers Education

780:15-3-2 [AMENDED]

780:15-3-3 [AMENDED]

780:15-3-7 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Career and Technology Education; 70 O.S. Supp. 2008, §§ 5-110 and 5-110.1, §§ 14-102.1 and 14-103, as amended.

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Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2009

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n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**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, 2009:**

**SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION**

**780:15-3-2. Establishment/Sustainment 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

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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 a 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) **State Board approval of sites and branch campuses.** The State Board shall approve the location of a site for an official campus of a technology center district. If the campus is able to provide a minimum of five full-time programs, then it may be recognized as an official campus and will be eligible for funding under a formula approved by the State Board. 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 *CareerTech* programs, district valuation, student enumeration, and local industry needs.

(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 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 be held within 180 days after the original election for the purpose of voting again on an operational levy. A second election must be

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requested by the technology center board and approved by the State Board.

(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 instruction. 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 instruction continuously and bring about changes and improvements that will ensure that students will obtain the skills and knowledge for which instruction is being provided. 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's credential. 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 by the State Department of Education. Second, the technology center superintendent shall have had at least five years of experience as a Career Tech teacher, supervisor, or administrator. Third, the technology center superintendent shall hold a valid Oklahoma *CareerTech* teaching certificate. Fourth,

the technology center superintendent shall have a Technology Center Administrator's Credential.

(3) **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.

(4) **Technology Center 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's Credential as provided for above in 780:15-3-2(k)(2) & (3) of the rules and regulations governing technology centers.

(A) **Standard Technology Center Administrator's Credential.** A person who has a superintendent's certificate or a secondary principal's certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator and has a valid Oklahoma *CareerTech* teaching certificate shall be issued a standard technology center administrator's credential.

(B) **Provisional technology center administrator's credential.** A person with a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate and at least five years of experience as a CareerTech teacher, supervisor, or administrator and without a valid Oklahoma *CareerTech* 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 eight semester hours specified below to meet 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 certificate 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 to meet the requirements for a standard technology center administrator's credential. 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:

- (i) History and Philosophy of Career and Technology Education;
- (ii) Technology Center Finance;
- (iii) Curriculum for Career and Technology Education; and,

- (iv) Career and Technology Education Program Planning Development and Evaluation.
- (5) **Requirements for first-year technology center superintendents.** The State Board of Career and Technology Education reaffirms its commitment to provide support and services to new technology center superintendents in Oklahoma. To assist first-year technology center superintendents in the state in providing their respective districts with maximum leadership, effective management, and strong educational programs, the following professional development requirements shall be met by each technology center superintendent employed for the first time in the state of Oklahoma as a technology center superintendent:
- (A) Meet qualifications for the Provisional or Standard School Superintendent Certificate.
- (B) Meet qualifications for the Provisional or Standard Technology Center Administrator's Credential.
- (C) Attend professional development workshops or training seminars equal to eleven days (66 hours) of training:
- (i) 1 day: Attend a meeting of the State Board of Career and Technology Education and a board meeting at a technology center where the first-year technology center superintendent is not currently employed
- (ii) 2 days: Attend the Annual CareerTech Summer Conference
- (iii) 2 days: Attend the Annual Technology Center Superintendents June Workshop
- (iv) 6 days: Attend professional development workshops or training in the following general areas:
- (I) Superintendent/Board of Education Relationships
- (II) Legal Issues/School Law/Open Meeting Laws
- (III) Staff Relationships/Due Process
- (IV) Community and Industry Relationships
- (V) Technology Center Finance
- (VI) Plant Management/School Facilities
- (VII) Setting School District Site Goals/Strategic Planning/Planning and Implementing Continuous Improvement Strategies for Schools
- (VIII) Individuals with Disabilities Act (IDEA)
- (D) After July 1, 2009, the Technology Center Services Division of the Department will provide and/or coordinate, approve and document professional development workshops and/or training seminars for first-year technology center superintendents. If content and method of delivery is approved by the Technology Center Services Division prior to a first-year technology center superintendent participating in training, a first-year technology center superintendent may complete some of the training

requirements by IETV, on-line training, webinars, or similar methods of delivery. To maintain certificate validity for second-year technology center superintendents, the Technology Center Services Division will provide to first-year technology center superintendents and the Oklahoma State Department of Education a report showing training completed by first-year technology center superintendents. The Technology Center Services Division will continue to consult with the Oklahoma State Department of Education regarding emerging issues that in the future may need to be integrated into first-year technology center superintendent training.

- (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) **Approval of capital improvement projects.** After local board approval, all plans and specifications for technology center buildings, additions, including parking lots and modifications designed for *CareerTech* programs and/or services shall be reviewed by appropriate staff of the Oklahoma Department of Career and Technology Education and shall be approved by the technology center services division of the Oklahoma Department of Career and Technology Education. In addition all capital improvement projects must comply with local building codes and be reviewed by the local and/or state fire marshal and the State Department of Education.
- (n) **State Board approval of capital improvement projects.** The board of education of a technology center district may, without prior approval of the State Board of Career and Technology Education, approve all plans and specifications for technology center school buildings, additions, and major modifications to school buildings that are designed to provide for the offering of *CareerTech* education and services when the cost of the building project is to be paid with local levies or state bond monies or both local levies and state bond monies. (70 O.S. 2001, Section 14-108, as amended.) The State Board must grant prior approval of all plans and specifications for technology center school buildings, additions, and modifications to school buildings that are designed to provide for the offering of *CareerTech* education and services when the cost of the building project is to be paid with state appropriated funds, which includes projects funded with monies from the Educational Lottery Trust Fund, or both local levies and state appropriated funds.
- (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

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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 2008~~, §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. 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. 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. 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. 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. 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.

(i) Education and training requirements. Technology Center Board members are required to complete training requirements specified in Sections 5-110 and 5-110.1 of Title 70 of the Oklahoma Statutes. The Department is authorized to provide new, incumbent, and continuing education workshop and training so technology center board members and the State Board of Career and Technology Education members have the opportunity to complete the training that is required by statute. The training may be conducted and/or coordinated by the Department or by an outside entity that has been approved by the Department and has contracted with the Department and/or agreed to provide the training. The Department shall provide each technology center school district board of education member and State Board of Career and Technology Education member with a training status report at least twice a year. If resources are available, the Technology Center Services Division may post training status reports on a web page that is accessible only to appropriate individuals.

(j) Workshops and training seminars. The Technology Center Services Division of the Department will provide and/or coordinate, approve and document professional development workshops and/or training seminars for technology center board members and State Board of Career and Technology Education Board members. If content and method of delivery is approved by the Technology Center Services Division prior to a board member participating in training, a board member may complete some of the training requirements by participating in IETV, on-line training, webinars or similar methods of delivery.

### 780:15-3-7. Special provisions

(a) **Sex discrimination.** It shall be the responsibility of the board of education of the technology center district to review and conform to all regulations that prohibit sex discrimination. *No person in the United States shall on the basis of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance* [Public Law

92-318, Title IX, Sec. 901 (A)]. Any reference to discriminatory language or practices relative to race, creed, or national origin should be deleted.

(b) **Basic education.** No technology center district shall be required to provide any training or instruction that is independent of career and/or technology education. However, foundational and contextual academic education should be provided to persons in order to bring them up to a level at which they may successfully complete the course or Career Major in which they are enrolled.

(c) **Education and Services in other districts.** No technology center district shall offer *CareerTech* education and/or services to any entities inside another technology center district without prior approval of that district. If there is a Reciprocity Agreement between technology center districts, the provisions of the Reciprocity Agreement shall be followed. Territory not presently a part of any technology center district may be served by a technology center district in accordance with the policy and procedures approved by the State Board.

(d) **Agreements between technology center and two-year colleges.** Cooperative Agreements negotiated between technology centers and colleges, which would permit post-secondary students to receive college credit for *CareerTech* courses offered at the technology center, shall be approved by the State Board. The merits of each request will be evaluated by the following criteria:

- (1) Increased utilization of existing resources;
- (2) Increased student access to additional educational options;
- (3) Continued credibility of the instruction offered at both institutions;
- (4) Increased student employability; and,
- (5) Consistency with goals and objectives of *CareerTech* education in Oklahoma.

(e) **Live Work Policy.** The live work policy adopted by the State Board of Career and Technology Education in February 2004 shall be incorporated into all technology center policies and procedures. Live work is work performed by students in a laboratory, classroom, shop, or in a field setting under written contract and under the direction of the instructor. The process by which all live work projects will be approved should be outlined in the live work policy. Live work projects should be chosen on the basis of merit in relation to the instructional objectives as well as the determined value of the project to allow students to achieve a desired level of competency. Superintendents, Deputy Superintendents, Assistant Superintendents and local board members shall be ineligible from utilizing live work services. These projects are not to replace other learning activities, nor to compete with other organizations within the district, but are to complement them. These projects will allow students to experience situations not easily duplicated in a lab or classroom, and at little or no cost to the school. Documentation for each live work project will be maintained by the technology center and will contain pre-numbered live work tickets, authorization signatures, signature of the project owner, estimated amount, amount paid or deposited, scope of the work, estimated completion date, and record of all materials and parts purchased. Live work accounts shall be

paid in full upon the completion of the project. The list of live work projects may be reviewed at any time by the ODCTE audit/review staff or others as designated by the State Director of Career and Technology Education. All records of live work projects will be maintained by the technology center for at least three (3) fiscal years following the most recent technology center financial audit. The following policy should be incorporated into all technology center policies and procedures. The policies developed by the technology centers will become items for review during all standard accreditation visits or audit/reviews conducted by the Oklahoma Department of Career and Technology Education.

(f) **Technology Center Code of Ethics Guidelines.** Each technology center will ensure that its district policies and procedures comply with the guidelines for the Technology Center Code of Ethics approved by the State Board of Career and Technology Education in April 2004. Technology center district boards may add any other provisions to these guidelines with discretion. Policies and procedures shall be developed by each technology center board for reporting and resolving alleged violations. The policies developed by the technology centers will become items for review during all standard accreditation visits or audit/reviews conducted by the Oklahoma Department of Career and Technology Education. The guidelines for the Technology Center Code of Ethics are:

(A) **Focus on the success of students and clients as the fundamental value upon which all decisions are made.** Provide a safe, supportive environment to include up-to-date facilities, equipment, instructional materials, and methods, as well as other appropriate student services to enhance the educational experience and enable all students to achieve their full potential for success. Ensure that all instructors are appropriately qualified to provide a high level of instruction to enable students to obtain realistic training and education for successful career and workplace readiness.

(B) **Acknowledge that the System is accountable to the taxpayers and patrons of the local district and the State of Oklahoma.** The district will compile and make available an annual report or profile that identifies the standards by which the district measures program success. A copy of this report will also be published on the district website. The annual report or profile may measure standards such as teacher qualifications, revenue, expenditures, cost per student, economic impact of education and services, completion rates, sending school service rate, placement of completers, percentage of completers who attain an industry-recognized state or national licensure or certification, etc.

(C) **Understand that the role of the board of education is to set policy and direction for the school district, and the role of the administration and staff is to implement the policies of the board in a fair and consistent manner.** The district will maintain and enforce an up-to-date manual of Policies and Procedures. The district will utilize a strategic

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planning process that will include, at a minimum, the following components: core values and beliefs, vision statement, mission statement, and strategic goals. Adoption of policies not in conformity with the administrator's recommendations or beliefs is not just cause for refusal by the administration to support and implement those policies. Administration must be impartial in the execution of the school policies and the enforcement of rules and regulations. It is a breach of ethics to give preferential consideration to any individual or group because of special status or position in the school system or the community.

(D) **Not use position or influence for any personal gain; and will avoid actions that create a conflict of interest and strive to avoid actions that might appear to create a conflict of interest.** The term "conflict of interest" describes any circumstance that could cast doubt on a person's ability to act with total objectivity with regard to the district's interest. Conflicts of interest are prohibited. It is improper for a board member or school administrator to profit financially from interest in any business which publishes, sells, manufactures, or in any way deals in goods or services which are, or may be expected to be, purchased by the school system they serve. It is a breach of public trust for a board member or administrator to use confidential information concerning schools affairs (such as the knowledge of the selection of specific school sites) for personal profit or to divulge such information to others who might profit. Although it is impossible to list all potential conflict of interest situations, the following examples represent situations where a conflict of interest could arise: A direct or indirect financial interest in any business or organization that is a district vendor or competitor, if the employee or board of education member can influence decisions with respect to the district's business. Use of any district asset for the employee's personal business advantage (examples of such assets include not only equipment, tools, and supplies, but also valuable ideas, technical data, and other confidential information). Relationships, including business, financial, personal, and family may give rise to conflicts of interest or the appearance of a conflict. Employees should carefully evaluate relationships as they relate to district business to avoid conflict or the appearance of a conflict.

(E) **Fulfill professional responsibilities with honesty and integrity.** The Board of Education, superintendent, administration, faculty, and staff will fulfill their duties and responsibilities with honesty and integrity and improve their professional effectiveness through continuing professional development. Board members will be diligent and well informed of issues surrounding Board decisions and regularly attend Board meetings.

(F) **Support the Constitutions of the State of Oklahoma and the United States of America and**

**obey all federal, state, and local laws.** Board members will uphold the Oath of Office. Professional development will be held annually for board members, superintendent, administration, faculty, and staff to learn about new laws.

(G) Encourage effective communication between the Board, the students, the staff, and all elements of the community. A communication plan will be developed to address internal and external audiences.

(H) **Improve professional effectiveness through continuing professional development.** In addition to meeting the minimum requirements for continuing education mandated by state law, board members, administration and staff have a professional obligation to attend conferences, seminars, and other learning activities that hold promise of contributing to their professional growth and development.

(g) **Rules; regulations.** In the absence or omission of specific rules and regulations pertaining to the technology center districts, the state statutes and the rules and regulations governing independent school districts will prevail.

(h) **Review of the Rules for Career and Technology Education.** The **Rules for Career and Technology Education** approved by the State Board should be reviewed in connection with developing *CareerTech* courses, Career Majors and services.

(i) **Technology Centers That Work.** The Technology Center Services Division will coordinate the Technology Centers That Work initiative to help technology centers embed college- and career-readiness academic standards into instruction and produce graduates who can succeed in postsecondary studies and careers in high-demand, high-skill, high-wage fields. The Technology Center Services Division will coordinate with the Southern Regional Educational Board and other entities to organize professional development sessions on topics such as numeracy, literacy and using data for continuous school improvement.

[OAR Docket #09-1080; filed 5-26-09]

### TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #09-1081]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 3. Secondary, Full-Time and Short-Term Adult *CareerTech* Programs

780:20-3-2 [AMENDED]

780:20-3-5 [AMENDED]

#### AUTHORITY:

Oklahoma State Board of Career and Technology Education; 70 O.S. 2001 § 14-104, as amended.

#### DATES:

##### Comment Period:

February 2, 2009 through March 23, 2009

##### Public Hearing:

March 26, 2009

Adoption: March 26, 2009
Submitted to Governor: March 30, 2009
Submitted to House: March 30, 2009
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Gubernatorial Approval: May 6, 2009
Legislative Approval: Failure of the Legislature to disapprove the rules resulted in approval on May 21, 2009
Final Adoption: May 21, 2009
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SUPERSEDED EMERGENCY ACTIONS: n/a
INCORPORATIONS BY REFERENCE: n/a
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, 2009:

SUBCHAPTER 3. SECONDARY, FULL-TIME AND SHORT-TERM ADULT CAREERTECH PROGRAMS

780:20-3-2. Programs: admissions, operations, enrollment, and length

- (a) Nondiscrimination; admission guidelines. Students shall be provided access to CareerTech 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.
(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.
(B) Family and Consumer Sciences Occupational Education.

- school students (grades 11 and 12) and/or adults to train or retrain in a specific family and consumer sciences related occupation.
(4) Health Careers Education.
(A) CareerTech health careers.
(B) Requirements for applicants.
(5) Marketing Education.
(6) Technology Engineering Education/TechConnect.
(7) Trade and Industrial Education/TechConnect Plus.
(b) Program operations.
(1) Recommendation for program approval.
(2) Program composition.

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(3) **Course titles.** *CareerTech* 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 *CareerTech* instruction class periods and one planning period for a six-period day, and six *CareerTech* 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)). For schools on non-traditional schedules, teachers shall have the equivalent of a minimum of 90 minutes per day for planning and supervision of students. 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 Engineering Education, TechConnect, Career Transitions Education, 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 Careers Education.** Teachers of Health Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on a standard six or seven-period teaching day), subject to the approval of the Health 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 *CareerTech* 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. In the case of a non-funded agriculture education program, the program must follow state policy and guidelines to remain in good standing and be able to utilize the *CareerTech* student organization, FFA.

(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 Careers Education.**

(i) **Secondary programs.** Programs in 7<sup>th</sup>, 8<sup>th</sup>, and 9<sup>th</sup> grade or high schools vary in length and may be offered in one, two or three blocks of time. 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

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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 Engineering ~~Education~~/TechConnect.**
- (i) **Program operation requirements.**
    - (I) **Program design.** The primary purpose of the Technology Engineering ~~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 Engineering ~~Education~~ /TechConnect programs are targeted for grades 9 and 10, but they may be extended an additional two years through an 11<sup>th</sup> and 12<sup>th</sup> grade TechConnect Plus program where access to advanced *CareerTech* 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 *CareerTech* preparation strategies in academic classes, Technology Engineering ~~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 Engineering ~~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 a Technology Engineering ~~Education~~/TechConnect program is the development and implementation of a comprehensive career guidance program, so Technology Engineering ~~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 Engineering ~~Education~~ /TechConnect programs shall consist of occupational instruction for two consecutive 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 *CareerTech* education, teachers of the Technology Engineering ~~Education~~ /TechConnect programs shall participate in appropriate professional improvement activities including the summer *CareerTech* conference, professional improvement meetings, and other related activities. Technology Engineering ~~Education~~ /TechConnect students shall have access to appropriate career and technology student organizations that are consistent with the related *CareerTech* programs as well as other personal development components. Technology Engineering ~~Education~~/TechConnect program enrollment numbers shall be consistent with related *CareerTech* program guidelines with particular attention given to work situations and available resources. Technology Engineering ~~Education~~ /TechConnect teacher certification shall be consistent with related *CareerTech* 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.** A six period day will require two, two-hour blocks or four

one-hour blocks with one hour of related instruction for a full time program. One two-period block or less than four one-hour period blocks will constitute a half-time program in a six period day. A seven period day will require three two-hour blocks or five one-hour blocks with one hour of related instruction for a full time program. Two two-hour blocks or less than five one-hour blocks will constitute a half-time program in a seven period day.

(IV) **Full-time teacher.** A teacher who is teaching two or more Technology Engineering Education/TechConnect classes, which are each two consecutive periods in length, or who is teaching four or more Technology Engineering Education/TechConnect classes, which are each one period in length, shall be considered as a full-time *CareerTech* teacher in a six period day. A Technology Engineering Education/TechConnect teacher may be assigned three two period or six one period *CareerTech* classes in a seven period day.

(V) **Technology Engineering Education/TechConnect program operation recommendations.** Technology Engineering 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 Engineering Education/TechConnect students. Enrollment in applied courses should be consistent with each Technology Engineering Education/TechConnect student plan of study. Enrollment in the Technology Engineering Education/TechConnect applied academic courses should not be limited to Technology Engineering Education/TechConnect students. Teachers of the applied academic courses should participate in appropriate professional improvement activities including summer *CareerTech* conference, professional improvement meetings, and other related activities. Technology Engineering 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 *CareerTech* programs. Programs shall be supervised by the appropriate occupational and Technology Engineering Education division.

(H) **Technology Engineering Education.**

(i) **Course duration.** Each technology engineering education course shall be taught in a one-period block of time (45-55 minutes).

(ii) **Curriculum.** The curriculum shall include emphasize the following technology system clusters: Architecture and Construction, Arts, A/V and communications, Information Technology, Manufacturing, Transportation, Distribution and Logistics, Agriculture, food and natural resources, Health Science and Science, Technology, Engineering & Mathematics ~~bio-tech~~. 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 Engineering 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.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. Secondary TechConnect Plus students in comprehensive high schools may be enrolled for 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

## Permanent Final Adoptions

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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.** Introduction to Agricultural Science 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-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 Careers Education.

(i) **Secondary health careers programs.** A minimum of 10 and a maximum of 18 students shall be enrolled in each section of a secondary health careers education program.

(ii) **Full-time adult health careers programs.** A minimum of 8 and a maximum of 12 students per instructor shall be enrolled in a full-time adult Health 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 25 students per marketing management teacher-coordinator. A maximum of 25 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 Engineering Education and TechConnect.** The maximum enrollment for each period of Technology Engineering 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 career transitions programs, which may have 50 students per career transitions 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.** CareerTech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

**780:20-3-5. Career and Technology Student Organizations**

(a) **Student organizations as an integral part of the CareerTech 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 CareerTech program design and operation. Each secondary CareerTech 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 Careers Education)
- (6) TSA (Technology ~~Engineering 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 CareerTech 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 #09-1081; filed 5-26-09]



# 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

**1:2009-21a.**

### AMENDED EXECUTIVE ORDER 2009-21 OF APRIL 29, 2009

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Tornadoes, severe storms and flooding beginning April 25, 2009 and continuing, have caused extensive damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this state.
2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.
3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms, and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The additional 68 counties included in this declaration are:

Adair, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cimarron, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Garvin, Grady, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kingfisher, Kiowa, Latimer, LeFlore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington and Washita

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan has been activated and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect

lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. State agencies, in responding to this continuing disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 14th day of May, 2009.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

[OAR Docket #09-955; filed 5-18-09]

**1:2009-22.**

### EXECUTIVE ORDER 2009-22

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, in recognition of Peace Officers Memorial Day, direct that appropriate steps be taken to fly all American flags and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Friday, May 15, 2009, to honor Federal, State and local officers killed or disabled in the line of duty.

## Executive Orders

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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 this 14<sup>th</sup> day of May, 2009.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #09-956; filed 5-18-09]*

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**1:2009-23.**

### EXECUTIVE ORDER 2009-23

I, Brad Henry, Governor of the State of Oklahoma, by the authority vested in me pursuant to Sections 1 and 2 of Article

VI of the Oklahoma Constitution, 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 25, 2009, 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 18th day of May 2009.

BY THE GOVERNOR OF THE  
STATE OF OKLAHOMA

Brad Henry

ATTEST:  
M. Susan Savage  
Secretary of State

*[OAR Docket #09-985; filed 5-19-09]*

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