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Submissions for Review

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

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

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 1. ORGANIZATION, OPERATIONS, PROCEDURES AND POLICIES

[OAR Docket #10-631]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:1-1-3 [AMENDED]
SUBMITTED TO GOVERNOR:
April 5, 2010
SUBMITTED TO HOUSE:
April 5, 2010
SUBMITTED TO SENATE:
April 5, 2010

[OAR Docket #10-631; filed ??-??-??]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 10. PERSONNEL

[OAR Docket #10-630]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 1. Purpose
40:10-1-1 [AMENDED]
40:10-1-2 [NEW]
40:10-1-3 [NEW]
40:10-1-4 [NEW]
40:10-1-5 [NEW]
40:10-1-7 [NEW]
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April 5, 2010

[OAR Docket #10-630; filed ??-??-??]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 15. LABORATORIES AND FACILITIES

[OAR Docket #10-632]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:15-1-2 [AMENDED]
40:15-1-3 [AMENDED]
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[OAR Docket #10-632; filed ??-??-??]

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

[OAR Docket #10-633]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:20-1-2 [AMENDED]
40:20-1-3 [AMENDED]
SUBMITTED TO GOVERNOR:
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[OAR Docket #10-633; filed ??-??-??]

TITLE 40. BOARD OF TESTS FOR ALCOHOL AND DRUG INFLUENCE CHAPTER 30. ANALYSIS OF ALCOHOL IN BREATH

[OAR Docket #10-634]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:30-1-3 [AMENDED]
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April 5, 2010

[OAR Docket #10-634; filed ??-??-??]

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

[OAR Docket #10-635]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
40:50-1-1 [AMENDED]
40:50-1-2 [AMENDED]
40:50-1-3 [AMENDED]
40:50-1-4 [AMENDED]
40:50-1-4.1 [NEW]
40:50-1-5 [AMENDED]
40:50-1-6 [AMENDED]
40:50-1-6.1 [NEW]
40:50-1-7 [AMENDED]
40:50-1-8 [AMENDED]
40:50-1-9 [AMENDED]
40:50-1-10 [AMENDED]
40:50-1-11 [AMENDED]
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April 5, 2010

[OAR Docket #10-635; filed ??-??-??]

TITLE 130. CEREBRAL PALSY COMMISSION CHAPTER 1. ORGANIZATION

[OAR Docket #10-679]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
130:1-1-2 [AMENDED]
130:1-1-7 [AMENDED]
130:1-1-14 [AMENDED]
Appendix A [REVOKED]
SUBMITTED TO GOVERNOR:
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April 1, 2010

[OAR Docket #10-679; filed ??-??-??]

TITLE 130. CEREBRAL PALSY COMMISSION CHAPTER 12. ADMINISTRATIVE PROCEDURES

[OAR Docket #10-680]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Admission
130:12-3-3 [AMENDED]
130:12-3-6 [AMENDED]
130:12-3-20 [AMENDED]
130:12-3-21 [AMENDED]
Subchapter 5. Leaving the Center
130:12-5-2 [AMENDED]
130:12-5-3 [AMENDED]
130:12-5-5 [AMENDED]
130:12-5-6 [AMENDED]
130:12-5-7 [AMENDED]
130:12-5-8 [AMENDED]
130:12-5-9 [REVOKED]
Subchapter 7. Records
130:12-7-1 [AMENDED]
130:12-7-2 [REVOKED]
Subchapter 9. Billing
130:12-9-1 [AMENDED]
SUBMITTED TO GOVERNOR:
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SUBMITTED TO SENATE
April 1, 2010

[OAR Docket #10-680; filed ??-??-??]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 13. CENTER SERVICES

[OAR Docket #10-681]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Inpatient Services
Part 1. General Provisions
130:13-3-1 [AMENDED]
130:13-3-2 [AMENDED]
130:13-3-4 [NEW]
Part 3. Daily Care Services
130:13-3-12 [AMENDED]
Part 5. Habilitation Services
130:13-3-21 [AMENDED]
Part 7. Recreational Services
130:13-3-30 [AMENDED]
130:13-3-31 [AMENDED]
130:13-3-32 [REVOKED]
130:13-3-33 [AMENDED]
130:13-3-34 [REVOKED]
130:13-3-36 [AMENDED]
Subchapter 5. Outpatient Services
130:13-5-1 [AMENDED]
Subchapter 7. Dental Services
130:13-7-1 [AMENDED]
130:13-7-2 [AMENDED]
Subchapter 9. Isolation and Disease Spread Prevention Services
130:13-9-2 [AMENDED]
Subchapter 13. Outreach and Contractual Services
130:13-13-1 [AMENDED]
130:13-13-2 [AMENDED]
Subchapter 15. Other Services
130:13-15-2 [AMENDED]
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April 1, 2010

[OAR Docket #10-681; filed ??-??-??]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 14. PATIENT BILL OF RIGHTS

[OAR Docket #10-682]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 1. General Provisions
130:14-1-5 [AMENDED]
Subchapter 3. Personal Rights
Part 1. Property
130:14-3-1 [AMENDED]
130:14-3-2 [AMENDED]
130:14-3-4 [AMENDED]
Part 3. Self
130:14-3-12 [AMENDED]
Subchapter 5. Medical Rights
130:14-5-3 [AMENDED
SUBMITTED TO GOVERNOR:
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[OAR Docket #10-682; filed ??-??-??]

TITLE 130. CEREBRAL PALSY COMMISSION
CHAPTER 15. EDUCATION [REVOKED]

[OAR Docket #10-683]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Chapter 15. Education [REVOKED]
SUBMITTED TO GOVERNOR:
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[OAR Docket #10-683; filed ??-??-??]

TITLE 135. COMMISSION ON CHILDREN AND YOUTH
CHAPTER 10. PROGRAMS, BOARDS, AND COUNCILS: OPERATION AND ADMINISTRATION

[OAR Docket #10-678]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 24. Certification of Children's Shelters Operated by the Oklahoma Department of Human Services [NEW]
135:10-24-1 [NEW]
135:10-24-2 [NEW]
135:10-24-3 [NEW]
SUBMITTED TO GOVERNOR:
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[OAR Docket #10-678; filed ??-??-??]

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

[OAR Docket #10-598]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 7. Individual Proceedings
535:1-7-3. Hearings [AMENDED]
535:1-7-6. Hearing records and record maintenance [AMENDED]
535:1-7-7. Final orders [AMENDED]
535:1-7-8. Appeal [AMENDED]
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-3. Practical experience licenses and certificates [AMENDED]
535:1-11-4. Other fees ~~Public access, open records~~ [AMENDED]
535:1-11-5. Miscellaneous [AMENDED]
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[OAR Docket #10-598; filed ??-??-??]

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

[OAR Docket #10-600]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 7. Individual Proceedings
535:1-7-3. Hearings [AMENDED]
535:1-7-6. Hearing records and record maintenance [AMENDED]
535:1-7-7. Final orders [AMENDED]
535:1-7-8. Appeal [AMENDED]
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-3. Practical experience licenses and certificates [AMENDED]
535:1-11-4. Other fees ~~Public access, open records~~ [AMENDED]
535:1-11-5. Miscellaneous **[AMENDED]**
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March 12, 2010
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March 12, 2010
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March 12, 2010

[OAR Docket #10-600; filed ??-??-??]

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

[OAR Docket #10-601]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Pharmacists
535:10-3-1.2. Violations of professional conduct [AMENDED]
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-3. Intern requirements; licenses [AMENDED]
535:10-5-4. Intern practice requirements [AMENDED]
535:10-5-8. Preceptor requirements [AMENDED]

535:10-5-9. Training area requirements [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-4. General requirements for pharmacist licensure applicants [AMENDED]
535:10-7-10. Pharmacist reinstatement [AMENDED]

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[OAR Docket #10-601; filed ??-??-??]

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

[OAR Docket #10-603]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review

PROPOSED RULES:
Subchapter 3. Pharmacists
535:10-3-1.2. Violations of professional conduct [AMENDED]
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-3. Intern requirements; licenses [AMENDED]
535:10-5-4. Intern practice requirements [AMENDED]
535:10-5-8. Preceptor requirements [AMENDED]
535:10-5-9. Training area requirements [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-4. General requirements for pharmacist licensure applicants [AMENDED]
535:10-7-10. Pharmacist reinstatement [AMENDED]

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[OAR Docket #10-603; filed ??-??-??]

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

[OAR Docket #10-605]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review

PROPOSED RULES:
Subchapter 9. Pharmaceutical Care
535:10-9-4. Purpose [AMENDED]
535:10-9-4.1. Definitions [NEW]
535:10-9-5. Agreements [AMENDED]
535:10-9-6. Minimum requirements for collaborative medication therapy management agreement(s) [NEW]
535:10-9-7. Collaborative medication therapy management process [NEW]
535:10-9-8. Collaborative medication therapy management authorization requirement [NEW]
535:10-9-12. Unauthorized practice [NEW]

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[OAR Docket #10-605; filed ??-??-??]

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

[OAR Docket #10-607]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review

PROPOSED RULES:
Subchapter 9. Pharmaceutical Care
535:10-9-4. Purpose [AMENDED]
535:10-9-4.1. Definitions [NEW]
535:10-9-5. Agreements [AMENDED]
535:10-9-6. Minimum requirements for collaborative medication therapy management agreement(s) [NEW]
535:10-9-7. Collaborative medication therapy management process [NEW]
535:10-9-8. Collaborative medication therapy management authorization requirement [NEW]
535:10-9-12. Unauthorized practice [NEW]

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March 12, 2010

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[OAR Docket #10-607; filed ??-??-??]

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

[OAR Docket #10-608]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 4. Remote Medication Order Procesing (RMOP) for Hospitals and RMOP Pharmacy [NEW]
535:15-4-1. Purpose [NEW]
535:15-4-2. Definitions [NEW]
535:15-4-3. Registration [NEW]
535:15-4-4. Staffing requirements [NEW]
535:15-4-5. Responsibilities and duties of RMOP pharmacies, pharmacist managers [pharmacist in charge (PIC)] [NEW]
535:15-4-6. Governing body [NEW]
535:15-4-7. Unlawful acts and violations [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-19. Remote medication order processing (RMOP) [NEW]
Subchapter 6. Hospital Drug Rooms
535:15-6-2. Definitions [AMENDED]
535:15-6-20. Remote medication order processing (RMOP) [NEW]
SUBMITTED TO GOVERNOR:
April 1, 2010
SUBMITTED TO HOUSE:
April 1, 2010
SUBMITTED TO SENATE:
April 1, 2010

[OAR Docket #10-608; filed ??-??-??]

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

[OAR Docket #10-610]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 4. Remote Medication Order Procesing (RMOP) for Hospitals and RMOP Pharmacy [NEW]
535:15-4-1. Purpose [NEW]
535:15-4-2. Definitions [NEW]
535:15-4-3. Registration [NEW]
535:15-4-4. Staffing requirements [NEW]
535:15-4-5. Responsibilities and duties of RMOP pharmacies, pharmacist managers [pharmacist in charge (PIC)] [NEW]
535:15-4-6. Governing body [NEW]
535:15-4-7. Unlawful acts and violations [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-19. Remote medication order processing (RMOP) [NEW]
Subchapter 6. Hospital Drug Rooms
535:15-6-2. Definitions [AMENDED]
535:15-6-20. Remote medication order processing (RMOP) [NEW]
SUBMITTED TO GOVERNOR:
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[OAR Docket #10-610; filed ??-??-??]

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

[OAR Docket #10-612]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 1. General Provisions
535:15-1-1. Purpose [AMENDED]
Subchapter 3. Pharmacies
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-4. Physical requirements for pharmacies [AMENDED]
535:15-3-9. Non-resident pharmacies [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-3. Applicability [AMENDED]
535:15-5-4. Registration [AMENDED]
535:15-5-10. Director of pharmacy responsibilities [AMENDED]
Subchapter 6. Hospital Drug Rooms
535:15-6-1. Purpose [AMENDED]
535:15-6-5. Drug room and PIC responsibilities and duties [AMENDED]
Subchapter 9. Parenteral Pharmacy Permits
535:15-9-6. Parenteral pharmacy physical requirements [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-5. Supervision of pharmacy technicians [NEW]
535:15-13-8. Technician annual permit requirement [NEW]
SUBMITTED TO GOVERNOR:
March 12, 2010
SUBMITTED TO HOUSE:
March 12, 2010

SUBMITTED TO SENATE:
March 12, 2010

[OAR Docket #10-612; filed ??-??-??]

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

[OAR Docket #10-613]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 4. Remote Medication Order Procesing (RMOP) for Hospitals and RMOP Pharmacy [NEW]
535:15-4-1. Purpose [NEW]
535:15-4-2. Definitions [NEW]
535:15-4-3. Registration [NEW]
535:15-4-4. Staffing requirements [NEW]
535:15-4-5. Responsibilities and duties of RMOP pharmacies, pharmacist managers [pharmacist in charge (PIC)] [NEW]
535:15-4-6. Governing body [NEW]
535:15-4-7. Unlawful acts and violations [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-19. Remote medication order processing (RMOP) [NEW]
Subchapter 6. Hospital Drug Rooms
535:15-6-2. Definitions [AMENDED]
535:15-6-20. Remote medication order processing (RMOP) [NEW]
SUBMITTED TO GOVERNOR:
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[OAR Docket #10-613; filed ??-??-??]

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

[OAR Docket #10-614]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Manufacturers
535:20-3-6.3. Security [AMENDED]
Subchapter 5. Packagers
535:20-5-6.3. Security [AMENDED
Subchapter 7. Wholesalers and Pedigree Rules
535:20-7-7.3. Security and anti-counterfeiting [AMENDED]
535:20-7-9.1. Prohibited conduct [AMENDED]
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-3. Medical gas suppliers [AMENDED]
535:20-9-4. Medical gas distributors [AMENDED]
SUBMITTED TO GOVERNOR:
April 1, 2010
SUBMITTED TO HOUSE:
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[OAR Docket #10-614; filed ??-??-??]

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

[OAR Docket #10-616]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Manufacturers
535:20-3-6.3. Security [AMENDED]
Subchapter 5. Packagers
535:20-5-6.3. Security [AMENDED
Subchapter 7. Wholesalers and Pedigree Rules
535:20-7-7.3. Security and anti-counterfeiting [AMENDED]
535:20-7-9.1. Prohibited conduct [AMENDED]
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-3. Medical gas suppliers [AMENDED]
535:20-9-4. Medical gas distributors [AMENDED]
SUBMITTED TO GOVERNOR:
March 12, 2010
SUBMITTED TO HOUSE:
March 12, 2010
SUBMITTED TO SENATE:
March 12, 2010

[OAR Docket #10-616; filed ??-??-??]

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

[OAR Docket #10-617]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Applicants, Registrants and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
Subchapter 9. Violation of the Rules of Registrant Conduct
535:25-9-8. Failure to maintain effective controls [AMENDED]
SUBMITTED TO GOVERNOR:
April 1, 2010
SUBMITTED TO HOUSE:
April 1, 2010
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April 1, 2010

[OAR Docket #10-617; filed ??-??-??]

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

[OAR Docket #10-619]

RULEMAKING ACTION:
Statement of gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Applicants, Registrants and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
Subchapter 9. Violation of the Rules of Registrant Conduct
535:25-9-8. Failure to maintain effective controls [AMENDED]
SUBMITTED TO GOVERNOR:
March 12, 2010
SUBMITTED TO HOUSE:
March 12, 2010
SUBMITTED TO SENATE:
March 12, 2010

[OAR Docket #10-619; filed ??-??-??]

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

[OAR Docket #10-625]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
630:15-1-14 [AMENDED]
SUBMITTED TO GOVERNOR:
April 1, 2010
SUBMITTED TO HOUSE:
April 1, 2010
SUBMITTED TO SENATE:
April 1, 2010

[OAR Docket #10-625; filed ??-??-??]

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

[OAR Docket #10-627]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Purpose
140:10-1-2 [AMENDED]
Subchapter 3. Application, Examination and Licensing
140:10-3-1 [AMENDED]
140:10-3-3 [AMENDED]
140:10-3-5 [AMENDED]
Subchapter 5. Procedures for Renewal License
140:10-5-1 [AMENDED]
140:10-5-3 [AMENDED]
Subchapter 8. Administrative Fees
140:10-8-1 [AMENDED]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-627; filed ??-??-??]

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

[OAR Docket #10-628]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 11. Homeopathy
140:15-11-1 [AMENDED]
Subchapter 12. Naturopathy
140:15-12-1 [AMENDED]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-628; filed ??-??-??]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES

[OAR Docket #10-646]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Scope and Applicability
340:25-1-1.1 [AMENDED]
340:25-1-2 [AMENDED]
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340:25-5-66 through 340:25-5-67 [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-110.1 [AMENDED]
340:25-5-133 [AMENDED]
Part 17. Past Support
340:25-5-140 [AMENDED]
Part 19. Locate Services
340:25-5-155 [AMENDED]
Part 20. Medical Support
340:25-5-168 through 340:25-5-171 [AMENDED]
Part 21. Establishment
340:25-5-176 [AMENDED]
340:25-5-178 [AMENDED]
Part 22. Review and Modification
340:25-5-198.1 through 340:25-5-198.2 [AMENDED]
Part 23. Enforcement
340:25-5-211.1 through 340:25-5-212 [AMENDED]
Part 37. Recovery
340:25-5-305 [AMENDED]
Part 38. IV-D and Non-IV-D Central Case Registry Information
340:25-5-340 through 340:25-5-340.1 [AMENDED]
Part 39. Accounting and Distribution
340:25-5-351 [AMENDED]
(Reference APA WFs 09-09, 09-17, 09-25)
GUBERNATORIAL APPROVAL:
March 26, 2010

[OAR Docket #10-646; filed ??-??-??]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-591]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
365:1-1-4.1. Fees [AMENDED]
Subchapter 7. Hearings
365:1-7-9. Hearing procedure - emergency actions [AMENDED]
Subchapter 9. Description of Forms and Instructions
365:1-9-5. Surplus lines forms [AMENDED]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-591; filed ??-??-??]

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

[OAR Docket #10-592]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
Part 1. General Provisions
365:10-1-14. Notice of withdrawal or discontinuance of writing [NEW]
Subchapter 5. Minimum Standards; Contract Guidelines
Part 1. Minimum Standards and Benefits for Accident and Health Insurance
365:10-5-9. Disclosure of reasonable charge determination [NEW]
Part 5. Long-Term Care Insurance
365:10-5-45.1. Reporting requirements [AMENDED]
365:10-5-55. Availability of new services or providers [AMENDED]
Part 17. Actuarial Opinion and Memorandum Regulation
365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis [AMENDED]
Subchapter 15. Utilization Review Regulations
365:10-15-2. Private review agents [AMENDED]
Subchapter 17. Valuation of Life Insurance Policies Regulation (Including the Introduction and Use of New Select Mortality Factors)
365:10-17-4. General calculation requirements for basic reserves and premium deficiency reserves [AMENDED]
Subchapter 25. Regulation Permitting the Recognition of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities
365:10-25-4. 2001 CSO Preferred Class Structure Table [AMENDED]
365:10-25-5. Conditions [AMENDED]
Appendix CC. Long-Term Care Insurance Claims Denial Reporting Form [REVOKED]
Appendix CC. Long-Term Care Insurance Claims Denial Reporting Form [NEW]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-592; filed ??-??-??]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #10-593]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
365:15-1-18. Withdrawal or discontinue writing [AMENDED]
365:15-1-22. Processing fee for affidavit of exempt status [REVOKED]
Subchapter 7. Property and Casualty Competitive Loss Cost Rating Regulations
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-7-16. Statistical plans [AMENDED]
365:15-7-31. Withdrawal or discontinue writing [AMENDED]
365:15-7-32. Use of "a" rates [AMENDED]
Subchapter 9. Medical Professional Liability Rate Setting
365:15-9-3. Notice to policyholders [AMENDED]
365:15-9-10. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-9-18. Statistical plans [AMENDED]
365:15-9-22. Withdrawal or discontinue writing [NEW]
Appendix D. Format for Notification to Policyholders of Application for Rate Change [REVOKED]
Appendix D. Format for Notification to Policyholders of Application for Rate Change [NEW]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-593; filed ??-??-??]

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

[OAR Docket #10-594]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Producers, Brokers, Limited Lines Producers and Vehicle Protection Product Warrantors
365:25-3-1.2. Provisional producer licensees [AMENDED]
365:25-3-14. Insurance adjusters continuing education [AMENDED]
365:25-3-15. Variable annuity licensing [AMENDED]
365:25-3-16. Examination exemptions [AMENDED]
365:25-3-21. Training and education requirements for the sale of annuities [NEW]
Subchapter 5. Bail Bondsmen
Part 5. General Provisions Pertaining to Bail Bondsmen
365:25-5-39. Affidavit as to undertaking [AMENDED]
365:25-5-40. Computation of time in 59 O.S. § 1332 [AMENDED]
365:25-5-44. Notice of return to custody [NEW]
Part 7. Specific Financial Circumstances Warranting Release of Professional Deposit [NEW]
365:25-5-50. Authority and scope [NEW]
365:25-5-51. Specific financial circumstances enumerated [NEW]
365:25-5-52. Time governing release of professional deposit [NEW]
365:25-5-53. Limitations upon release of professional deposit below applicable limits [NEW]
365:25-5-54. Review of bail bondsmen's administrative history before release of professional deposit [NEW]
365:25-5-55. Denial of request if bail bondsman has prior forfeitures [NEW]
365:25-5-56. Limits on outstanding liabilities [NEW]
365: 25-5-57. Commissioner discretion to release amount less than requested [NEW]
365:25-5-58. Approval of final order by Commissioner [NEW]
Subchapter 9. Prepaid Funeral Benefits
365:25-9-3. Forms [AMENDED]
Appendix C. Application for Original Permit [NEW]
Appendix M. Application for Renewal of Permit [NEW]
Appendix X. Sellers Notice to the Insurance Commissioner [NEW]
Appendix Y. Assumption Affidavit [NEW]

GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-594; filed ??-??-??]

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

[OAR Docket #10-595]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Holding Company System
Part 3. Holding Company System
365:40-3-14. Prior approval pursuant to 36 O.S. § 6903(C) [AMENDED]
Subchapter 5. Life, Accident & Health Division and Consumer Assistance and Claims Division Rules
Part 1. General Provisions
365:40-5-2. Form filings [NEW]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-595; filed ??-??-??]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 45. HEALTH CARE FOR OKLAHOMANS REGULATION

[OAR Docket #10-596]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Plan Requirements [NEW]
365: 45-1-1. Standard health benefit plan requirements [NEW]
365:45-1-2. Standard health benefit plan disclosure requirements [NEW]
Subchapter 3. Product Certification Requirements [NEW]
365:45-3-1. Certification of insurance programs for recommendation by the Health Care for the Uninsured Board [NEW]
Subchapter 5. Producer Education Requirements [NEW]
365:45-5-1. Training and education requirements for producers to market Health Care for the Uninsured Board (HUB) certified products [NEW]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-596; filed ??-??-??]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-648]

RULEMAKING ACTION:
Gubernatorial approval of permanent rule
RULES:
Subchapter 3. Board Organization and Administration
505: 1-3-9[AMENDED]
GUBERNATORIAL APPROVAL:
February 4, 2010

[OAR Docket #10-648; filed ??-??-??]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 10. LICENSURE AND REGULATION OF OPTOMETRISTS

[OAR Docket #10-649]

RULEMAKING ACTION:
Gubernatorial approval of permanent rule
RULES:
Subchapter 3. Licensing Procedures
505: 10-3-6 [NEW]
GUBERNATORIAL APPROVAL:
February 4, 2010

[OAR Docket #10-649; filed ??-??-??]

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

[OAR Docket #10-597]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
605:10-1-2. Definitions [AMENDED]
Subchapter 3. Education and Examination Requirements
605:10-3-2. Application for license [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]
605:10-5-1.1 Approval of postlicense 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
605:10-7-1.1. Documentation required for compliance necessary to verify citizenship, qualified alien status, and eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. [AMENDED]
605:10-7-4. Request for activation or re-issuance of license [AMENDED]
605:10-7-9. Nonresident licensing [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-1. Place of business [AMENDED]
605:10-9-4. Advertising [AMENDED]
Subchapter 11. Associate's Licensing Procedures
605:10-11-2. Associates licenses [AMENDED]
Subchapter 13. Trust Account Procedures
605:10-13-1. Duty to account; broker [AMENDED]
605:10-13-2. Duty to account; associate [AMENDED]
Subchapter 17. Causes for Investigation, Hearing Process, Prohibited Acts; Discipline
605:10-17-4. Prohibited dealings [AMENDED]
605:10-17-5. Substantial misrepresentation [AMENDED]
Appendix A. Residential Property Condition Disclosure Statement [REVOKED]
Appendix A. Residential Property Condition Disclosure Statement [NEW]
GUBERNATORIAL APPROVAL:
April 5, 2010

[OAR Docket #10-597; filed ??-??-??]

TITLE 723. TOBACCO SETTLEMENT ENDOWMENT TRUST FUND
CHAPTER 1. ORGANIZATION AND PROCEDURE

[OAR Docket #10-589]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
723:1-1-1 through 723:1-1-8 [NEW]
GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-589; filed ??-??-??]

TITLE 723. TOBACCO SETTLEMENT ENDOWMENT TRUST FUND CHAPTER 10. GRANTS AND PROGRAMS

[OAR Docket #10-590]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
723:10-1-1 through 723:10-1-10 [NEW]

GUBERNATORIAL APPROVAL:
March 25, 2010

[OAR Docket #10-590; filed ??-??-??]

Withdrawn Rules

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

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

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

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

[OAR Docket #10-599]

RULEMAKING ACTION:
Withdrawal of proposed PERMANENT rulemaking.

PROPOSED RULES:
Subchapter 7. Individual Proceedings
535:1-7-3. Hearings [AMENDED]
535:1-7-6. Hearing records and record maintenance [AMENDED]
535:1-7-7. Final orders [AMENDED]
535:1-7-8. Appeal [AMENDED]
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
535:1-11-3. Practical experience licenses and certificates [AMENDED]
535:1-11-4. Other fees ~~Public access, open records~~ [AMENDED]
535:1-11-5. Miscellaneous [AMENDED]

DATES:
Adoption:
March 3, 2010
Submitted to Governor:
March 12, 2010
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Submitted to Senate:
March 12, 2010
Withdrawn:
March 30, 2010

[OAR Docket #10-599; filed ??-??-??]

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

[OAR Docket #10-602]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking

PROPOSED RULES:
Subchapter 3. Pharmacists
535:10-3-1.2. Violations of professional conduct [AMENDED]
Subchapter 5. Interns, Preceptors and Training Areas
535:10-5-3. Intern requirements; licenses [AMENDED]
535:10-5-4. Intern practice requirements [AMENDED]
535:10-5-8. Preceptor requirements [AMENDED]
535:10-5-9. Training area requirements [AMENDED]
Subchapter 7. Pharmacist Licensure
535:10-7-4. General requirements for pharmacist licensure applicants [AMENDED]
535:10-7-10. Pharmacist reinstatement [AMENDED]

DATES:
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March 3, 2010
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[OAR Docket #10-602; filed ??-??-??]

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

[OAR Docket #10-604]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking

PROPOSED RULES:
Subchapter 9. Pharmaceutical Care
535:10-9-4. Purpose [AMENDED]
535:10-9-4.1. Definitions [NEW]
535:10-9-5. Agreements [AMENDED]
535:10-9-6. Minimum requirements for collaborative medication therapy management agreement(s) [NEW]
535:10-9-7. Collaborative medication therapy management process [NEW]
535:10-9-8. Collaborative medication therapy management authorization requirement [NEW]
535:10-9-12. Unauthorized practice [NEW]

DATES:
Adopted:
March 30, 2010
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April 1, 2010
Withdrawn:
April 7, 2010

[OAR Docket #10-604; filed ??-??-??]

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

[OAR Docket #10-606]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
PROPOSED RULES:
Subchapter 9. Pharmaceutical Care
535:10-9-4. Purpose [AMENDED]
535:10-9-4.1. Definitions [NEW]
535:10-9-5. Agreements [AMENDED]
535:10-9-6. Minimum requirements for collaborative medication therapy management agreement(s) [NEW]
535:10-9-7. Collaborative medication therapy management process [NEW]
535:10-9-8. Collaborative medication therapy management authorization requirement [NEW]
535:10-9-12. Unauthorized practice [NEW]
DATES:
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[OAR Docket #10-606; filed ??-??-??]

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

[OAR Docket #10-609]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
PROPOSED RULES:
Subchapter 1. General Provisions
535:15-1-1. Purpose [AMENDED]
Subchapter 3. Pharmacies
535:15-3-2. Pharmacy responsibilities [AMENDED]
535:15-3-4. Physical requirements for pharmacies [AMENDED]
535:15-3-9. Non-resident pharmacies [AMENDED]
Subchapter 5. Hospital Pharmacies
535:15-5-3. Applicability [AMENDED]
535:15-5-4. Registration [AMENDED]
535:15-5-10. Director of pharmacy responsibilities [AMENDED]
Subchapter 6. Hospital Drug Rooms
535:15-6-1. Purpose [AMENDED]
535:15-6-5. Drug room and PIC responsibilities and duties [AMENDED]
Subchapter 9. Parenteral Pharmacy Permits
535:15-9-6. Parenteral pharmacy physical requirements [AMENDED]
Subchapter 13. Pharmacy Supportive Personnel
535:15-13-5. Supervision of pharmacy technicians [NEW]
535:15-13-8. Technician annual permit requirement [NEW]
DATES:
Adoption:
March 3, 2010
Submitted to Governor:
March 12, 2010
Submitted to House:
March 12, 2010
Submitted to Senate:
March 12, 2010
Withdrawn:
March 30, 2010

[OAR Docket #10-609; filed ??-??-??]

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

[OAR Docket #10-611]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking

PROPOSED RULES:
Subchapter 4. Remote Medication Order Procesing (RMOP) for Hospitals and RMOP Pharmacy [NEW]
535:15-4-1. Purpose [NEW]
535:15-4-2. Definitions [NEW]
535:15-4-3. Registration [NEW]
535:15-4-4. Staffing requirements [NEW]
535:15-4-5. Responsibilities and duties of RMOP pharmacies, pharmacist managers [pharmacist in charge (PIC)] [NEW]
535:15-4-6. Governing body [NEW]
535:15-4-7. Unlawful acts and violations [NEW]
Subchapter 5. Hospital Pharmacies
535:15-5-2. Definitions [AMENDED]
535:15-5-19. Remote medication order processing (RMOP) [NEW]
Subchapter 6. Hospital Drug Rooms
535:15-6-2. Definitions [AMENDED]
535:15-6-20. Remote medication order processing (RMOP) [NEW]
DATES:
Adoption:
March 3, 2010
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Submitted to Senate:
March 12, 2010
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March 30, 2010

[OAR Docket #10-611; filed ??-??-??]

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

[OAR Docket #10-615]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
PROPOSED RULES:
Subchapter 3. Manufacturers
535:20-3-6.3. Security [AMENDED]
Subchapter 5. Packagers
535:20-5-6.3. Security [AMENDED
Subchapter 7. Wholesalers and Pedigree Rules
535:20-7-7.3. Security and anti-counterfeiting [AMENDED]
535:20-7-9.1. Prohibited conduct [AMENDED]
Subchapter 9. Medical Gas Suppliers and Distributors
535:20-9-3. Medical gas suppliers [AMENDED]
535:20-9-4. Medical gas distributors [AMENDED]
DATES:
Adoption:
March 3, 2010
Submitted to Governor:
March 12, 2010
Submitted to House:
March 12, 2010
Submitted to Senate:
March 12, 2010
Withdrawn:
March 30, 2010

[OAR Docket #10-615; filed ??-??-??]

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

[OAR Docket #10-618]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking.
PROPOSED RULES:
Subchapter 3. Applicants, Registrants and Applications
535:25-3-3. Qualifications and requirements for registrant applicants [AMENDED]
Subchapter 9. Violation of the Rules of Registrant Conduct
535:25-9-8. Failure to maintain effective controls [AMENDED]
DATES:
Adoption:
March 3, 2010
Submitted to Governor:
March 12, 2010
Submitted to House:
March 12, 2010
Submitted to Senate:
March 12, 2010
Withdrawn:
March 30, 2010

[OAR Docket #10-618; filed ??-??-??]

Emergency Adoptions

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

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

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

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

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

[OAR Docket #10-684]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. Fee Schedules
35:2-3-12 [AMENDED]
AUTHORITY:
State Board of Agriculture; Article 6, Section 31, Constitution of the State of Oklahoma; 2 O.S. § 2-4 (A)(2)
DATES:
Adoption:
March 17, 2010
Approved by Governor:
April 14, 2010
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2011 unless superseded by another rule or disapproved by the Legislature
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
FINDING OF EMERGENCY:
The Department is required to amend its fees to ensure the appropriate amount of money is collected and therefore the Department does not owe any additional monies to the federal government. Pursuant to Title 75 O.S. § 253 (G), the Department may increase a fee by emergency rule only in certain cases. One of those cases is when the fees are specifically mandated by federal legislation. These fees are mandated by federal legislation, as discussed earlier. As a result, a compelling public interest exists requiring the promulgation of this emergency rule.
ANALYSIS:
Pursuant to federal law, the proposed rules mirror the phytosanitary certificate fee increases that the Department is required to collect on behalf of the federal government. These fees are set to be raised over time pursuant to federal law.
CONTACT PERSON:
Teena G. Gunter, (405) 522-4576, teena.gunter@oda.state.ok.us

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

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-12. Schedule of horticulture program fees

(a) The fee for each Federal Phytosanitary Certificate issued or renewed shall be as follows:

(1) Federal Phytosanitary Certificate PPQ Form 577.

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more—~~Fifty Dollars ($50.00).~~:

(i) Seventy Seven Dollars ($77.00) for 2010.

(ii) One Hundred and Four Dollars ($104.00) for 2011.

(iii) One Hundred and Six Dollars ($106.00) for 2012 and following years.

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00—~~Twenty Five Dollars ($25.00).~~:

(i) Forty Two Dollars ($42.00) for 2010.

(ii) Sixty Dollars ($60.00) for 2011.

(iii) Sixty One Dollars ($61.00) for 2012 and following years.

(2) Federal Phytosanitary Certificate, Processed Plant Products PPQ Form 578.

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more—~~Fifty Dollars ($50.00).~~:

(i) Seventy Seven Dollars ($77.00) for 2010.

(ii) One Hundred and Four Dollars ($104.00) for 2011.

(iii) One Hundred and Six Dollars ($106.00) for 2012 and following years.

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00—~~Twenty Five Dollars ($25.00).~~:

(i) Forty Two Dollars ($42.00) for 2010.

(ii) Sixty Dollars ($60.00) for 2011.

(iii) Sixty One Dollars ($61.00) for 2012 and following years.

(3) Federal Phytosanitary Certificate for Re-export PPQ Form 579

(A) If the aggregate commercial value of the product inspected for certification is $1,250.00 or more—~~Fifty Dollars ($50.00).~~:

(i) Seventy Seven Dollars ($77.00) for 2010.

(ii) One Hundred and Four Dollars ($104.00) for 2011.

(iii) One Hundred and Six Dollars ($106.00) for 2012 and following years.

(B) If the aggregate commercial value of the product inspected for certification is less than $1,250.00— ~~Twenty Five Dollars ($25.00).~~:

(i) Forty Two Dollars ($42.00) for 2010.

(ii) Sixty Dollars ($60.00) for 2011.

(iii) Sixty One Dollars ($61.00) for 2012 and following years.

(4) Ten Dollars ($10.00) for the re-issuance of a Federal Phytosanitary Certificate.

(5) All Federal Phytosanitary Certificates shall require an administrative fee paid by the Department to USDA in the following amounts:

(A) Three Dollars ($3.00) if the certificate is issued in PCIT, or Six Dollars ($6.00) if the certificate is issued outside of PCIT for 2010.

(B) Six Dollars ($6.00) if the certificate is issued in PCIT, or Twelve Dollars ($12.00) if the certificate is issued outside of PCIT for 2011 and following years.

(b) The fee for each State Phytosanitary Certificate issued or renewed shall be Twenty Dollars ($20.00) except there shall be no charge for the issuance of a certificate required by the Japanese Beetle Harmonization Plan unless a treatment is monitored by an authorized agent of the Board.

(c) The fee for each grower, dealer, broker, and landscaper license issued or renewed and inspection conducted shall be as follows:

(1) Growers license - Twenty five Dollars ($25.00) for each business location.

(2) Growers inspection fee - One Dollar ($1.00) per acre and per 1000 square feet of greenhouse area inspected.

(3) Dealers, broker license and landscapers fees -Thirty eight Dollars ($38.00) for each business location.

(4) Landscaper or Personal Use Only license fee - One Hundred Dollars ($100.00) for each business location.

(5) No fee for shall be charged for a grower's license issued to any scientific, agricultural, or horticultural club, garden center, educational or eleemosynary institution, or any department or branch of the state or federal government:

(6) Failure to remit the license fee by the 15th of the month following the expiration month shall result in a penalty fee equal to the cost of the license.

(d) A fee of Twenty-Five Dollars ($25.00) shall be charged for any requested inspection or certification and shall be payable at the time of inspection and includes inspections and certificates issued for transporting plants.

(e) All fees and monies collected under this program shall be paid to the Oklahoma Department of Agriculture, Food, and Forestry.

[OAR Docket #10-684; filed ??-??-??]

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

[OAR Docket #10-647]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-9 [AMENDED]
340:75-1-12 [AMENDED]
340:75-1-12.2 [AMENDED]
340:75-1-12.6 [AMENDED]
340:75-1-14 [AMENDED]
340:75-1-16 through 340:75-1-18.1 [AMENDED]
340:75-1-18.2 [REVOKED]
340:75-1-18.3 through 340:75-1-18.4 [AMENDED]
340:75-1-20 through 340:75-1-21 [AMENDED]
340:75-1-23 [AMENDED]
340:75-1-23.1 [NEW]
340:75-1-29 [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-42 [AMENDED]
340:75-1-44 through 340:75-1-46 [AMENDED]
Part 10. Oklahoma Children's Services (OCS)
340:75-1-151 through 340:75-1-152 [AMENDED]
340:75-1-152.3 through 340:75-1-152.8 [AMENDED]
340:75-1-154 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-1 through 340:75-3-2 [AMENDED]
340:75-3-4 through 340:75-3-7.1 [AMENDED]
340:75-3-7.2 [REVOKED]
340:75-3-7.3 [AMENDED]
340:75-3-7.4 through 340:75-3-7.5 [NEW]
340:75-3-8 through 340:75-3-8.4 [AMENDED]
340:75-3.8.5 through 340:75-3-8.6 [REVOKED]
340:75-3-9.1 [AMENDED]
340:75-3-10.1 through 340:75-3-10.3 [AMENDED]
340:75-3-11 through 340:75-3-13 [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-9 [AMENDED]
340:75-4-12.1 [AMENDED]
340:75-4-12.2 [REVOKED]
340:75-4-13 through 340:75-4-14 [AMENDED]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-1 [AMENDED]
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-30 through 340:75-6-31.5 [AMENDED]
Part 7. ~~Case Plans~~Family and Child Individualized Service Planning Components
340:75-6-40 through 340:75-6-40.6 [AMENDED]
340:75-6-40.7 [REVOKED]
340:75-6-44 through 340:75-6-46 [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-48 through 340:75-6-48.3 [AMENDED]
340:75-6-49 through 340:75-6-50 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85 through 340:75-6-85.6 [AMENDED]
340:75-6-88 [AMENDED]
340:75-6-91 [AMENDED]
Part 13. Independent Living
340:75-6-110 [AMENDED]
340:75-6-114 through 75-6-115.1 [REVOKED]
340:75-6-115.3 through 340:75-6-115.10 [REVOKED]
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-2 [AMENDED]
Part 2. Development of Resources

340:75-7-12 [AMENDED]
340:75-7-14 [AMENDED]
340:75-7-15 [AMENDED]
340:75-7-18 [AMENDED]
340:75-7-24 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 through 340:75-7-37.1 [AMENDED]
340:75-7-41 [AMENDED]
Part 5. Eligibility and Payments
340:75-7-52 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-1 [AMENDED]
340:75-8-6 through 340:75-8-7 [AMENDED]
340:75-8-9 through 340:75-8-10 [AMENDED]
340:75-8-13 through 340:75-8-14 [AMENDED]
Part 3. DDSD Services for Children in Custody
340:75-8-40 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230 [AMENDED]
340:75-11-233 through 340:75-11-233.1 [AMENDED]
340:75-11-237 [AMENDED]
340:75-11-239 through 340:75-11-240 [AMENDED]
Part 19. Residential Diagnostic and Evaluation Services
340:75-11-250 [AMENDED]
Part 21. Residential Intensive Treatment Services
340:75-11-265 [AMENDED]
Part 23. Specialized Community Homes
340:75-11-287 [AMENDED]
Part 25. Non-funded and Funded Contracted Level B Placements
340:75-11-301 [AMENDED]
Part 29. Non-funded and Funded Level C Placements
340:75-11-330 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 7. Medical Services
340:75-13-65 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-6 [AMENDED]
340:75-15-8 [REVOKED]
Part 6. Adoption Process
340:75-15-41 [REVOKED]
340:75-15-41.1 [NEW]
340:75-15-43 [REVOKED]
Part 8. Adoptive Placement Process
340:75-15-59 [REVOKED]
340:75-15-61 through 340:75-15-62 [REVOKED]
Part 10. Integrated Family Assessment and Preparation Process
340:75-15-85 [REVOKED]
340:75-15-92 [REVOKED]
Part 12. Post Placement Services
340:75-15-103 [AMENDED]
340:75-15-106 through 340:75-15-108 [REVOKED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-28 through 340:75-16-30 [AMENDED]
340:75-16-34 [REVOKED]
340:75-16-37 through 340:75-16-38 [AMENDED]
(Reference APA WF 09-19)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; the Oklahoma Children's Code of Title 10A of the Oklahoma Statutes; HB 2028; HB 1734, and SB 339; and the Fostering Connections to Success and Increasing Adoptions Act of 2008 at House Resolution 6893.

DATES:

Adoption:
February 23, 2010
Approved by Governor:
March 26, 2010
Effective:
Upon Governor's approval
Expiration:
Effective through July 14, 2011, unless superseded by another rule or disapproved by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

Superseded 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]
(Reference APA WF 09-06)
Gubernatorial approval:
April 27, 2009
Register publication:
26 Ok Reg 1785
Docket number:
09-1041
Superseded rules:
Subchapter 6. Permanency Planning
Part 5. Permanency Planning Services
340:75-6-31.4 [AMENDED]
(Reference APA WF 09-08)
Gubernatorial approval:
June 23, 2009
Register publication:
27 Ok Reg 44
Docket number:
09-1252

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Emergency rulemaking approval is requested as OKDHS finds compelling public interest to bring the rules into conformity with federal and state statutory requirements and the Oklahoma Department of Human Services (OKDHS) enhanced Practice Model for Child Welfare Services initiative.

ANALYSIS:

The proposed revisions to Subchapters 1, 3, 4, 6, 7, 8, 11, 13, 15, and 16 of Chapter 75 amend the rules to bring them into conformity with federal and state statutory requirements, and the Oklahoma Department of Human Services (OKDHS) enhanced Practice Model for Child Welfare Services initiative. Several pieces of significant legislation were enacted during the First Session of the 52nd Legislature in 2009, including: (1) House Bill 2028 (HB 2028) that updated, reformed, and recodified the laws relating to deprived children known as the Oklahoma Children's Code; (2) HB 1734 that significantly affected the operations of OKDHS Child Welfare Services; and (3) the incorporation of requirements from the federal Fostering Connections to Success and Increasing Adoptions Act of 2008.

CONTACT PERSON:

Dena Thayer at (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 DEPARTMENT OF HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

SUMMARY:

340:75-1-9 is amended to condense and restructure the section by moving information to Instructions to Staff (ITS).

340:75-1-12 is amended to clarify the system for the resolution of grievances.

340:75-1-12.2 is amended to correspond with updated statutory terminology.

340:75-1-12.6 is amended to update: (1) to whom a fair hearing may be granted; and (2) terminology and form numbers.

340:75-1-14 is amended to update terminology and delete instructive information for agency staff.

340:75-1-16 is amended to: (1) include prepetition emergency custody order determinations; (2) delete requirements not mandated to OKDHS; (3) delete instructive information for agency staff for inclusion in ITS; (4) clarify mandate for release of a child when the adjudication hearing is not timely held; and (5) provide for teleconference hearings.

340:75-1-17 is amended to update statutory language regarding adjudicatory hearings and reasonable efforts not required to reunify family.

340:75-1-18 is amended to update dispositional hearing guidelines, dispositional options, court determinations, and placement preferences.

340:75-1-18.1 is amended to: (1) update statutory requirement for permanency planning meetings; and (2) delete information moved to ITS.

340:75-1-18.2 is revoked to delete statutorily revoked process for permanent care and custody transfer to another person.

340:75-1-18.3 is amended to delete statutorily revoked permanent care and custody transfer process and replace with new statutory authority for permanent guardianship process.

340:75-1-18.4 is amended to: (1) clarify the provisions of a reasonable efforts not required to prevent removal or reunite the child and family determination by the court; and (2) delete and reposition instructive information to ITS.

340:75-1-20 is amended to: (1) clarify court review requirements consistent with statutory amendments; and (2) delete from rule requirements not mandated to OKDHS.

340:75-1-21 is amended to: (1) update statutory information in relation to post-adjudication review board (PARB) reviews and OKDHS employees participation on the boards; and (2) delete requirements not mandated to the agency.

340:75-1-23 is amended to update cites to statutory procedures for termination of parental rights.

340:75-1-23.1 is added to outline statutory authority for reinstatement of parental rights.

340:75-1-29 is amended to clarify potential assignment of cases.

340:75-1-42 is amended to update statutory cites and disclosure of information requirements.

340:75-1-44 is amended to update statutory cites and authority for disclosure of client information and records without a court order.

340:75-1-45 is amended to: (1) update statutory cite and information regarding release of records pursuant to a court order; and (2) delete outdated procedures for release of information.

340:75-1-46 is amended to update information related to the uniform Consent for Release of Information form state agencies are mandated to use.

340:75-1-151 is amended to update the terminology used in the Oklahoma Children's Services (OCS) referral procedure.

340:75-1-151.1 is amended to update consultation requirement related to a contracting agency's right to decline cases.

340:75-1-151.2 is amended to include parent aide as a participant in the Comprehensive Home-Based Service (CHBS) intake staffing.

340:75-1-152 is amended to delete direction to staff for placement in ITS.

340:75-1-152.3 is amended to update terminology for consistency and form number.

340:75-1-152.4 is revoked as it is an obsolete process.

340:75-1-152.5 is amended to removed ITS from rule for placement in ITS.

340:75-1-152.6, 340:75-1-152.7, 340:75-1-152.8, and 340:75-1-154 are amended to: (1) update sentence structure; (2) update reasons for OCS case suspensions; (3) to update terminology; and (4) delete instructive information for placement in ITS.

340:75-3-1 is amended to update terminology and statutory cites.

340:75-3-2 is amended to: (1) include legislative intent in family intervention; (2) update statutory definitions; and (3) delete agency-defined vernacular for placement in ITS.

340:75-3-4 is amended to clarify the scope of Child Protective Services (CPS).

340:75-3-5 is amended to clarify roles of other entities in child abuse and neglect investigations.

340:75-3-6 is amended to clarify the role of the OKDHS Abuse and Neglect Hotline.

340:75-3-6.1 is amended to outline the types of exceptional reports of abuse and neglect considered for assessment or investigation.

340:75-3-7 is amended to update report screening requirements and terminology.

340:75-3-7.1 is amended to update priority guidelines and move instructive information to ITS.

340:75-3-7.2 is revoked as information is repositioned in other sections.

340:75-3-7.3 is amended to update statutory language regarding when an assessment or investigation is conducted.

340:75-3-7.4 is added to set out general protocols for CPS assessments and investigations.

340:75-3-7.5 is added to detail assessment protocol in relation to statutory requirements.

340:75-3-8 is amended to update terminology and statutory language in relation to investigation protocol.

340:75-3-8.1 is amended to: (1) update the investigation protocol for addressing reports of abuse or neglect in a foster or trial adoptive home; and (2) delete instructive information for repositioning in ITS.

340:75-3-8.2 is amended to delete instructive information regarding child care center or home investigations for repositioning in ITS.

340:75-3-8.3 is amended to update tagline.

340:75-3-8.4 is amended to update statutory cites and delete instructive information for repositioning in ITS.

340:75-3.8.5 and 340:75-3-8.6 are revoked as information is repositioned to other sections.

340:75-3-9.1 is amended to: (1) clarify that child deaths may be reviewed by OKDHS Critical Incidents Review Committee or by an OKDHS administrative investigation; and (2) delete information repositioned to ITS.

340:75-3-10.1 is amended to: (1) update safety determination and responses protocol; (2) add CW joint response with law enforcement protocol; (3) outline restoration of custody to parent, legal guardian, or custodian protocol when a child is in protective custody protocol; (4) update statutory authority for removal of children in diverse legal statuses; and (5) delete obsolete or instructive information from rule for repositioning in ITS.

340:75-3-10.2 is amended to update statutorily mandated findings in child abuse and neglect investigations.

340:75-3-10.3 is amended to update terminology.

340:75-3-11 is amended to update statutory cites and venue for filing child abuse and neglect legal actions.

340:75-3-12 is amended to: (1) update statutory cites and terminology for the Child Abuse and Neglect Information System also known as KIDS; and (2) delete information repositioned from rule to ITS.

340:75-3-13 is amended to: (1) outline statutory requirements for prevention and intervention-related services and associated determinations; (2) clarify disclosure of findings or conclusions to other professionals and the reporter of abuse and neglect; and (3) delete instructive information for staff for placement in ITS.

340:75-4-9 is amended to: (1) clarify the purpose of voluntary family-centered services; and (2) update terminology and statutory cites.

340:75-4-12.1 is amended to outline voluntary family-centered services and supports provided and delete instructive information for repositioning to ITS.

340:75-4-12.2 is revoked and information repositioned to another section of rule.

340:75-4-13 is amended to update Family-Centered Services requirements and processes.

340:75-4-14 is amended to: (1) move instructive information to ITS; and (2) update terminology for consistency with enhanced Practice Model.

340:75-6-1 is amended to update the purpose and philosophy of permanency planning.

340:75-6-4 is amended to revise statutory definitions and reposition agency definitions to ITS.

340:75-6-30 is amended to clarify visitation processes between children, parents, and siblings and move instructive information to ITS.

340:75-6-31 is amended to: (1) update statutory cites and terminology; and (2) clarify statutory authority for reunification with a parent and legal guardianship in relation to permanency planning for children.

340:75-6-31.1 is amended to delete obsolete requirements and include potential requirement by court for a permanency planning review prior to permanency hearings.

340:75-6-31.2 is amended to: (1) delete instructive information for repositioning in ITS; and (2) clarify when a Temporary Assistance for Needy Families (TANF) recipient may continue eligible for benefits when the child is in OKDHS custody.

340:75-6-31.3 is amended to update statutory language regarding trial reunification.

340:75-6-31.4 is amended to update supported permanency procedures and outline procedures for Title IV-E subsidized guardianships.

340:75-6-31.5 is amended to update agency division name and name of a legislative act related to establishment of paternity.

340:75-6-40 is amended to clarify the purpose of the case plan and delete instructive information for repositioning in ITS.

340:75-6-40.1 is amended to delete obsolete language regarding the placement plan and include requirements for the newly structure Child's Individualized Service Plan (ISP).

340:75-6-40.2 is amended to clarify the requirements of the placement provider information.

340:75-6-40.3 is amended to explain the purpose of the Family Functional Assessment and delete instructive information repositioned in ITS.

340:75-6-40.4 is amended to: (1) revamp the ISP process to concur with statutory requirements; (2) delete instructive information for repositioning in ITS; and (3) delete obsolete requirements.

340:75-6-40.5 is amended to: (1) delete instructive information for repositioning in ITS; and (2) set out requirements for court reviews, including process on how to handle social records.

340:75-6-40.6 is amended to: (1) clarify the purpose of case contacts; and (2) delete instructive information for repositioning in ITS.

340:75-6-40.7 is revoked as obsolete.

340:75-6-44 is amended to: (1) enhance process for case planning in heinous and shocking cases or cases in which reasonable efforts to reunify are not required; and (2) delete obsolete process.

340:75-6-45 is amended to update procedure for case planning for incarcerated parents to conform to statutory revisions.

340:75-6-46 is amended to: (1) delete instructive information for repositioning in ITS; and (2) update agency name and syntax.

340:75-6-48 is amended to delete instructive information for repositioning in ITS; and (2) detail statutory requirement for visitation with foster children.

340:75-6-48.1 is amended to explain the role of the child's attorney and related statutory authority.

340:75-6-48.2 is amended to correct syntax and update statutory cite related to child's court-appointed special advocate or guardian ad litem.

340:75-6-48.3 is amended to delete duplicative information found in ITS related to runaway or abducted children.

340:75-6-49 is amended to clarify statutory authority for selecting placement in accord with the child or parent's religious faith and delete instructive information repositioned in ITS.

340:75-6-50 is amended to: (1) include statutorily mandated assurance of school attendance for children eligible for Title IV-E foster care maintenance payments; and (2) delete instructive information repositioned in ITS.

340:75-6-85 is amended to: (1) include legislative intent for children placed outside the home; and (2) update placement considerations for children in OKDHS custody.

340:75-6-85.1 is revoked and information placed in other sections of rule or ITS.

340:75-6-85.2 is amended to update statutory requirements for placement preferences and diligence required to identify and notify relatives.

340:75-6-85.3 is amended to clarify statutory requirements for sibling placement.

340:75-6-85.4 is amended to clarify that in most cases, the adoptive home is the relative or kin family with whom the child is currently placed.

340:75-6-85.5 is amended to update statutory authority for protective supervision of cases.

340:75-6-85.6 is amended to: (1) delete instructive information repositioned in ITS; and (2) clarify syntax.

340:75-6-88 is amended to: (1) update statutory cite requiring OKDHS to provide medical care to children in OKDHS custody; and (2) delete instructive information for repositioning in ITS.

340:75-6-91 is amended to update terminology and delete instructive information repositioned in ITS.

340:75-6-110 is amended to combine information from other sections of rule into one section outlining the Independent Living program and related requirements.

340:75-6-114, 340:75-6-115, 340:75-6-115.1, 340:75-6-115.3, 340:75-6-115.4, 340:75-6-115.5, 340:75-6-115.6, 340:75-6-115.7, 340:75-6-115.8, 340:75-6-115.9, and 340:75-6-115.10 are revoked and repostioned in 340:75-6-110 or related ITS.

340:75-7-2 is amended to update statutory cites and definitions related to foster home care.

340:75-7-12 is amended to update foster home care applicant requirements.

340:75-7-14 is amended to update and clarify Bridge resource applicant's training requirements.

340:75-7-15 is amended to update and clarify background investigation and assessment requirements for Bridge resource applicants.

340:75-7-18 is amended to: (1) restructure information related to Bridge resource family assessments; (2) update terminology; and (3) delete instructive information repositioned in ITS.

340:75-7-24 is amended to update terminology.

340:75-7-37 is amended to add responsibilities to the child for Bridge resource parents.

340:75-7-37.1 is amended to: (1) update statutory language related to recruitment of Bridge resource homes; and (2) delete instructive information repositioned to ITS.

340:75-7-41 is amended to update statutory language related to placement considerations and requirements.

340:75-7-52 is amended to update terminology and specify when foster care maintenance payments may begin.

340:75-7-65 is amended to clarify procedures for informal arrangements for babysitting and update terminology.

340:75-7-94 is amended to describe when a resource home is closed and delete instructive information repositioned in ITS.

340:75-8-1 is amended to clarify purpose of therapeutic foster care (TFC) and update statutory cites.

340:75-8-6 is amended to update statutory cites and syntax.

340:75-8-7 is amended to correct syntax and update terminology.

340:75-8-9 is amended to correct age of children served by TFC.

340:75-8-10 is amended to update terminology to conform to statutory language.

340:75-8-13 and 340:75-8-14 are amended to delete instructive information repositioned in related ITS.

340:75-8-40 is amended to delete instructive information from rule repositioned in related ITS.

340:75-11-230 is amended to update statutory cites and definitions related to contracted community-based residential care (CBRC) providers.

340:75-11-233 is amended to: (1) update statutory cites; and (2) clarify when children younger than 10 years of age may be placed in CBRC.

340:75-11-233.1 is amended to delete instructive information repositioned in related ITS.

340:75-11-237 is amended to: (1) update statutory and policy cites; and (2) clarify use of physical force in CBRC.

340:75-11-239 is amended to correct agency name.

340:75-11-240 is amended to: (1) update statutory cites; and (2) clarify when consent is needed for certain types of medical care.

340:75-11-250 is amended to: (1) clarify time frame for contracted CBRC to complete the comprehensive assessment of the child; and (2) update form number.

340:75-11-265 is amended to update form number.

340:75-11-287 is amended to update statutory cite.

340:75-11-301 is amended to clarify that referrals to the non-funded Level B group homes are made by the contract liaison to the specific facility.

340:75-11-330 is amended to clarify how referrals are received for funded and non-funded contractors.

340:75-13-65 is amended to update statutory requirements for consent for medical care for children in OKDHS custody.

340:75-15-6 is amended to clarify the scope of the adoption program.

340:75-15-8 is revoked as duplicative information or because information was repositioned in another section of rule or ITS.

340:75-15-41 is revoked as duplicative information or information repositioned in another section of rule or ITS for clarity and conciseness.

340:75-15-41.1 is new to clarify statutory requirements for adoption placement considerations.

340:75-15-43 is revoked as duplicative information or information repositioned in another section of rule or ITS for clarity or alignment of subject matter.

340:75-15-59, 340:75-15-61, and 340:75-15-92 are revoked as information is repositioned to another section for clarity and alignment of subject matter.

340:75-15-62 and 340:75-15-85 are revoked as subject matter repositioned in another section.

340:75-15-103 is amended to: (1) clarify services provided to children in adoptive homes; and (2) include statutory language related to post-adoption contact agreements.

340:75-15-106, 340:75-15-107, and 340:75-15-108 are revoked as information is repositioned to another section for alignment of subject matter.

340:75-16-28 is amended to: (1) update statutory cite; and (2) delete instructive information repositioned in related ITS.

340:75-16-29 is amended to update definitions related to inpatient mental health treatment and reposition definition specific to OKDHS to related ITS.

340:75-16-30 is amended to: (1) delete contractor agency name; and (2) add statutory provision for telephonic or teleconference hearings.

340:75-16-34 is revoked as either duplicative or information repositioned in another section of related rule or ITS.

340:75-16-37 is amended to delete information repositioned in related ITS.

340:75-16-38 is amended to: (1) correct agency name; and (2) clarify that consent for extraordinary medical care is required.

[OAR Docket #10-647; filed ??-??-??]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 30. SIZE AND WEIGHT PERMITS

[OAR Docket #10-629]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 3. Size and Weight Permit Load
595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]
595:30-3-18. Oversize vehicles and loads [AMENDED]
AUTHORITY:
Commissioner of Public Safety; 47 O.S. §§ 2-108(b), 14-116(A), 14-118(A), 14-118.1, 14-120(C), 14-120.1(D), and 14-121(B).
DATES:
Adoption:
November 16, 2009
Approved by Governor:
December 18, 2009
Effective:
Immediately upon Governor's approval.
Expiration:
Effective through July 14, 2010, unless superseded by another rule or disapproved by the Legislature.
Gubernatorial approval:
August 18, 2009
Register publication:
27 OkReg 329
Docket number:
09-1352
SUPERSEDED EMERGENCY ACTIONS:
Subchapter 3. Size and Weight Permit Load
595:30-3-17. Requirements for escort vehicles and escort vehicle operators [AMENDED]
595:30-3-18. Oversize vehicles and loads [AMENDED]
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
These rules are of compelling public interest in order to rescind emergency rules previously adopted on August 12, 2009, and approved by the Governor on August 18, 2009.
ANALYSIS:
Amendments to 595:30-3-17 and 595:30-3-18 would return rules to their the language existing prior to the adoption of emergency rules on August 12, 2009, and approval of those rules by the Governor on August 18, 2009, and would provide simple clarification to requirements for escort vehicles.

The proposed actions are amendments to existing rules.

The circumstance which created the need for this rule is subsequent information from the trucking and manufactured home industries regarding escort vehicles received after the adoption and approval of previous emergency rules.

The intended effect of this rule is to allow the Department of Public Safety to perform its duties as required or authorized by law.

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

SUBCHAPTER 3. SIZE AND WEIGHT PERMIT LOAD

595:30-3-17. Requirements for escort vehicles and escort vehicle operators

(a) **General requirements for escort vehicles.** Any vehicle to be used as an escort vehicle must be either a pickup truck of not less than one-quarter (1/4) ton rated load capacity or an automobile of not less than two thousand (2,000) pounds. The escort vehicle must be properly registered and licensed under the statutes of the State of Oklahoma [47 O.S. § 1101 et seq.] or properly registered and licensed in another state. If commercially registered and licensed, an escort for an intrastate move must obtain a temporary registration from the Oklahoma Tax Commission Motor Vehicle Registration Division.

(b) **Identification of escort vehicles.** The owner of an escort vehicle must have displayed on each side of the escort vehicle the name, city and state of the escort vehicle company or operator, or the owner of the escort vehicle, or both. Such identifying markings must be:

(1) Plainly legible and visible to the motoring public.

(2) Readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is stationary.

(3) Kept and maintained in a manner to preserve legibility.

(4) In a color or colors which sharply contrast with the background on which they are placed.

(c) **Equipment of escort vehicles.** An escort vehicle must carry the following items of equipment at all times when escorting an oversize/overweight vehicle or load:

(1) **Flags.** Red flags shall be at least twelve (12) inches square and shall be attached to standards angled upward to the left and right at forty-five (45) degrees and mounted on the top of the cab. No flags shall be displayed unless the escort vehicle is actually engaged in escorting.

(2) **Mirrors.** The vehicle shall be equipped with an outside rear-view mirror on each side of the vehicle.

(3) **Radio.** Escort and towing vehicles shall be equipped with a two-way radio which is capable of transmitting and receiving voice messages over a minimum distance of one-half (1/2) mile and which is compatible with radios in the escorted vehicle and any other escort vehicle(s).

(4) **Fire extinguisher.** One (1) ten-pound or two (2) five-pound ABC fire extinguishers. Extinguishers shall be checked annually to ensure they are operational.

(5) **Flares or reflectors.** Four (4) fifteen-minute flares or three (3) portable triangle reflector units.

(6) **Sign.** The regulation "Oversize Load" sign, as provided in 595:30-3-16, shall be mounted either on the front or the roof of front escort vehicles and on the rear of rear escort vehicles while escorting an oversize vehicle or load. The sign will be clearly visible without an obstruction. No signs shall be displayed unless the escort vehicle is actually engaged in escorting.

(7) **Warning lights.** One AAMVA-approved rotating or flashing amber beacon or a flashing amber light bar system shall be mounted on top of the escort vehicle and shall be of sufficient intensity when illuminated to be visible from five hundred (500) feet in normal sunlight, and shall rotate, oscillate or flash through three hundred sixty (360) degrees. Blue, red, or white rotating lights are not authorized under Oklahoma statutes. In addition:

(A) Headlights of escort vehicles shall be lighted at all times during movement.

(B) Warning lights in conformance with 47 O.S. § 12-220(D) and § 12-227(C) may be used in conjunction with the headlights.

(C) No warning lights shall be displayed unless the escort vehicle is actually engaged in escorting.

(8) **Measuring pole.** A current height measuring pole made of non-conductive, flexible, non-fragile material when escorting a load or vehicle which is fifteen (15) feet and nine (9) inches or more in height.

(9) **Traffic control sign.** A standard eighteen (18) inch "STOP" and "SLOW" paddle sign.

(10) **Safety clothing.** A hard hat and a jacket or vest, both in safety orange color, for each person who may be assigned to traffic control, setting reflectors or any other duties conducted on or near a roadway.

(11) **Flashlight.** A flashlight equipped with and powered by at least two (2) D cell batteries.

(12) **Spare tire.** A full-size spare tire for the escort vehicle, tire jack and lug wrench.

(d) **Prohibitions when operating escort vehicles.** The escort vehicle shall not:

(1) Carry any item, equipment or load in or upon the vehicle which:

(A) Exceeds the height, length or width of the vehicle, overhangs the escort vehicle; or otherwise impairs its immediate recognition as an escort vehicle by the motoring public.

(B) Impairs the view of the operator of the escort vehicle or the escorted vehicle.

(C) Obstructs the view of signs or flags used by the escort vehicle or causes safety risks to the motoring public.

(D) Impairs the performance of the escort vehicle.

(2) Tow any trailer or other vehicle, except that an escort vehicle operator not required to be certified by the Department *may tow a trailer when escorting a manufactured home. Such trailer shall not exceed eight and one-half (8 1/2) feet in width and twenty (20) feet in length with siding not to exceed four (4) feet in height measured from the bed of the trailer. The trailer may only be used to transport supplies and equipment necessary to carry out the mission of escort vehicle operators* [47 O.S. § 14-120.1(C)] and shall not be used to carry other supplies, equipment, or cargo.

(3) The operator of the escort vehicle shall not perform as a tillerman while performing escort operations. For purposes of this paragraph, "tillerman" means a person who operates by remote control any axle of the escorted vehicle.

(e) **Duties of escort vehicle operators.**

(1) **Traffic control.** In the performance of duties as the operator of an escort vehicle, the operator is authorized to direct traffic to stop, slow down or proceed in situations where such direction is necessary to allow traffic or the escorted vehicle or load to continue moving safely.

(A) The operator of the escort vehicle shall require the escorted vehicle or load to stop, and the escorted vehicle shall move as far off of the roadway as practicable and stop to allow other traffic to pass, under the following conditions:

(i) When the escorted vehicle or load becomes disabled.

(ii) When the movement of the escorted vehicle or load on a particular section of roadway presents a safety risk or unreasonable risk to or unreasonably interferes with the efficient movement of other traffic, based upon such factors as the widths of the escorted vehicle or load, roadway, volume of traffic, limited visibility or mountainous terrain.

(iii) When driving conditions for the escorted vehicle or load are hazardous for any reason including weather.

(B) When the escorted vehicle or load stops, the escort vehicle operator may direct other traffic past the escorted vehicle or load as necessary until such time as the escorted vehicle or load can reenter the roadway and continue moving without presenting a safety risk or unreasonably interfering with efficient movement of other traffic.

(2) **Escort vehicle operation.**

(A) The operator of an escort vehicle must comply with all applicable traffic laws of this state and with the requirements of this Chapter when escorting a vehicle on all routes of the state highway system, including but not limited to the Dwight D. Eisenhower National System for Interstate and Defense Highways, all turnpikes, and such other roads, streets, or public ways that the Commissioner of Public Safety and the Oklahoma Department of Transportation shall deem appropriate.

(B) On two-lane highways, the first escort vehicle will travel far enough to the front and the second escort vehicle, if required, will travel far enough to the rear of the escorted vehicle or load to timely warn approaching motorists. On multi-lane highways, the first escort vehicle will travel far enough to the rear of

the escorted vehicle or load to timely warn motorists approaching from the rear.

(f) **Insurance.**

(1) Each certified escort vehicle operator who operates in interstate commerce, and on and after August 1, 2014, each certified escort vehicle operator, shall maintain a valid insurance policy issued by an insurance company currently authorized to issue policies of insurance covering risks in the State of Oklahoma, and proof of insurance shall be carried in the escort vehicle at all times. The insurance policy shall protect the public against loss of life, bodily injury to persons, and damage to property, and shall provide not less than One Million Dollars ($1,000,000.00) combined single limit coverage for bodily injury and/or property damage as a result of the operation of the escort vehicle, the escorted vehicle, or both causing the bodily injury and/or property damage.

(2) Until July 31, 2014, paragraph (1) of this subsection shall not apply to any operator who operates only in intrastate commerce or in interstate commerce into or through states which do not have escort vehicle certification requirements for the type of vehicle and/or load being escorted and who applies for and is granted restricted certification as provided for in OAC 595:30-3-17.1(c)(3); provided, the operator shall meet all minimum requirements for compulsory liability insurance in this state, and proof of insurance shall be carried in the escort vehicle at all times.

(3) On and after August 1, 2014, paragraph (1) of this subsection shall apply to all certified escort vehicles. operators.

595:30-3-18. Oversize vehicles and loads

(a) **General.** Permitted oversize vehicles and loads shall be subject to the following conditions and restrictions:

(1) The applicant for a permit must provide the length, height, and width of the vehicle or combination of vehicles and load requiring a permit.

(2) Date and time of travel shall be permitted as provided for in 47 O.S. §14-101 and in 595:30-3-4(1).

(3) Certain highways and areas may be designated for use or prohibited from use for a limited time, due to events which would impede traffic conditions.

(4) An escort vehicle or vehicles will be required as provided in (b) of this Section or as provided in 595:30-3-19 for manufactured homes.

(b) **Escorts for oversize loads.**

(1) Loads more than twelve (12) feet in width but not more than fourteen (14) feet in width shall have the required "Oversize Load" sign and flagging displayed on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest and are required to be accompanied by one (1) escort vehicle, in the following position depending on the type of highway on which the load is being transported:

(A) a front escort vehicle on two-lane highways and on super two-lane highways, and ~~by~~

(B) a rear escort on multi-lane highways ~~with the required "Oversize Load" sign and flagging on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest~~.

(2) Loads more than fourteen (14) feet in width are required to be accompanied by two (2) escort vehicles, one (1) in the front and one (1) in the rear, on two-lane highways or super two-lane highways. A rear escort is required on all multi-lane highways. All loads more than sixteen (16) feet in width are required to be accompanied by two (2) escort vehicles, one (1) in the front and one (1) in the rear, on all roads and highways. The required "Oversize Load" sign and flagging ~~is required~~shall be displayed on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest.

(3) Loads with an overall height of fifteen (15) feet and nine (9) inches or more are required to be accompanied by two (2) escort vehicles, one (1) in the front and one (1) in the rear. The required "Oversize Load" sign and flagging ~~is required~~shall be displayed on the front of the towing vehicle and on the rear of the load or the towed vehicle, whichever extends the farthest. All public utilities and railroads along the route must be contacted in advance of the move by the permittee.

(4) A truck-tractor/semi-trailer combination which is more than eighty (80) feet in overall length is required to be accompanied by one (1) front escort on two-lane highways. A combination other than a truck-tractor/semi-trailer which is more than eighty (80) feet in overall length is required to be accompanied by one (1) front escort on two-lane highways or super two-lane highways.

(5) A truck-tractor/semi-trailer combination or any other combination of vehicles which is more than one hundred (100) feet in overall length is required to be accompanied by two (2) escort vehicles, one (1) in the front and one (1) in the rear, on two-lane highways and super two-lane highways.

[OAR Docket #10-629; filed ??-??-??]

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 25. OKLAHOMA AERONAUTICS COMMISSION
CHAPTER 20. AIRCRAFT EXCISE TAX DEDICATION PROGRAM [REVOKED]

[OAR Docket #10-669]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
25:20-1-6 [REVOKED]
25:20-1-7 [REVOKED]
25:20-1-8 [REVOKED]
25:20-1-9 [REVOKED]
25:20-1-10 [REVOKED]
AUTHORITY:
Oklahoma Aeronautics Commission, 3 O.S. Section 84 (C) and repeal of 68 O.S. Section 6003.1.
DATES:
Comment period:
December 2, 2010 through January 4, 2010.
Public hearing:
January 5, 2010
Adoption:
January 14, 2010
Submitted to Governor:
January 20, 2010
Submitted to House:
January 20, 2010
Submitted to Senate:
January 20, 2010
Gubernatorial approval:
February 4, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on March 24, 2010.
Final adoption:
March 24, 2010
Effective:
June 1, 2010
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORORATIONS BY REFERENCE:
n/a
ANALYSIS:
These rules "officially" revoke the Aircraft Excise Tax Dedication Program. The Aircraft Excise Tax Dedication Program was revoked by SB 243, which was passed during the 2009 Legislature. The program was revoked when the bill became effective, as of June 1, 2009. Previously, this program allowed a purchaser of an aircraft with a selling price in excess of $5,000,000.00 to request that the excise tax paid due to the purchase of the aircraft be dedicated to a specific general aviation airport owned or controlled by an airport sponsor or municipality in this state.
CONTACT PERSON:
Treasure Tytenicz, Government Affairs Liaison and Aviation Education Coordinator, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6901

PURSUANT TO THE ACTIONS DESCRIBED 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 1, 2010:

25:20-1-6. Purpose [REVOKED]

~~(a) Title 68, Revenue and Taxation found in Section 6003.1 of the Oklahoma Statutes, allows a purchaser of an aircraft with a selling price in excess of $5,000,000, to request that the excise tax paid due to the purchase of the aircraft be dedicated to a specific general aviation airport owned or controlled by a airport sponsor or municipality in this state.~~

~~(b) The purpose of this chapter is to set forth the requirements for participation in the aircraft excise tax dedication program administered by the Aeronautics Commission, and to establish the procedures to be followed by the Aeronautics Commission in the administration and enforcement of that program.~~

25:20-1-7. Definitions [REVOKED]

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

~~**"Aeronautics Commission"** means the organizational unit responsible for administering the aviation grant program for the State of Oklahoma and the Federal Aviation Administration.~~

~~**"Aircraft"** means and includes every self-propelled plane, airplane, helicopter, or balloon or sailplane manufactured by mass production or individually constructed or assemble, use, or designated for navigation or flight in the air or airspace, and subject to registration with the Federal Aviation Administration;~~

~~**"Airport"** means any area of land or water which is used, or intended for use, for the landing and take off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings and facilities located thereon.~~

~~**"Airport Development Worksheet"** means a listing of the capital projects needed at an airport over a ten year planning horizon together with the estimated cost, construction type, objective code, and airport component for each project. Projects identified for a particular airport must be consistent with the service level, functional classification, design standard, and airport reference code identified for the airport in the Oklahoma Airport System Plan. An airport development worksheet is developed and maintained for each system plan~~

~~airport cooperatively by the airport sponsor and the Aeronautics Commission staff.~~

~~**"Airport Sponsor"** or "Municipality" is used interchangeably throughout this chapter. Either term means any incorporated city, village, or town of this state, any public institution of higher education, and any county or political subdivision or district of this state, or any public trust thereof, which is, or may be, authorized by law to acquire, establish, construct, maintain, improve, and operate airports, airstrips, and aeronautical facilities. To be eligible for the state grant program, the airport sponsor must be one of the governmental entities referenced in the preceding sentence and included in the Oklahoma Airport System Plan. Nothing herein precludes two or more of these entities from acting jointly as an airport sponsor. In the event a public trust is the airport sponsor, the beneficiary of that public trust must also be a record owner of the airport property.~~

~~**"Capital Improvement Program"** means a list of airport capital projects approved by the Commission for implementation within a three-year planning horizon showing a description of the project, the costs of each phase of the project, when the project is expected to occur, and the sources of funding.~~

~~**"Director"** means the Director of the Oklahoma Aeronautics Commission.~~

~~**"Legal Representative"** means a person authorized to act as an official delegate or agent.~~

~~**"Purchase price"** means the total amount paid for the aircraft whether paid in money or otherwise. "Purchase price" is further defined as the fair market value when no current purchase is involved.~~

~~**"Transfer of Legal Ownership"** means when the purchaser has the legal right to take possession of the aircraft and the legal responsibility for the aircraft (not when the excise tax is paid or date of registration).~~

~~**"Use"** means and includes the operation or basing of an aircraft on or from any airport in this state for a period of thirty (30) days or more.~~

25:20-1-8. Program Participation Request and Consideration [REVOKED]

~~(a) To be eligible to participate in the excise tax dedication program, a legal representative of the aircraft purchaser must submit a written request to the Aeronautics Commission within twenty (20) days of the transfer of legal ownership of the aircraft. The written request shall:~~

~~(1) Identify the taxpayers name and federal identification number;~~

~~(2) Identify the actual selling price and the amount of the excise tax;~~

~~(3) Identify the date of transfer of legal ownership;~~

~~(4) Identify the date the aircraft purchaser took possession of the aircraft;~~

~~(5) Identify the specific general aviation airport(s) to which the aircraft purchaser wants the excise tax dedicated; and~~

~~(6) Include a statement which confirms that the person submitting the request is a legal representative of the aircraft purchaser.~~

~~(b) The Director and/or Aeronautics Commission staff shall present the request of the aircraft purchaser to the Aeronautics Commission for its approval, disapproval, or deferral.~~

~~(1) If approved, the funds will be dedicated to the designated airport(s) by way of a State Grant as set forth in 25:15-1-4.~~

~~(2) The Commission may disapprove the request if the approval would jeopardize the ability of the Commission to fulfill its statutory duties.~~

~~(3) In the event approval of the request would jeopardize the ability of the Commission to fulfill its statutory duties, the Commission may also choose to defer its decision for up to six (6) months from the date of the request, and then reconsider the request.~~

~~(4) The Director and/or Aeronautics Commission staff shall advise the purchaser and the owner of the specific airport(s) in writing of the Aeronautics Commission"s determination concerning the purchaser"s request for participation in the excise tax dedication program.~~

25:20-1-9 Program Administration [REVOKED]

~~(a) Upon approval of the request by the Aeronautics Commission, the excise tax funds dedicated in the request will be transferred to the designated excise tax fund created by the Aeronautics Commission.~~

~~(b) If the airport sponsor has a project(s) in the Aeronautics Commission"s current three (3) year Capital Improvement Program then the dedicated excise tax funds shall be used to meet the state funding portion of the project as set forth in 25:15-1-4(e).~~

~~(c) If the airport sponsor does not have a project(s) in the Aeronautics Commission"s current three (3) year Capital Improvement Program, then the Aeronautics Commission will select the highest priority project(s) identified on the airport sponsor"s Capital Improvement Program or their Airport Development Worksheet. Should the excise tax funds dedicated not be adequate to fund the highest priority project on the airport sponsor"s Capital Improvement Program or their Airport Development Worksheet, then the funds may be held until such time adequate funding is available or another project is identified and initiated. These funds shall be used to meet the state funding portion of the identified project as set forth in 25:15-1-4(e).~~

25:20-1-10. Project Implementation [REVOKED]

~~(a) Once the request has been approved by the Aeronautics Commission and the dedicated excise tax funds have been segregated, then the project selected will be implemented as set forth in 25:15-1-4.~~

~~(b) Upon the final expenditure of funds dedicated by the purchaser, the Finance Officer for Aeronautics Commission shall provide a summary of disbursements to the beneficiary airport(s) and to the Aeronautics Commission.~~

[OAR Docket #10-669; filed ??-??-??]

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

[OAR Docket #10-661]

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Subchapter 3. Fee Schedules
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ANALYSIS:
The purpose of the proposed rules is to revise the prices of the Forest Regeneration Center's seedlings. Title 2 O.S. § 16-3 requires the Department to institute a broad program of reforestation. To implement this requirement, the Department sells seedlings in bulk for reforestation projects. Currently, the prices do not reflect market costs and have not been revised since 2004. The actual prices will be replaced by a formula for calculating actual costs of producing the seedlings. The formula will not result in a profit, but will allow the Department to charge prices that more accurately reflect the Department's costs.
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, 2010:

SUBCHAPTER 3. FEE SCHEDULES

35:2-3-11. Schedule of fees for forest tree and shrub seedlings from the Forest Regeneration Center

(a) Pursuant to Title 2 O.S. § 16-3, in order to carry out reforestation purposes, the Oklahoma Department of Agriculture, Food, and Forestry operates a Forest Regeneration Center that grows forest tree and shrub seedlings for distribution to landowners.

(b) The following is a ~~schedule of~~method to determine annual fees for ~~forest tree and shrub~~ categories of seedlings, including but not limited to hardwoods and miscellaneous conifers, southern pines, and containers, purchased from the ~~State's~~ Forest Regeneration Center for reforestation purposes:

(1) ~~Bare root deciduous and evergreen species:~~ The following calculations shall be made for each category prior to determining the prices for seedlings:

(A) ~~50 to 300:~~ Estimate the percentage of the previous three (3) years' average input costs for growing trees in each category using the best professional judgment of the Department.

~~(i) Price per tree if shipped - $0.44~~
~~(ii) Price per tree if picked up - $0.40~~

(B) ~~350 to 500:~~ Use actual seedling distribution data to calculate the three (3) year average of number of trees sold.

~~(i) Price per tree if shipped - $0.42~~
~~(ii) Price per tree if picked up - $0.38~~

(C) ~~550 to 950:~~ Estimate the percentage of the previous three (3) years' average revenues generated from each category using the best professional judgment of the Department.

~~(i) Price per tree if shipped - $0.40~~
~~(ii) Price per tree if picked up - $0.34~~

~~(D) 1000+:~~

~~(i) Price per tree if shipped - $0.35~~
~~(ii) Price per tree if picked up - $0.30~~

(2) ~~Southern Pine:~~ Using the inputs from subsection (1), determine the difference between the average input cost per tree and the average revenue per tree to find the three (3) year average cost per tree.

~~(A) 50 to 300:~~

~~(i) Price per tree if shipped - $0.33~~
~~(ii) Price per tree if picked up - $0.30~~

~~(B) 350 to 500:~~

~~(i) Price per tree if shipped - $0.29~~
~~(ii) Price per tree if picked up - $0.26~~

~~(C) 550 to 950:~~

~~(i) Price per tree if shipped - $0.26~~
~~(ii) Price per tree if picked up - $0.22~~

~~(D) 1000 to 2950:~~

~~(i) Price per tree if shipped - $0.18~~
~~(ii) Price per tree if picked up - $0.15~~

~~(E) 3000 to 9950:~~

~~(i) Price per tree if shipped - $0.11~~
~~(ii) Price per tree if picked up - $0.05~~

~~(F) 10,000+:~~

~~(i) Price per tree if shipped - $0.045~~
~~(ii) Price per tree if picked up - $0.038~~

(3) ~~Improved Virginia Pine:~~ Estimate the total production for the upcoming year through evaluation of factors that include but are not limited to:

(A) ~~50 to 300:~~ Actual sales by species for the past three (3) years.

~~(i) Price per tree if shipped - $0.33~~

~~(ii) Price per tree if picked up - $0.28~~

(B) ~~350 to 500:~~ Recent purchase trends.

~~(i) Price per tree if shipped - $0.29~~

~~(ii) Price per tree if picked up - $0.24~~

(C) ~~550 to 950:~~Cost-share program activity.

~~(i) Price per tree if shipped - $0.25~~

~~(ii) Price per tree if picked up - $0.20~~

~~(D) 1000+:~~

~~(i) Price per tree if shipped - $0.16~~

~~(ii) Price per tree if picked up - $0.12~~

(4) ~~Containerized seedlings:~~ Calculate projected seedling revenue based on averages from subsection (1) above applied to the current planting plans with projected sales of a minimum of eighty percent (80%) of stock.

(A) ~~Seedling price is $0.90 each.~~ Calculate projected seedling revenue by applying calculating average three (3) year prices against future or three (3) year average sales.

(B) ~~Prepaid shipping costs:~~ Calculate percentage estimated price adjustment necessary to reach self sufficiency of the program using total projected revenue against three (3) year rolling average of costs.

~~(i) 50 trees - $8.00~~

~~(ii) 100 trees - $14.00~~

~~(iii) 150 trees - $20.00~~

~~(iv) 200 trees or more - $26.00 plus $8.00 for each 50 trees over 200~~

(5) Select the minimum of eighty percent (80%) target projected sales percentage using all available information, sales data and best professional judgment. Then apply the needed percentage price adjustment against projected sales to approach self-sufficiency. In order for Oklahoma's seedling prices to remain competitive, price adjustments shall in no case exceed fifteen percent (15%) per year.

(b) The Department may negotiate prices on any advance contract orders greater than 150,000 trees, so long as the price is not lower than estimated cost for production.

(c) In the event that a fiscal year results are within ten percent (10%) of the self sufficiency target, the Department may defer a price increase, so long as estimated input costs and the planting plan are not expected to deviate significantly from the previous year.

(d) Delivery charges for large seedling orders shall be the estimated actual costs to the Department.

(e) Shipping charges for seedling orders shall be based upon projected actual shipping costs for the upcoming year.

[OAR Docket #10-661; filed ??-??-??]

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

[OAR Docket #10-662]

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PERMANENT final adoption
RULES:
Subchapter 1. Fine Schedules
Part 7. Forestry and Timber Violations [NEW]
35:3-1-7 [NEW]
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ANALYSIS:
The primary purpose of the proposed rule is to create a fine matrix for the Oklahoma Forestry Code to address the imposition of administrative penalties in relation to violations of the Oklahoma Agricultural Code and corresponding rules. The implementation of the fine matrix in the rules will provide guidance to the Department and to the public on potential fines for specific violations. Penalties for referenced violations will be more consistently applied, while still allowing the Department to make determinations on a case-by-case basis.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:

SUBCHAPTER 1. FINE SCHEDULES

PART 7. FORESTRY AND TIMBER VIOLATIONS

35:3-1-7. Violations of forestry and timber laws

(a) After notice and opportunity for a hearing in accordance with the Administrative Procedures Act, if the State Board

of Agriculture finds any person in violation of the Oklahoma Agricultural Code or any rule promulgated or order issued pursuant thereto, the Board shall have the authority to assess an administrative penalty of not less than One Hundred Dollars ($100.00) and not more than Ten Thousand Dollars ($10,000.00) for each violation.

(b) Each animal, each action, or each day a violation continues may constitute a separate and distinct violation.

(c) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require.

(d) Knowingly and willfully interfering with, molesting, or assaulting a forest ranger or firefighter in the performance of their duties pursuant to 2 O.S. § 16-6.

(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(e) Knowingly and willfully obstructing, interfering with, or impeding the progress of forest rangers or firefighters to reach the destination of a fire pursuant to 2 O.S. § 16-6.

(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(f) Knowingly and willfully damaging or destroying any vehicle or equipment used to reach or extinguish a fire pursuant to 2 O.S. § 16-6..

(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(g) Carelessly or willfully burning or causing to be burned or to set fire to or cause any fire to be set to any forest, grass, crops, rangeland, or other wild lands not owned by, duly authorized by the owner or manager, or in the lawful possession of, the person setting the fire or burning the lands or causing fire to be burned pursuant to 2 O.S. § 16-25(A).

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000.

(h) Setting fire to any forest, grass, range, crop, or other wildlands, or to build a campfire or bonfire, or to burn trash or other material that may cause a forest, grass, range, crop or other wildlands fire in any county, counties or area within a county where, because of emergency drought conditions there is a gubernatorially proclaimed extraordinary danger from fire pursuant to 2 O.S. § 16-26(A)(1).

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(i) Willfully, negligently, or carelessly build a warming or camp fire and leave the fire unextinguished or all the fire to spread pursuant to 2 O.S. § 16-27..

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(j) Willfully or carelessly burning, causing to be burned, setting fire to, or causing fire to be set to any forest, grass, croplands, rangeland, or other wild lands, by an owner of the property, unless notification to burn is made by the owner to the local office or local representative of the Forestry Division at least four (4) hours in advance and verbal or written approval obtained in a protection area pursuant to 2 O.S. § 16-28.1(A)(1).

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(k) Willfully or carelessly burning, causing to be burned, setting fire to, or causing fire to be set to any forest, grass, croplands, rangeland, or other wild lands, by an owner of the property, unless the owner takes reasonable precaution against the spreading of fire to other lands by providing adequate firelines, manpower, and fire fighting equipment for the control of the fire, watching over the fire until it is extinguished and not permitting fire to escape to adjoining land pursuant to 2 O.S. § 16-28.1(A)(2).

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(l) Failure to confine the fire to the owner's, agent's, or tenant's land pursuant to 2 O.S. § 16-28.1(B).

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(m) Failure to ensure the fire does not spread beyond the control of the person setting the fire, or failure to subdue or extinguish the fire pursuant to 2 O.S. § 16-28.1(E).

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(n) Failure to pay all costs and expenses incurred in suppressing the fire within ninety (90) days of notification by the Forestry Division for willfully or carelessly causing an unlawful forest, grass, crops, or woods fire pursuant to 2 O.S. § 16-32.

(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000
(4) In addition, all costs and expenses may be collected by the Department pursuant to a finding by the State Board of Agriculture.

(o) Intentionally breaking down, mutilating, removing, or destroying any fire control or forestry sign or poster of the Forestry Division erected in the administration of its lawful duties and authorities pursuant to 2 O.S. § 16-33.

(1) First Violation - $100 to $500
(2) Second Violation - $500 to $1000
(3) Subsequent Violations - $1000 to $10,000

(p) Possessing any incendiary device with the intent to use the device for the purpose of burning or setting fire to any forest, grass, crops, or woodlands that the person possessing the device is not the owner of nor in possession of lawfully, as under a lease pursuant to 2 O.S. § 16-34(A).

(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(q) Removing any timber or other timber products from any lands owned by the State of Oklahoma pursuant to 2 O.S. § 16-59.

(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(r) Intentionally, willfully, maliciously, or unlawfully entering upon the lands of another to cut down, injure, remove, or destroy any timber, without the permission of the owner or the owner's representative pursuant to 2 O.S. § 16-60.
(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(s) Failure of the timber owner to clearly mark any established property lines or failure to mail or publish any notice to the abutting real property owners, and as a result, timber is harvested or other damage occurs on any abutting real property without the consent of the owner pursuant to 2 O.S. § 16-61(B).
(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(t) Negligently enters upon lands of another, or authorizes or directs a logging or timber harvesting operation upon the lands of another, and cuts down, injures, removes, or destroys any timber without the permission of the owner pursuant to 2 O.S. § 16-62(A).
(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(u) Willfully, knowingly, or fraudulently representing, making, issuing, delivering, using or submitting, or participating in representing, making, issuing, delivering, using, or submitting any fictitious, false or fraudulent offer, agreement, contract, or other instrument concerning the sale of timber or the right to cut or harvest or remove timber not owned by that person, or from a site or from real property not owner or leased by that person pursuant to 2 O.S. § 16-63(A).
(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(v) Knowingly or with intent to defraud, the timber owner fails to pay in a timely manner the applicable owner the full price of all the purchased timber pursuant to 2 O.S. § 16-63(B).
(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

(w) Failure to maintain at all times during a logging or timber harvesting operation for inspection purposes a written bill of sale, timber deed or timber contract, recording memorandum, or written consent of the timber owner for the timber being harvested pursuant to 2 O.S. § 16-64(A).
(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(x) Failure to preserve any written bill of sale, timber deed or timber contract, recording memorandum, or written consent of the timber owner by the owner or operator of a logging or timber harvesting operation for at least a period of three (3) years pursuant to 2 O.S. § 16-64(D).
(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(y) Failure of a sawmill owner or operator of other person purchasing timber for resale, from a timber owner or owner of a logging or timber harvesting operation to obtain a bill of sale for the same or other evidence of ownership and to preserve it for a period of three (3) years pursuant to 2 O.S. § 16-65.
(1) First Violation - $100 to $2500
(2) Second Violation - $750 to $5000
(3) Subsequent Violations - $2500 to $10,000

(z) Selling timber using a false or altered identification or a false declaration of ownership pursuant to 2 O.S. § 16-66.
(1) First Violation - $500 to $2500
(2) Second Violation - $1000 to $7500
(3) Subsequent Violations - $5000 to $10,000

[OAR Docket #10-662; filed ??-??-??]

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

[OAR Docket #10-657]

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PERMANENT final adoption
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ANALYSIS:

This rule will require that each person who shows at a livestock exhibition must have a Federal Premise Identification Number or a verification of the permanent and physical location where the swine are housed through a Physical Location Card. The Novel Influenza A-H1N1 virus currently circulating in the human population is now known to be present in the U.S. swine herd, but to date is not known to be in the Oklahoma swine herd. As a result, this rule is very necessary to protect the swine industry and humans, especially youth, who could have potential exposure to the H1N1 strain. It is necessary to have the rule in place to ensure traceback in the event humans or swine are diagnosed with any Influenza A-H1N1 strains.

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, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

35:15-1-4. Exhibitions and shows

(a) As of August 1, 2009, each person who presents swine for a swine exhibition and show shall provide one of the following:

(1) Verification of a Federal Premise Identification Number; or

(2) Verification of the permanent and physical location where the swine are housed when not in transit or attending a swine exhibition or show.

(A) Verification shall be provided pursuant to a Physical Location Card obtained from the Oklahoma Department of Agriculture, Food, and Forestry.

(B) The information provided for a Physical Location Card shall not be included or maintained with the Federal Premise Identification Number database.

(b) A swine exhibition or show shall not include a livestock market.

[OAR Docket #10-657; filed ??-??-??]

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

[OAR Docket #10-656]

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RULES:

Subchapter 15. Equine Infectious Anemia (EIA)
Part 3. Procedures
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35:15-15-36 [AMENDED]
35:15-15-37 [AMENDED]
35:15-15-39 through 35:15-15-42 [AMENDED]

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ANALYSIS:

The purpose of the proposed rules is to develop a licensing process for new laboratories that provide equine infectious anemia testing. Recently, USDA lifted the ban on licensing of new equine infectious anemia laboratories. The rule establishes criteria for licensing and provides a licensing fee for these facilities. In addition, the proposed rules clean up the procedural rules for equine infectious anemia.

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, 2010:

SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)

PART 3. PROCEDURES

35:15-15-32. Personnel authorized to collect blood samples

All official samples collected from Equidae for EIA testing shall be collected by a state or federal veterinarian ~~or by~~, an accredited veterinarian, or an authorized agent of the Board.

35:15-15-33. Submission of sample and test charts

(a) All blood samples submitted for official tests shall be accompanied by a properly completed VS Form 10-11 Equine Infectious Anemia Laboratory Test listing the following:

(1) Description of the Equidae, including the age, breed, color, sex, animal's name, any registration number, all distinctive markings, including color patterns, brands, tattoos, scars, or blemishes. In the absence of any distinctive color markings or visible permanent identifications,

the Equidae shall be identified by indicating the location of all hair whorls, vortices, or cowlicks with an "X" on the illustration provided on the VS Form 10-11.

(2) Owner's name, address, and telephone number.

(3) The animal's home premise and county.

(4) The name, address, and telephone number of the authorized person collecting the test sample.

(5) The laboratory and the person conducting the test.

(b) All blood samples taken from the animal listed on the VS Form 10-11 shall be submitted in approved tubes and the tubes shall be identified with the same animal name, registration number, tattoo, or other identification as recorded on the VS Form 10-11.

(c) Samples submitted without proper identification and proper test charts shall not be classified.

(d) Authorized personnel shall use only one chart or VS Form 10-11 for each Equidae to be tested.

35:15-15-34. Requirements for approved EIA testing laboratories

(a) No person shall operate an EIA testing laboratory without first obtaining approval from the Board.

(b) Conditions of approval.

(1) Submit a complete application to the office of the State Veterinarian.

(2) Upon receipt of an application, the facility shall be inspected by an authorized agent of the Board.

(3) A report of the inspection shall be submitted to the State Veterinarian and identify the EIA testing laboratory's compliance with the minimum standards for facilities, equipment, and personnel.

(4) The applicant shall agree in writing to operate the laboratory in conformity with the Department rules and the requirements of the USDA and shall continually meet all requirements during operation of the laboratory.

(5) A determination by the Department that an additional EIA laboratory is necessary in the area.

(c) Operating requirements.

(1) All personnel conducting an official test at an approved laboratory shall receive training prescribed by the National Veterinary Services Laboratories (NVSL).

(2) Approved laboratories shall use USDA licensed antigen and follow standard test protocols prescribed by NVSL.

(3) Approved laboratories shall maintain a work log clearly identifying each individual sample and test results.

(4) Approved laboratories shall maintain a work log and a file of all submission forms for a period of not less than two (2) years.

(5) All approved laboratories shall report all positive results to an official test for EIA to the State Veterinarian's office within twenty four (24) hours.

(6) A copy of all test charts for positive Equidae shall be sent to the State Veterinarian's office within seventy two (72) hours.

(7) Negative results shall be reported to the office of the State Veterinarian on a monthly basis.

(d) Inspections ~~and~~, proficiency tests, and licenses.

(1) The Board shall randomly and without prior notification collect samples and inspect the facilities and records of all EIA laboratories in Oklahoma at a minimum of once per year.

(2) All records required to be maintained by approved laboratories shall be open to inspection by state or federal employees during normal business hours.

(3) All approved laboratories shall pass annual proficiency test requirements administered by the NVSL.

(4) All approved laboratories shall pass any additional proficiency test requirements administered by the Board.

~~(A) All approved laboratories that pass the additional proficiency test requirements administered by the Board shall be published on the Department maintained list of "Oklahoma Certified EIA Laboratories."~~

~~(B) The Board shall charge a fee to the approved laboratory for administering each additional proficiency test in the amount of Fifty Dollars ($50.00).~~

~~(C) The Board may waive any additional proficiency test requirements if an approved laboratory enters into a written agreement with the State Veterinarian and is designated as "ELISA Only" on the Department maintained list of "Oklahoma Certified EIA Laboratories."~~

(5) The Board shall charge a fee to the approved laboratory for administering each additional proficiency test in the amount of Fifty Dollars ($50.00).

(6) Each approved laboratory shall obtain a license on an annual basis.

(A) The annual license fee shall be $250.00.

(B) The annual license shall expire on January 31 of each calendar year.

(C) The renewal license application shall be submitted no later than January 31 of each calendar year.

(D) A renewal application received or postmarked after January 31 shall be in violation of these rules.

(E) Failure to renew may result in disapproval of the laboratory.

(F) A fee waiver may be granted to an EIA laboratory at a university or state agency.

(e) An EIA laboratory may have its approval cancelled if the Board finds that the laboratory has failed to meet the requirements or has falsified records or reports.

(f) Any action taken by the Board to cancel laboratory approval shall conform to the Administrative Procedures Act.

(g) The Department may deny the application of any EIA laboratory if it fails to meet any criteria required by the Department.

(h) ~~State approved~~Approved laboratories shall only perform the ~~EIA~~ ELISA test.

(i) The Department may at its discretion in limited and approved circumstances grant ~~state~~ approved laboratories the ability to perform the AGID test for equine being exported from Oklahoma to a foreign country or for horses not residing in Oklahoma. The limited exception shall be detailed in a written agreement between the Department and the ~~state~~ approved laboratory.

(j) Any approved EIA laboratory shall resubmit all application information for approval by the Department upon a change in ownership of the facility or a change in location of the facility.

35:15-15-36. Classification of Equidae tested

(a) All Equidae tested for EIA pursuant to an official test shall be classified as negative or positive.

(b) Positive Equidae and retests.

(1) A positive is any Equidae which discloses a positive reaction to an official test.

(2) Equidae classified as positive may be retested prior to branding upon the owner's written request to the State Veterinarian no more than fifteen (15) days following the date of the original test.

(3) All retest samples shall be collected by a state or federal veterinarian, an accredited veterinarian, or an authorized agent of the Board and submitted to the Oklahoma Department of Agriculture, Food, and Forestry Laboratory Services.

(4) The owner shall provide documentation ~~to the state or federal veterinarian collecting the retest sample~~ verifying the equine tested is the same animal identified as positive on the original test document.

(5) All positive Equidae shall be held in isolation and under quarantine until the retest results are received.

(6) All other Equidae on the premise shall be held under quarantine until the retest results are received.

(7) Retest results from the Oklahoma Department of Agriculture, Food, and Forestry Laboratory Services shall be the official retest results. Results from other approved laboratories shall not be official when conducted as retests of positive animals.

(c) All Equidae that show a negative response to an official test shall be classified negative by the approved laboratory.

(d) The designated epidemiologist may deviate from the positive or negative classification so long as the reasons to do so are documented.

35:15-15-37. Reporting of test results

(a) The person operating an approved laboratory shall notify the State Veterinarian's office and the individual submitting the sample for testing within twenty four (24) hours of all positive test results.

(b) The individual who collected the test sample shall notify the owner of the positive horse within forty eight (48) hours of all positive test results and of the quarantine resulting from the positive test results.

(c) Approved laboratories shall only report test results on samples properly submitted and accompanied by a completed VS Form 10-11.

(d) ~~An~~ Any person operating an approved laboratory that reports results prior to the appropriate time period necessary for the proper completion of an official test shall be in violation of these rules and may be subject to removal of the laboratory's approved status and other administrative remedies.

35:15-15-39. Quarantines

(a) Any Equidae testing positive to an official test shall be quarantined to the premise of origin or other approved premise until natural death, disposition by euthanasia or slaughter, or movement to a quarantined holding facility.

(b) The quarantine shall include the positive Equidae, all other Equidae on the premise, and all Equidae epidemiologically determined to have been exposed to an EIA positive animal.

(c) The owner shall maintain isolation of all Equidae on an affected premise a minimum of two hundred (200) yards from all other negative Equidae and Equidae of unknown status on adjacent premises.

(d) In addition to a quarantine, the owner may enter into a herd plan for an affected herd.

(e) The owner of an adjacent or exposed herd may enter into a herd plan in addition to a quarantine or in lieu of a quarantine, pursuant to an agreement with the State Veterinarian.

(f) The issuance of a quarantine may be waived if the Board or the State Veterinarian enters into a formal memorandum of understanding with the owner that controls the movement of animals and the disease condition.

(g) Release of quarantine.

(1) No Equidae held under quarantine shall be moved or released until a written permit or quarantine release signed by an authorized agent has been executed.

(2) The EIA quarantine may be released by an authorized agent after all quarantined Equidae in the affected herd test negative to an official test conducted at the Oklahoma Department of Agriculture, Food, and Forestry no less than sixty (60) days nor more than one hundred twenty (120) days following the identification and removal of the last EIA positive animal.

(3) Epidemiologic data may be considered in the release of the quarantine.

35:15-15-40. Testing requirements in affected herds

(a) All test eligible Equidae determined to have been on the same premise as an EIA positive animal at the time the positive animal was tested shall be tested by a state or federal veterinarian or an authorized agent of the Board within thirty (30) days of the confirmation of the positive EIA test.

(b) A second test shall be conducted not less than sixty (60) days nor more than one hundred twenty (120) days following removal of the last positive Equidae for quarantine release.

(c) Foals nursing EIA positive mares shall be tested not less than sixty (60) days nor more than one hundred twenty (120) days upon weaning and isolation from any positive animal. If positive, foals may remain under quarantine for additional testing at the discretion of the designated epidemiologist.

35:15-15-41. Testing in exposed, contact, and adjacent herds

(a) All test eligible Equidae epidemiologically determined to have been exposed to an EIA positive animal shall be quarantined and tested by a state or federal veterinarian, an accredited veterinarian, or an authorized agent of the Board.

(b) All test eligible exposed, contact, or adjacent herds shall be tested within thirty (30) days of notification.
(c) A second test shall be conducted not less than sixty (60) days nor more than one hundred twenty (120) days following the removal of the last positive animal from the affected herd.
(d) Exposed, contact, or adjacent herds tested by a state or federal ~~veterinarians~~veterinarian or an authorized agent of the Board shall be tested at state expense so long as funds are available.
(e) Exposed, contact, or adjacent herds tested by accredited veterinarians shall be tested at the owner's expense.
(f) Epidemiologic data may be considered in the testing requirements and release of quarantine for exposed, contact, and adjacent herds.
(g) Any owner who chooses to maintain an EIA positive animal shall adhere to the following requirements:
(1) Brand and isolate the EIA positive animal in accordance with the provisions of this subchapter;
(2) Test each Equidae under common ownership or present on the property annually at the owner's expense;
(3) Submit an annual inventory of all Equidae under common ownership or present on the property to the Department by June 30 of each year; and
(4) Test any Equidae thirty (30) days prior to any sale or movement of any Equidae under common ownership or present on the property.

35:15-15-42. Movement of positive and exposed animals

(a) All positive and exposed Equidae shall be accompanied by a permit when moved from any quarantined premise.
(b) All movement of positive or exposed Equidae shall be direct to an approved slaughter facility, to a quarantined holding facility prior to movement to an approved slaughter facility, or to a research facility approved by the State Veterinarian.
(c) ~~Any~~ An owner who intends to change ~~in~~ the location of positive or exposed Equidae to an alternate quarantined premise shall ~~be approved~~request approval at least thirty (30) days in advance and shall only move the animal following an epidemiological investigation by a state or federal veterinarian.
(d) No diversion from the destination identified on the permit is allowed.
(e) If a change in destination is necessary, a new permit shall be issued.

[OAR Docket #10-656; filed ??-??-??]

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

[OAR Docket #10-659]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 44. Farmed Cervidae
35:15-44-2 through 35:15-44-14 [AMENDED]
35:15-44-16 through 35:15-44-19 [AMENDED]
AUTHORITY:
State Board of Agriculture; 2 O.S. §§ 2-4 (A) (2) and 6-503(D) 281
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N/A
ANALYSIS:
The proposed rules amend the procedures for obtaining a farmed cervidae license. It will address fee increases, permitting procedures, and inspection procedures.
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, 2010:

SUBCHAPTER 44. FARMED CERVIDAE

35:15-44-2. Definitions

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

"Applicant" means one or all landowners or lessees of the property where the farmed cervidae facility will be located who apply for a license.

"Licensee" means one or all of the landowners or lessees of the property where a licensed farmed cervidae facility is located.

"Proof of ownership" means an inspection certificate, a purchase invoice from a licensed public livestock market showing ~~individual~~official identification, a duly executed bill of sale, court orders, certification that the cervidae was born from animals owned by the seller, or any other document the Department deems acceptable.

35:15-44-3. Application for license

(a) An ~~owner or operator~~applicant shall obtain a farmed cervidae license prior to breeding, possessing, or raising farmed cervidae for commercial or noncommercial purposes.

(b) The Department may issue a license if the cervidae ~~were~~are lawfully obtained, the~~ owner and operator~~applicant act in good faith, and the~~ owner and operator adhere~~licensee adheres to all applicable laws and rules.

(c) An application for a farmed cervidae facility shall contain the following complete, accurate, and legible information:

(1) Name, address, ~~and~~all telephone ~~number of owner~~ numbers, and email addresses, if available, of the applicant.

(2) Name, address, ~~and~~all telephone ~~number~~numbers, and email addresses, if available, of the operator, if different from the ~~owner~~applicant.

(3) ~~Name, address, and telephone number~~Identification of the primary contact, who shall be an applicant or the operator.

(4) ~~Farm name,~~A list of all names the farmed cervidae facility operates pursuant to, and the address, and facility telephone number, including but not limited to the Doing Business As (D/B/A), corporate name, or other name. If a corporation, submit the certificate of good standing from the Secretary of State.

(5) Name, address and telephone number of the location where records are kept.

(6) Specific legal description of the facility to the nearest quarter section.

(7) A map showing waters of the state and topography of the area with a diagram of the facility structures, fencing plan, and perimeter clearly marked.

(8) ~~A description of the experience and education of the owner and operator to successfully maintain and operate the facility.~~

~~(9)~~ Whether the applicant has been convicted of a felony, misdemeanor, administrative, or civil violation of any natural resources requirements, including but not limited to wildlife, forestry, fisheries, environment, or animal health within the past three (3) years in Oklahoma or any other jurisdiction.

(~~10~~9) Whether the property where the farmed cervidae facility is located is owned or leased.

(~~11~~10) An initial inventory of the farmed cervidae, including their ~~ages~~ age, breed and species, and a minimum of one form of official ~~individual~~ identification ~~approved by the Department~~ for each animal.

(~~12~~11) Method of carcass disposal for the facility, including carcass storage sites, carcass burial areas, incineration approval, rendering company, composting plan, or landfill.

(~~13~~12) Driving directions from the nearest town.

~~(14) The D/B/A, corporate name, or other name the farmed cervidae facility operates under. If a corporation, submit a certificate of good standing from the secretary of state.~~

~~(15) A list of each name the farmed cervidae facility operates under.~~

(~~16~~13) Signature of each applicant under oath "I certify under penalty of law this document, all attachments, and information submitted are to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for knowingly submitting false, inaccurate, or incomplete information, including the possibility of fines for each violation and the possibility of denial, modification, suspension, cancellation, and revocation of the license."

(d) The Department shall not issue a license in the following circumstances:

(1) The facility was not inspected by the Department.

(2) The ~~owner or operator~~applicant had any equivalent license denied, revoked, or suspended by any authority, except ~~by~~in accordance with the provisions of OAC 35:15-44-16.

(e) Using information from the application and from the State's files, the Department shall determine:

(1) The accuracy of all materials in the application;

(2) The applicant can reasonably be expected to comply with all legal requirements; and

(3) The proposed facility is adequate and complies with all legal requirements and would not result in harm to native wildlife.

(f) If an applicant is denied a farmed cervidae license, the Department shall notify the applicant in writing by certified mail, return receipt requested, of the denial. The denial shall include the following:

(1) Reasons for the denial;

(2) Steps necessary to meet the requirements for a license, if applicable; and

(3) The opportunity to request an administrative hearing on the denial.

35:15-44-4. Renewals

(a) Any licensee obtaining a new license issued after November 1 in any calendar year, but prior to January 1, shall not be required to renew in the next calendar year.

(b) The license shall expire on June 30 of each calendar year.

(~~b~~c) The renewal application shall be submitted not later than January 15 of each calendar year.

(~~c~~d) ~~The annual report containing all~~All inventory information shall be submitted with the renewal application.

(1) The Department may, on a case by case basis, approve a different date for submission of the annual report.

(2) ~~An owner or operator shall~~A licensee may request a different date in writing ~~to~~ from the Department no later than November 1 of the previous calendar year, and shall provide justification for using a date other than January 15.

(3) Submission of an annual report for other disease monitoring purposes may be considered justification for requesting a different date.

(d) Any renewal application ~~received or~~ postmarked after the renewal date shall be subject to ~~a 10%~~an administrative penalty in addition to the renewal fee, and the late application shall be deemed a violation of the Oklahoma Farmed Cervidae Act.

(e) Submit a signed, complete, accurate, and legible form containing the following information:

(1) ~~The annual report~~All material required for an original application, except for the topographic map.

(2) Any changes to the facility since the last renewal or original license application, including, but not limited to:

(A) Changes in contact information.

(B) Changes in perimeter fences. Attach an updated facility map indicating any expansion, change in facility perimeter, or any additional fencing.

(f) No renewals shall be issued for a license that is allowed to lapse due to the negligence of the owner or operator.

(g) Failure to renew or hold a current license shall result in the facility being quarantined until due process of law against the ~~current~~ owner occurs and shall be deemed a violation of the act. The failure may result in ~~revocation of the license, loss of the facility number~~ penalties, closure of the facility, and removal of the cervidae from the premises.

(h) If an applicant is denied a farmed cervidae license, the Department shall notify the applicant in writing by certified mail, return receipt requested, of the denial. The denial shall include the following:

(1) Reasons for the denial;

(2) Steps necessary to meet the requirements for a license, if applicable; and

(3) The opportunity to request an administrative hearing on the denial.

35:15-44-5. Transfers

For transfer of a license to a new ~~owner or operator~~applicant, the following conditions shall be met:

(1) The new ~~owner or operator~~applicant shall submit to the Department a transfer application that requests all items required by an original license application, attaching any change of conditions resulting from the transfer of ownership or operation;

(2) After receipt of the information required, the Department shall review the information, and within thirty (30) days, issue approval or denial of the transfer. Transfer of a license shall be denied only if:

(A) the new ~~owner or operator~~applicant cannot comply with the requirements of transfer or licensure,

(B) failure of the new ~~owner or operator~~applicant to meet any other conditions or requirements for compliance established by the Department, or

(C) If a transfer is denied, written notification of the denial and an opportunity for an administrative hearing on the denial shall be given to the applicant for a transfer license by the Department. The notification shall set forth the reasons for the denial, steps necessary to meet the requirements for a transfer license and the opportunity for the applicant to request an administrative hearing.

35:15-44-6. Record keeping

(a) All required records shall be kept by the ~~owner or operator~~licensee for a minimum of five (5) years.

(b) The following records shall be maintained at the facility:

(1) Records of all cervidae bought, sold, killed, given away, transported, or shipped, and shall include but not be limited to all natural additions and natural losses.

(2) The name, telephone numbers and address of any recipient or consignee and the date of any transaction. The licensee shall confirm that the recipient or consignee holds a valid Oklahoma farmed cervidae license and the animals are officially identified prior to the transaction.

(3) ~~Sales receipts~~ Official sales report.

(4) Proof that the purchased cervidae are from a current license farmed cervidae facility or other legal source ~~and records kept~~ and ~~animals marked to identify individual animals~~ are identified by official identification prior to addition to the herd.

(5) The ~~CWD inventory or an~~ inventory of cervidae containing the following information:

(A) ~~Name and address of the farmed cervidae facility, the owner, and the operator.~~

~~(B)~~ A listing of each individual animal currently on the facility.

~~(C) A statement of ownership.~~

(~~D~~B) A listing of any and all identification numbers assigned to each animal. All ~~the~~ cervidae ~~by the owner or operator and any others~~shall have at least one form of official ~~entity~~ identification by six (6) months of age or at change of ownership, whichever occurs first.

~~(i) Tattoo number.~~

~~(ii) Any official identification approved by the Department.~~

~~(iii) USDA alphanumeric test tag number or official Canadian alphanumeric test tag number, if applicable.~~

(~~E~~C) Age.

(~~F~~D) Sex.

(~~G~~E) Date of purchase or date of birth if a natural addition to the herd.

(~~H~~F) Date of death or date of change of ownership.

~~(I) Any cervidae born at the facility shall be shown on the inventory record on or before December 31 of the year of birth, or upon sale or transfer of ownership or upon leaving the facility, whichever comes first.~~

~~(J) Any cervidae purchases shall be on the inventory record immediately after acquisition.~~

~~(K) Date the inventory was completed.~~

(6) Herd and individual animal health documents, including, but not limited to, ~~the Certificate~~Certificates of Veterinary Inspection, license certificates, and test results.

35:15-44-7. Limit on facility size

(a) Facility size shall be limited to the largest practicable area to ensure no native or wild cervidae are within the confines of the facility. Limitations on facility size may include but not be limited to geography,~~and~~ topography, timber density, and visibility of the property. The Department has the authority to approve, disapprove, or request modifications to the facility.

(b) No farmed cervidae facility shall share a common fence with any Wildlife Management Area operated by the Oklahoma Department of Wildlife Conservation.
(c) Each separate location of a farmed cervidae facility that does not share a common fence shall be licensed separately.

35:15-44-8. Fencing and facility requirements
(a) The ~~owner or operator~~license shall ensure that farmed cervidae are confined to the ~~lands~~ facility described in the application.
(b) The perimeter of each new farmed cervidae facility shall be an eight (8) foot game or high tensile fence designed in a manner to prevent ingress and egress of cervidae.
(1) Facilities in operation prior to the effective date of the Oklahoma Farmed Cervidae Act shall maintain fencing sufficient to prevent ingress and egress of cervidae.
(2) The owner or operator shall install eight (8) foot game or high tensile fence for any new fencing at a new or existing facility.
(c) Damage caused to a farmed cervidae facility perimeter fence ~~by a natural disaster~~through no fault of the licensee shall not constitute a violation so long as the ~~owner or operator~~licensee begins any necessary repairs immediately upon discovery, acts expeditiously in the opinion of the Department to complete any necessary repairs, and reports the extent and cause of any damage to the Department within two (2) working days of discovery.
(d) The ~~owner or operator~~licensee shall notify the Department within two (2) working days of discovery of any wild cervidae within the farmed cervidae facility and of any escaped farmed cervidae.
(e) The ~~owner or operator~~licensee shall provide each farmed cervidae with adequate water, adequate feed, appropriate natural or manmade shelter, and reasonable protection from predators.

35:15-44-9. Flushing procedures
(a) Prior to the final enclosure of the farmed cervidae facility, the ~~owner~~applicant or ~~operator~~ licensee shall undertake a flushing procedure to ensure that any native or wild cervidae are not present in the area.
(b) The flushing procedure shall be performed in the presence of authorized agents of the Oklahoma Department of Wildlife Conservation.
(c) The ~~owner~~applicant or ~~operator~~licensee shall obtain documentation from the Oklahoma Department of Wildlife Conservation that the flushing procedure was adequately completed.

35:15-44-10. Slaughter requirements
(a) ~~Owners and operators~~Licensees of licensed farmed cervidae facilities may slaughter farmed cervidae at any time throughout the year pursuant to the Exotic Livestock and Exotic Livestock Products Inspection Act or other applicable law.
(b) ~~An owner or operator~~Licensees may slaughter their own farmed cervidae for personal or noncommercial consumption, but in no case shall someone other than the ~~owner or operator~~ licensee be allowed to hunt or shoot the farmed cervidae.
(c) Any person holding meat or antlers with attached skull plates from a farmed cervidae facility that obtained it through ~~non-commercial~~noncommercial methods shall hold a receipt from the ~~owner or operator~~licensee of the farmed cervidae facility for so long as they ~~have~~hold the meat or antlers with attached skull plates.

35:15-44-11. Transportation permit
A ~~permit developed by the Department or a~~ sales ~~receipt~~report shall be provided to any purchaser or transporter of live cervidae, meat, or antlers with attached skull plates and it shall be kept with the live cervidae, meat, or antlers with attached skull plates at all times.

35:15-44-12. Sale or disposal of hides and antlers
(a) Any ~~owner and operator~~licensee of a farmed cervidae facility may sell or dispose of hides and ~~antler sheds~~antlers not attached to skull plates at any time.
(b) ~~An owner or operator~~A licensee shall only sell or dispose of antlers with attached skull plates in the following circumstances:
(1) Each set of antlers with attached skull plate shall be ~~individually~~officially identified with sufficient documentation linking it to the farmed cervidae facility or license, including, but not limited to, photographs of the animal, lock on identification tags, DNA testing, or other proof of ownership;
(2) In no case shall ~~an owner or operator~~any person sell or dispose of antlers with attached skull plates without appropriate documentation.
(3) ~~The owner or operator shall notify the Department within two working days of any sale or disposal of antlers pursuant to this section and provide a copy of all appropriate documentation to the Department.~~
~~(4)~~ The ~~owner or operator~~licensee shall provide a copy of all appropriate documentation to the purchaser or recipient at the time of sale or disposal.
~~(c) The sale or disposal of antler sheds or antlers that are not attached to the skull plate shall not be restricted.~~

35:15-44-13. Carcass disposal
(a) Facilities shall comply with all carcass disposal requirements.
(b) The following methods may be used for disposal of carcasses from a farmed cervidae facility:
(1) Rendering,
(2) Landfill,
(3) Burial,
(4) Incineration, or
(5) Composting.
(c) Carcass disposal areas shall be located a minimum of thirty (30) feet from any live farmed cervidae.
(d) The owner or operator shall comply with Title 2, Section 2-18.1,~~and~~ Title 21, Sections 1222, 1223, and 1224, and OAC 35:100-13-1 et seq. at all times.

35:15-44-14. Inspections

(a) Each ~~premises~~farmed cervidae facility shall be inspected at least annually between renewal application approval and prior to expiration of the license.

(b) Prelicensing inspections:

(1) Upon submission of a complete application, the Department shall schedule an onsite meeting and inspection to review the facility.

(2) The Department shall review the location of the facility, including perimeter fencing, gates, feed bunkers, waters of the state, shelter, carcass disposal areas, and any other facilities for the location.

(3) The Department may request appropriate changes to the facility design prior to license approval.

(4) In no case shall a license for a farmed cervidae facility be granted unless the Department has conducted ~~a prelicensing~~an inspection and the Department has approved the facility based on that inspection.

(5) The license ~~shall~~may be revoked for any facility that does not construct or operate the facility in accordance with the approved prelicensing inspection.

~~(c) All new facilities shall be inspected within ninety (90) calendar days prior to issuance of a new license.~~

~~(d) All facilities and cervidae for inventory purposes shall be inspected within six (6) months prior to the renewal of an existing license.~~

~~(e) It is the responsibility of the owner or operator to arrange the appropriate inspection and the Department shall be given an adequate time to respond to the request for the inspection.~~

~~(f) Authorized agents of the Oklahoma Department of Wildlife Conservation shall have the authority to enter and inspect any premises pursuant to Title 29, Section 3-201 of the Oklahoma Statutes for the purpose of implementing and enforcing the Oklahoma Wildlife Conservation Code.~~

35:15-44-16. Modify, suspend, cancel, deny, or revoke licenses

(a) The farmed cervidae license ~~of any owner or operator~~ may be revoked if the ~~owner or operator~~licensee is convicted of violating any provisions of the Oklahoma Agricultural Code.

(b) In the event a license is denied, revoked, cancelled, or suspended, the ~~owner or operator is~~ former licensee shall not be eligible to reapply until after the date the license would have expired.

35:15-44-17. Closure of the facility

(a) The ~~owner or operator~~licensee may take up to ~~one hundred twenty (120)~~sixty (60) days to dispose of all cervidae at the facility pursuant to the Oklahoma Farmed Cervidae Act and rules upon expiration of a license.

(b) In no case shall the licensee release any farmed cervidae ~~be released~~ into the wild.

(c) ~~Cleaning~~The licensee shall clean and ~~disinfection of~~disinfect the premises ~~shall be completed~~ immediately upon closure of the facility if required by the Department.

35:15-44-18. Fees

(a) The application, renewal, and transfer fee for a ~~new~~ farmed cervidae facility shall be ~~$125~~ Two Hundred and Fifty Dollars ($250.00).

(b) The ~~annual license renewal~~follow up inspection fee shall be ~~$75~~ One Hundred Dollars ($100.00) per ~~facility~~ inspection. The fee shall be due prior to the Department's follow up inspection.

(c) There shall be no fee for closure inspections unless a follow up closure inspection is required.

(d) Fees shall not be refundable.

35:15-44-19. Entry and export requirements

(a) Import of cervidae originating in any state or Canadian province where CWD exists in free ranging native herds shall be prohibited, unless it originates from a CWD monitored herd with a five-year status within a county where no CWD exists in free ranging native herds.

(b) All other cervidae imports shall only be from a source herd ~~that is in~~ a minimum of five (5) year status or equivalent in a state or federal CWD surveillance and certification program ~~that meets the standards of cervidae importation into Oklahoma~~.

(c) Import of cervidae shall be accompanied by a Certificate of Veterinary Inspection and ~~an approved~~a Cervidae Import Permit approved or provided by the Department.

(1) The import permit shall be valid for thirty (30) days from approval.

(2) Cervidae Import Permit applications shall be submitted to the Department no less than four (4) working days prior to the scheduled shipment.

(d) Cervidae shall be officially identified prior to import.

(e) All cervidae six (6) months or older shall test negative for brucellosis thirty (30) days prior to entry or originate from a certified brucellosis free herd.

(f) All cervidae six (6) months or older shall meet one of the following criteria prior to entry:

(1) Classified negative to two (2) official tuberculosis test that were conducted no less than ninety (90) days apart with the second test conducted no more than ninety (90) days prior to the date of movement.

(2) Originate from a Qualified Herd and test negative to an official tuberculosis test conducted no more than ninety (90) days prior to the date of movement. The Qualified Herd number and date of the qualifying test shall be recorded on the Certificate of Veterinary Inspection.

(3) Originate from an Accredited Free Herd provided the Accredited Free Herd number and date of last test are recorded on the Certificate of Veterinary Inspection.

[OAR Docket #10-659; filed ??-??-??]

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

[OAR Docket #10-660]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
35:20-1-1 [AMENDED]
Subchapter 3. Rural Fire Protection Program Fund Act
Part 1. General Provisions
35:20-3-1 [AMENDED]
Part 3. Financial Assistance Program
35:20-3-5 [AMENDED]
35:-20-3-6 [AMENDED]
35:20-3-7 [REVOKED]
35:20-3-8 through 35:20-3-11 [AMENDED]
Part 5. Matching Grant Program
35:20-3-17 through 35:20-3-24 [AMENDED]
Part 7. Rural Fire Defense Equipment Revolving Fund Program
35:20-3-30 through 35:20-3-34 [AMENDED]
Subchapter 17. Forest Resources Development Program
Part 1. General Provisions
35:20-17-1 [AMENDED]
35:20-17-2 [AMENDED]
Part 3. Cost-Share Program Guidelines
35:20-17-7 through 35:20-17-9 [AMENDED]
35:20-17-14 through 35:20-17-16 [AMENDED]
35:20-17-19 [AMENDED]
35:20-17-21 through 35:20-17-23 [AMENDED]
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ANALYSIS:
The purpose of the proposed rules is to revise the procedures for application and approval of 80/20 rural fire grants, as well as other grant programs. In addition, the rules provide an increase in total grant funds available to each fire department. The rules will also clean up obsolete language.
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, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

35:20-1-1. Purpose

The rules of this Chapter establish procedures for implementing various programs of the ~~State~~Oklahoma Department of Agriculture, Food, and Forestry, ~~-~~Forestry Services Division related to the Rural Fire Protection Program Fund Act and ~~Urban and Community Forestry~~Forest Resource Development Program. These programs generally provide funding assistance to rural fire departments, communities, nonprofit groups and others in the areas of rural fire protection and ~~urban and community forestry~~ and forest resource development.

SUBCHAPTER 3. RURAL FIRE PROTECTION PROGRAM FUND ACT

PART 1. GENERAL PROVISIONS

35:20-3-1. Purpose

The rules of this Subchapter have been adopted for the purpose of complying with the provisions of 19 O.S.~~,~~ Sections 901.55 through 901.61, ~~which may be cited~~known as the Rural Fire Protection Program Fund Act. These rules establish procedures for implementing three programs in the Rural Fire Protection Program Fund Act. The Act provides programs of financial assistance, matching grants and equipment revolving funds to improve fire protection provided by ~~Oklahoma's~~ rural fire departments. These rules are designed to be in full compliance with legislative intent, Executive ~~Order Number 95-26~~Orders and subsequent guidance from the Attorney General's Office and the Office of State Finance related to funding of local projects, and the Administrative Procedures Act.

PART 3. FINANCIAL ASSISTANCE PROGRAM

35:20-3-5. Overview of Financial Assistance Program

(a) **Program description.** 19 O.S. ~~Supp. 1990,~~ Section 901.56 authorizes the Oklahoma Department of Agriculture, Food, and Forestry to provide financial assistance to eligible rural fire departments upon certification by the Rural Fire Coordinators in each District. These funds may be used for certain operational expenses of the fire department, and are intended to supplement funds already available to the fire department, and not to replace them.

(b) **Contingency.** Implementation of this Part is contingent upon annual appropriation to the Department ~~of Agriculture~~ for this purpose. If funding is approved, the Department ~~of~~

~~Agriculture~~ will notify the Rural Fire Coordinators on or before June 30.

35:20-3-6. Eligibility of fire departments for financial assistance

In order to participate in the Financial Assistance Program, fire departments ~~must~~shall meet the eligibility criteria established by 19 O.S.~~,~~ Section 901.56(D).

35:20-3-7. Financial Assistance Program announcement [REVOKED]

~~A Financial Assistance Program announcement will be published in the Oklahoma Register in accordance with the Administrative Procedures Act when funds are made available for this program.~~

35:20-3-8. Financial assistance certification of eligible fire departments

(a) **Certification procedure.** Each Rural Fire Coordinator ~~will~~shall certify each year~~, on the form prescribed,~~ the eligibility of fire departments in ~~the~~their assigned District to receive state grants and awards.~~, and develop the list of the certified fire departments which need financial assistance.~~ Fire departments shall complete and submit appropriate forms provided by the Oklahoma Department of Agriculture, Food, and Forestry to the respective Rural Fire Coordinator no later than April 30 of each year. The fire department shall submit the following, at a minimum:~~must furnish proof of documentation of incorporation of the fire department to be certified. New fire departments formed after the certification period will not be eligible for funds until the next fiscal year. Fire departments not returning the required forms by the due date specified will not be eligible for funding.~~

(1) Name, address, and contact information;

(2) The fire department's OFIRS reporting number and a statement that a report of fire runs was reported to the State Fire Marshall's Office for the previous year. Fire departments formed after the end of the previous calendar year shall be exempt;

(3) Proof of a public listing of an emergency telephone number or statement indicating the fire department is a part of the 911 system.

(4) Proof of workers' compensation insurance on its firefighters;

(5) Proof of liability insurance on each fire department vehicle acquired from the Department;

(6) A statement indicating the fire department has formally adopted NIMS and is actively participating in NIMS training and compliance activities; and

(7) Compliance with all other applicable state and federal laws.

(b) **Ineligibility.** New fire departments formed after April 30 shall not be eligible for funds in that year. Fire departments submitting the forms for certification after April 30 shall not be eligible for funding in that year.

(c) **Certified list of ~~eligibles~~ Rural Fire Departments.** ~~The~~From the fire department forms submitted, the Rural Fire Coordinators ~~will~~shall provide a written list of the certified incorporated cities, towns and rural fire departments, and the name and address of the fire chief or other official contact person to the ~~Commissioner of Agriculture~~Department as soon as practicable after notification.~~ These lists will be forwarded to Forestry Services for processing.~~

(~~c~~d) **Review and approval of lists.** The Department shall review the Rural Fire Coordinator's lists of certified fire departments and amounts, and submit them ~~for July~~to the State Board of Agriculture for consideration and approval.

35:20-3-9. Determination of Financial Assistance Program grant amount

~~Forestry Services~~The Oklahoma Department of Agriculture, Food, and Forestry shall ~~will~~ determine the grant amount by distributing the available Financial Assistance Program funds to all certified fire departments. The funds available will be divided by the total number of ~~"full equivalent shares" to determine the amount of one full share. The "full share equivalent" is determined by adding the number of rural~~eligible fire departments~~ organized under Titles 18 and 19 and the proportionate shares of municipalities eligible for the program. Where sales tax collections are used in the calculation, the most recent fiscal year data available from the Tax Commission will be used~~.

35:20-3-10. Processing of Financial Assistance Program payments

(a) **Claim forms.** ~~Forestry Services~~The Department will distribute the proper Financial Assistance Program ***claim forms*** to the contact person in each approved city, town or fire department, for signature. A copy of the fully executed forms will be returned to the fire department.

(b) **Issuance of checks.** Upon approval, ~~Forestry Services~~the Department will process the proper Financial Assistance Program claim forms as required by law~~ through the Department of Agriculture's Administrative Services to the Office of State Finance~~. A fire department may apply for Direct Deposit. Checks will be sent by ~~Forestry Services~~the Department to the Coordinators for distribution to the fire departments by August 31, unless funding is delayed or reduced by the Oklahoma Legislature or the Office of State Finance, as required by 19 O.S.~~,~~ Section 901.56.

35:20-3-11. Limitations on use of Financial Assistance Program funds

Limitations on the use of Financial Assistance Program funds are explicit in 19 O.S.~~,~~ Section 901.56. No program funds ~~may~~shall be expended for any purpose which does not relate to the permitted purposes specifically stated therein.

PART 5. MATCHING GRANT PROGRAM

35:20-3-17. Overview of matching grant program

(a) **Program description.** 19 O.S. Supp. Section 901.57 authorizes the ~~State~~Oklahoma Department of Agriculture, Food, and Forestry to administer ~~a~~federal and state grant ~~program whereby matching funds are provided~~programs to rural fire departments to improve fire protection in rural areas by reducing hazard of loss by fire, ~~and~~ reducing fire insurance rates, ~~thereby~~and promoting public safety. ~~Forestry Services, by virtue of its state/federal cooperative role with the USDA Forest Service, also administers the Federal Rural Community Fire Protection (RCFP) program which may provide matching grants to rural fire departments. The rules in this Part establish procedures for both of these matching grant programs.~~

(b) **Contingency.** Implementation of ~~the~~ matching grant ~~program~~programs is contingent upon legislative appropriation to the Department ~~of Agriculture~~ for this purpose~~, or availability of federal funds~~.

35:20-3-18. Eligibility of fire departments for matching grants

(a) Incorporated cities under ten thousand (10,000) population according to the latest Federal Decennial Census, towns, and legally formed rural fire departments, unless otherwise designated by law, are eligible for the matching grant ~~program~~ programs.

(b) Communities imposing strict boundary limits~~, which exclude~~excluding rural residences logically part of the community or limit fire response only to paid subscribers~~, will~~shall not be considered for funding in ~~the~~ matching grant ~~program~~ programs.

35:20-3-19. Matching grant description

(a) **State-funded grants.** For state-funded matching grants, the cost-share level ~~will~~shall be ~~80~~eighty percent (80%) state which requires a ~~20~~twenty percent (20%) local match. The State will reimburse ~~80~~eighty percent (80%) of the project amount, up to the approved limit of the grant.

(b) ~~**Federally funded rural community fire protection grants.** For the federally funded Rural Community Fire Protection grant program, the cost share level will be 50 percent federal which requires a 50 percent local match. Forestry Services will determine whether federal funds will be used for a matching grant program or other purpose.~~

~~(c)~~ **Limitations on matching funds.** In-kind matching ~~will~~shall not be accepted as any portion of the local match. Applicants ~~are required to~~shall certify that matching funds are available on the matching grant application form ~~prescribed, when applying~~. Failure to certify ~~will~~shall be cause for rejection of the application.

35:20-3-20. Matching grant program announcements and fund allocation

(a) **District notification and participation.** The Oklahoma Department of Agriculture, Food, and Forestry will notify the Rural Fire Coordination Districts in writing prior to August 1 if funds are available for the matching grant program. Districts desiring to participate in the program ~~must~~shall notify the Department in the manner prescribed by September 1.

(b) ~~**Announcement in Oklahoma Register.** A matching grant program announcement will be published in the Oklahoma Register in accordance with the Administrative Procedures Act.~~

~~(c)~~ **Grants allocated by District.** Matching grants ~~will~~shall be competitive within each Rural Fire Coordination District. The total amount available for grants shall be initially allocated to each of the participating Rural Fire Coordination Districts based upon each District's proportion of the number of eligible fire departments ~~in the State~~. Amounts available to each District will be determined by October 1.

~~(d) Federal funds allocation. If Federal funds are made available for the matching grant program, Forestry Services will follow the same procedures specified in this Section, use the applications already received, will allocate the funds to each District as per (c) above, and will determine the federal grantee list from the applicants next in order on the existing District lists.~~

35:20-3-21. Applications for matching grants

(a) **Forms.** Upon appropriation of funds for the state matching grant program, ~~and no later than July 31, Forestry Services will develop and print matching grant application forms. Forms~~ forms will be distributed to all eligible fire departments ~~by August 10~~.

(b) **Application procedure.** Applicants shall respond to questions on the matching grant application form, and include a written narrative of how the grant will benefit their fire department. Completed applications are sent to each Rural Fire Coordination District's Coordinator.

(c) **Application deadline.** ~~Deadline~~The deadline for applications for matching grants ~~will be~~ is the first week in October of each year, unless otherwise ~~announced in the Oklahoma Register~~ advertised.

(d) **Review and rating of applications.** Applications for matching grants received by the deadline within each Rural Fire Coordination District ~~will be~~are reviewed, rated and ranked by the District's Coordinator~~, according~~pursuant to standard criteria and guidelines approved by the Department ~~of Agriculture~~. Applications received after the deadline will not be rated nor funded. Applications which are incomplete, or which request funding for items outside the purposes described in 19 O.S., Section 901.57, ~~will~~shall be denied and returned to the applicant.

(e) **Application rating criteria.** In anticipation of receiving applications for funding greater than the matching grant program funds available, a set of criteria will be used to rate the applications numerically. These criteria will be reviewed annually by the Rural Fire Coordinators and ~~Forestry Services~~ the Department, and will be standard for all Rural Fire Coordination Districts. Applications with the highest point score will be recommended for funding to the extent of funds available.

35:20-3-22. Matching grant limitations

(a) The maximum state ~~or federal~~ share of projects funded under the matching grant programs shall be as follows:

(1) The eighty percent (80%) state share for fire-related equipment shall not exceed ~~$10,000.00~~ twenty thousand dollars ($20,000).

(2) The eighty percent (80%) state share for fire station construction or improvements shall not exceed ~~$20,000.00~~ thirty thousand dollars ($30,000).

~~(3) The fifty percent (50%) federal share for fire-related equipment and training shall not exceed $2,500.00.~~

(b) Applicants for state matching grant program funds may not apply for ~~either~~both an equipment grant ~~or~~and a fire station grant~~, but not both~~ in ~~one~~the same funding period.

(c) State matching grant program funds may be expended for the purchase or maintenance of fire related equipment and the construction or improvement of structures suitable for fire stations. Applicants shall certify on the application form that the conditions in this section are met when applying for grants for facilities.

(1) No matching grant program funds may be expended or obligated for the purchase of land or construction of fire stations unless all obligations previously incurred for such purposes and to be paid from matching grant program funds have been fully paid and satisfied.

(2) No matching grant program funds shall be expended or obligated for the construction of fire stations unless the eligible participant holds fee simple title, not encumbered by any lien, or holds a lease for a period of not less than ten (10) years, with provisions for renewal of the lease annually, to the land on which it proposes to construct ~~such~~the building. This provision shall not prohibit construction or location of a fire station on land donated in whole or in part for the purpose, and use of matching grant program funds for ~~such~~ construction where the donor has reserved right ~~or~~of reversion of such land under stated conditions, if such use is reasonable and appropriate as determined by ~~Forestry Services~~the Department and the Rural Fire Coordinators.

(3) Matching grant program funds shall be expended under the direction of the chief of the fire department upon duly executed vouchers approved as required by law.

35:20-3-23. Board approval of matching grants

Each Rural Fire Coordinator ~~will~~shall send the prioritized list of applications to ~~Forestry Services. Forestry Services will submit the final list~~the Department for submissions of recommended grantees and their approved amounts to the next regularly scheduled meeting of the State Board of Agriculture for consideration and approval.

35:20-3-24. Matching grant program administration

(a) **Matching grant certification forms.** Upon approval, ~~Forestry Services~~the Department will distribute the matching grant forms ~~required by law~~ to ~~all grantees~~each grantee to certify the grant. The ~~prescribed~~ matching grant forms ~~must~~shall be signed by the grantee and returned to ~~Forestry Services before~~prior to completing the grant ~~becomes official~~.

(b) **Matching grant award date.** Expenditures made prior to the date of the matching grant award ~~will~~shall not be considered for reimbursement. The matching grant award date is the date the State Board of Agriculture approved the list of grantees. All grant monies ~~must~~shall be obligated by June 30. Grant funds are considered obligated when items are ordered or purchased from the date of the grant award ~~date~~ through June 30th, as evidenced on the invoice or in other written form.

(c) **Reimbursement claims.** Grantees shall abide by 19 O.S.~~,~~ Section 901.57, or other procedures established by ~~Forestry Services~~ the Department, when submitting claims for reimbursement.

(d) **Recordkeeping.** Grantees shall keep ~~a file on awarded matching grants, and include~~ copies of grant awards, applications, claims, invoices,~~and~~ cancelled checks, ~~as appropriate, in order to comply with followup audits~~ and any other documentation that may be necessary for an audit.

(e) ~~**Claim processing.** Forestry Services will process reimbursement claims promptly, according to state policy, and send checks to the grantee's contact person or designee.~~

~~(f)~~ **Matching grant ~~progress tracking and~~ reallocation of funds.** ~~Forestry Services and the Rural Fire Coordinators will closely monitor the progress of all grantees, to assure the funded projects are being performed according to schedule. When~~If a matching grant ~~cancellations are expected, Forestry Services will follow the procedures outlined in~~cancellation occurs, the Department will reallocate unobligated grant funds pursuant to 19 O.S.~~,~~ Section 901.57 ~~to reallocate unobligated grant funds in a timely manner~~.

(~~f~~g) **Compliance audits.** ~~Forestry Services and~~The Department through the Rural Fire Coordinators will audit ~~100~~one hundred percent (100%) of the completed grants funded under the matching grant program.

PART 7. RURAL FIRE DEFENSE EQUIPMENT REVOLVING FUND PROGRAM

35:20-3-30. Overview of the rural fire defense equipment revolving fund program

(a) **Program description.** 19 O.S.~~,~~ Sections 901.58 through 901.60 authorize the ~~State~~ Oklahoma Department of Agriculture, Food, and Forestry to establish a rural fire defense equipment revolving fund ~~in order to~~for purchase and resell of fire-related equipment and supplies to rural fire departments at cost.

(b) **Contingency.** Implementation of the rural fire defense equipment revolving fund program is contingent upon legislative appropriation to the Department ~~of Agriculture~~ for this purpose.

35:20-3-31. Rural fire defense equipment revolving fund created

A revolving fund ~~has been~~ created in the State Treasury, ~~to be~~ known as the Rural Fire Defense Equipment Revolving Fund, ~~which will~~shall be used for the implementation of the rural fire defense equipment revolving fund program.

35:20-3-32. Equipment acquisition and storage

(a) **List of items.** The Oklahoma Department of Agriculture, Food, and Forestry ~~Services~~ and the Rural Fire Coordinators ~~will~~shall jointly develop a list of items to be included in the rural fire defense equipment revolving fund program.

(b) **Purchases.** ~~Forestry Services will~~The Department may purchase bulk supplies of approved items in order to obtain a reduced price, using purchasing methods prescribed by law.

(c) **Inventory and storage.** ~~Items will~~Purchased items shall be inventoried immediately ~~on~~ upon receipt~~, and stored in the space provided,~~ as authorized by 19 O.S.~~,~~ Section 901.59.

35:20-3-33. Eligibility ~~of fire departments for the rural fire defense equipment revolving fund program~~

(a) Fire departments eligible to participate in the rural fire defense equipment revolving fund program shall include only those with a written and active cooperative agreement with the Rural Fire Defense Program of the ~~State~~Oklahoma Department of Agriculture, ~~-~~ Food, and Forestry ~~Services~~.

(b) Application procedures for eligible fire departments shall be developed by the Rural Fire Coordinators and filed with the Department.

35:20-3-34. Rural fire defense equipment revolving fund program administration

(a) **Invoicing and payment.** ~~Purchase orders from fire departments are acceptable. Forestry Services will~~A fire department may provide a purchase order and the Oklahoma Department of Agriculture, Food, and Forestry shall invoice the fire department immediately after the order is filled from the storage area. Payment ~~will~~shall be due within forty-five (45) days of invoice date~~. Payment should~~and shall be ~~made out~~payable to the ~~State Department of Agriculture~~ Department's Rural Fire Defense Equipment Revolving Fund. A late payment charge ~~will~~shall be added ~~on~~to invoices not paid within forty-five (45) days.

(b) **Deposit of receipts.** ~~Forestry Services will~~The Department shall deposit all receipts from the resale of equipment and supplies purchased from the rural fire defense equipment revolving fund back into the revolving fund~~, from which~~for the purpose of making additional purchases ~~may be made~~.

(c) **Report.** ~~Forestry Services will document~~The Department shall provide a written report documenting savings to fire departments by June 1 of each year~~, in a written report to the Commissioner of Agriculture~~.

SUBCHAPTER 17. FOREST RESOURCES DEVELOPMENT PROGRAM

PART 1. GENERAL PROVISIONS

35:20-17-1. Purpose

The rules of this subchapter are adopted for the purpose of administering Oklahoma's Forest Resources Development Program, a forestry cost-share program to help landowners implement forest resource management and conservation projects in Oklahoma, pursuant to Title 2~~,~~O.S. Sections 16-10 through 16-13~~ of the Oklahoma Statutes~~. The Forest Resources Development Program will be used to administer funding allocated to Oklahoma through ~~the~~ federal ~~Forest Land Enhancement Program~~ grant programs, and other funding for forestry cost-share programs from state appropriations, federal grants, private foundation grants, donations or similar sources.

35:20-17-2. Definitions

The following words or terms used in this subchapter shall have the meaning described below unless the context clearly indicates otherwise:

"Advisory Committee" ~~or~~ ~~**"Committee"**~~ means the group established by the Commissioner of Agriculture to assist with the program, and is equivalent to the State's Forest Stewardship Coordinating Committee, established pursuant to section 16 USC 2113 of the Cooperative Forestry Assistance Act as amended (16 U.S.C. 2101, et seq).

"Applicant" means the person who applies for cost-share assistance under the program.

"Area Forester" means the forester in charge of a designated Forestry Services Administrative Area who provides basic oversight of the cost-share program in their assigned area.

~~**"Cooperative Agreement"** means the written and signed contract and all other documents made a part of the contract incorporated by reference, and any written and signed amendments or addendums to the original contract, providing the terms of the contract under the Forest Resources Development Program between the Department and an approved applicant.~~

"Cost-share" means the payment that is used to offset part of the cost incurred by an approved applicant for implementation of an approved practice authorized under the program.

~~**"Eligible practices"** means the list of activities that may be approved for cost-sharing to meet the intent of the program, as approved by the Advisory Committee and included in the program guidelines.~~

~~**"Eligible purposes"** means the forest conservation and production benefits that will result from implementation of approved practices.~~

~~**"Forest Land Enhancement Program"** means the federal forestry cost-share program established by Title VIII of the Farm Security and Rural Investment Act of 2002 (PL 107-171).~~

"Forester" means the professional natural resources manager who provides information and technical assistance to program participants.

~~**"Forestry Services"** means the Forestry Division of the Oklahoma Department of Agriculture, Food, and Forestry.~~

"Fund" means the forestry cost-share revolving fund, authorized at ~~O.S.~~ Title 2~~, Article 16,~~O.S. Section 16-11.

"Landowner" means the owner of non-industrial private forest—land or a leaseholder who controls the land for the minimum length of time for a practice to be established,

~~excluding~~ but shall not mean corporations whose stocks are publicly traded, owners principally engaged in the processing or manufacture of wood products, governmental entities and public utilities.

"Management plan" means the written plan prepared by a natural resources management professional and approved by the ~~State Forester~~Department that describes projects and activities to be carried out by the landowner, consistent with the landowner's objectives.

"Non-industrial private forestland" means rural lands with existing tree cover, or which are suitable for growing trees, and are owned by any non-industrial private individual, group, association, corporation, Indian tribe, or other private legal entity so long as the individual, group, association, corporation, tribe, or entity has definitive decision-making authority over the lands.

"Practice" means a prescribed forestry activity consistent with the management plan and implemented through the program that results in improved conditions on eligible private lands. A practice may consist of multiple activities.

"Practice plan" means the written document that contains site-specific technical recommendations on proper installation of requested practices.

~~**"Program"** means the Forest Resources Development Program.~~

"Project" means the purpose for which an applicant requests funding assistance under this program.

~~**"Slippage"** means the amount of cost-share funds turned back to the forestry cost-share fund as a result of cancellations or where actual costs are less than approved costs.~~

PART 3. COST-SHARE PROGRAM GUIDELINES

35:20-17-7. Eligibility for cost-share program

(a) Any private individual, corporation, trust, joint venture, Native American Tribe, association or other legal entity shall be eligible for participation in the program, provided that they meet the program guidelines established and approved by the Department in consultation with the Advisory Committee.

(b) Any federal, state or local government agency or political subdivision, corporations with publicly traded stock, landowners primarily engaged in the manufacture of wood products, public utilities, owners of less than ten (10) contiguous acres, unless a waiver is approved by the ~~Director~~Department, and any landowner with joint ownership in an eligible tract of land where all joint owners or duly authorized agents do not sign the application shall not be eligible for participation in the program.

(c) Funding shall be available for practices on a statewide basis, unless restricted to certain counties or geographic areas by the Department in consultation with the Advisory Committee based upon the source of cost-share funding.

(d) The Department in consultation with the Advisory Committee will establish the minimum and maximum size ownerships for landowners to be eligible to participate in the program, and the minimum size tract where practices are to be installed under the program.

(e) The Department in consultation with the Advisory Committee may establish additional restrictions for participation in the program, based upon program funding sources and intent.

35:20-17-8. Program announcements

~~Forestry Services~~The Department shall notify potential applicants through direct mailings, news releases, personal contact and through other conservation agencies.

35:20-17-9. Applications for cost-share funding

(a) The Department~~shall~~will develop the forms and guidelines required for the cost-share program in consultation with the Advisory Committee.

(b) Any landowner desiring to participate in the program shall submit an application to the Department on a form supplied by the Department. Potential participants shall complete the application for cost-share funding according to the guidelines and shall send completed applications to the Area Forester responsible for the county in which the land where the practice is to be installed is located.

(c) Applications will be accepted on a continuous basis, unless otherwise established by the Department in consultation with the Advisory Committee.

35:20-17-14. Approval of cost-shares

(a) Cost-share funding shall be allocated on a first-come first served basis, unless the Department in consultation with the Advisory Committee establishes an application rating system to fund projects with the highest priority or to meet specific objectives.

(b) In no case shall a cost-share rate be adjusted from the rate in effect when the application was approved.

(c) In the event funding is not immediately available, an application will be retained on file and reconsidered as new funding becomes available. At the end of twelve (12) months, and at least annually thereafter, landowners will be required to notify ~~Forestry Services~~the Department in writing if they wish for their application to remain on file.

(d) Landowners shall obtain written approval prior to implementing cost-shared practices. Reimbursement shall not occur unless an approved cooperative agreement is on file with the Department prior to practice implementation.

35:20-17-15. Practice expiration and extensions

(a) A landowner shall complete implementation of the cost-share practices within twelve (12) months of the date of approval.

(b) ~~Forestry Services' State Office~~The Department may approve an extension of up to twelve (12) months where circumstances beyond the landowner's control prevented practice completion in a timely manner. Under no circumstances shall cost-share funding be extended beyond ~~this 12 month period~~ the initial extension.

35:20-17-16. Changes to approved projects

(a) Changes in approved practices or applications may be made, based upon the ~~forester~~ landowner submitting an amended practice plan and application. The total dollar value of an approved application may be increased based upon the ~~forester's~~ landowner's needs determination and the availability of cost-share funding.

(b) Participants with a pending or an approved application may ~~cancel~~withdraw their application at any time~~, provided they do so~~ in writing to the Area Forester.

35:20-17-19. Practice maintenance requirement

Landowners ~~are generally required to~~shall maintain cost-share practices in accordance with the cooperative agreement for a period of ten (10) years following the date of performance certification. The Department in consultation with the Advisory Committee may establish a maintenance period of less than ten (10) years for certain practices or under certain conditions. Foresters will perform random spot checks of practices completed in prior years and notify ~~Forestry Services' State Office~~ the Department of discrepancies.

35:20-17-21. Appeals

(a) Landowners ~~who disagree with a forester's determination or who believe their treatment under the program has been unfair or feel they have been discriminated against~~ may file an appeal of any decision of the forester that is adverse to the landowner. The landowner shall appeal in writing to the Area Forester who received the original application for funding.

(b) The Area Forester and forester involved in the case shall have fourteen (14) calendar days from the date the appeal is received to investigate and respond in writing to the landowner with a determination on the appeal.~~ A landowner who is dissatisfied with this determination may file a second appeal in writing to the Area Forester.~~

(c) In the event the landowner is dissatisfied with the Area Forester' determination, the landowner may request a hearing before the State Board of Agriculture, or the Board may assign an administrative law judge to preside and make a recommendation to the Board. ~~On receipt of the second appeal, the Area Forester will refer the case to Forestry Services' State Office for review, in consultation with the Advisory Committee as necessary. The State Office shall have up to 60 calendar days from the date the appeal is received by the State Office to investigate and respond to the landowner in writing with a determination. A landowner who is dissatisfied with the State Office determination may appeal in writing to the State Board of Agriculture, whose decision shall be final.~~

35:20-17-22. Accounting and reporting

(a) ~~Forestry Services~~The Department shall maintain ~~a control ledger~~records that ~~includes~~ include data on approved landowners, approved cost-shares, actual cost-shares, practices installed, accomplishments and any other information.

(b) ~~Forestry Services~~The Department shall develop quarterly status reports and annual accomplishment reports of program activities~~, and as otherwise requested by the Advisory Committee or Board~~.

35:20-17-23. Equal opportunity provisions

The program shall be developed, promoted and implemented in full compliance with state and federal laws governing discrimination and civil rights.~~ Participants who believe they have been discriminated against may file an appeal.~~

[OAR Docket #10-660; filed ??-??-??]

TITLE 35. OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY CHAPTER 30. CONSUMER PROTECTION

[OAR Docket #10-658]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 27. Feed
Part 1. Commercial Feed
35:30-27-9.1 [NEW]
AUTHORITY:
2 O.S. §§ 2-4 (A) (2); Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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Subchapter 27. Feed
Part 1. Commercial Feed
35:30-27-9.1 [NEW]
Gubernatorial approval:
August 31, 2009
Register publication:
27 Ok Reg 99
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09-1269
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Pursuant to 2 O.S. § 8-41.7, the proposed rule allows a commercial handler of whole corn to blend those lots of whole corn originally containing more than 300 ppb but no more than 500 ppb of total aflatoxins, provided certain provisions as outlined in the rule are followed. Aflatoxin contamination is a public health risk if it enters the human food chain, and is also a risk to certain

types of livestock when used as a feed ingredient. This rule is necessary to allow for the proper utilization of whole corn which contains aflatoxin above the levels normally allowed for use in animal feed. The State Board of Agriculture previously approved this as an emergency 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, 2010:

SUBCHAPTER 27. FEED

PART 1. COMMERCIAL FEED

35:30-27-9.1. Aflatoxin contaminated corn as a feed ingredient

(a) Aflatoxin contaminated corn when unblended may be used as a feed ingredient pursuant to the following action levels:

(1) Less than 20 ppb total aflatoxins may be utilized as a feed ingredient intended for dairy animals, immature animals, animals not listed below, or other undesignated uses.

(2) One (1) to 100 ppb total aflatoxins may be utilized as a feed ingredient intended for breeding cattle, breeding swine, and mature poultry.

(3) One (1) to 200 ppb total aflatoxins may be utilized as a feed ingredient intended for finishing swine over 100 pounds.

(4) One (1) to 300 ppb total aflatoxins may be utilized as a feed ingredient intended for finishing beef cattle in confinement.

(b) A commercial handler of whole corn may blend lots of whole corn originally containing more than 300 ppb but not more than 500 ppb of total aflatoxins, pursuant to the following restrictions:

(1) The final lot of blended corn shall contain less than 200 ppb total aflatoxins as determined by a commercial laboratory using approved Association of Analytical Chemists International (AOACI) methods, or the Oklahoma Department of Agriculture, Food, and Forestry laboratory.

(2) The blended corn shall only be used as a feed ingredient intended for finishing beef cattle in confinement even if the final blended product contains less than 20 ppb.

(3) The blended corn shall be prohibited from distribution into interstate commerce or conversion to any other use.

(4) The facility shall maintain records indicating the amount of corn blended, the aflatoxin laboratory test results, and distribution records for a minimum of two (2) years and the records shall be made available to the Department upon request.

(c) The label requirements for corn containing aflatoxin shall be the following:

(1) Whole, unblended corn containing total aflatoxins of 20 ppb or more shall be accompanied by a label bearing the range of aflatoxin contamination (i.e. if the test indicates 50 ppb the range should be 20 - 100 ppb), the intended species in accordance with the listed action levels, and the appropriate warning statement pursuant to the general format listed below:

(A) Feed corn.

(B) This product contains between _____ and _____ ppb aflatoxin. May be fed to _____.

(C) WARNINGS: This product may not be fed to dairy animals or immature animals. Not for human use.

(D) Supplier's name, address, and city/state/zip.

(E) Net wt. _____ lb. (_____ kg).

(2) The blended corn shall be accompanied by a label indicating that the corn is blended, the level of total aflatoxins in the final blended product, the date of laboratory analysis, the intended use, and the appropriate warning statement pursuant to the general format listed below:

(A) Blended corn.

(B) For finishing beef cattle in confinement only.

(C) This product contains _____ ppb aflatoxin, as determined by laboratory analysis on _____.

(D) WARNINGS: Feed only to finishing beef cattle fed in confinement. Not for human use.

(E) Manufactured by: Manufacturer's name, address, and city/state/zip.

(F) Net wt. _____ lb. (_____ kg).

[OAR Docket #10-658; filed ??-??-??]

TITLE 60. ARCHIVES AND RECORDS COMMISSION
CHAPTER 10. ARCHIVES AND RECORDS

[OAR Docket #10-676]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 11. Service Fees

60:10-11-4 [AMENDED]

AUTHORITY:

Archives and Records Commission; Records Management Act; 67 O. S. Section 212; OAC 60:1-1-5

DATES:

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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Chapter 10 rules are amended to increase the monthly fee for storage and servicing of records at the State Records Center by $0.05 per cubic foot per month to $0.30 per cubic foot per month. The amendment to the rule also eliminates language regarding storage containers supplied by the Records Management Division for records stored at the State Records Center and the State Archives. The agency no longer purchases or provides storage containers for agencies.
CONTACT PERSON:
Jan Davis, Administrative Archivist, (405) 521-2502; Oklahoma Department of Libraries, 200 N.E. 18th Street, Oklahoma City, OK 73105, email address: jdavis@oltn.odl.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 11. SERVICE FEES

60:10-11-4. Storage fees

State boards, agencies, commissions, and institutions housing ~~nonpermanent~~ records in the State Records Center under approved records disposition schedules shall be assessed a fee of ~~twenty-five cents ($0.25)~~thirty cents ($0.30) per cubic foot of records per month for records storage and servicing. No records shall be transferred to the State Records Center unless authorized by approved records disposition schedules or records disposition authorizations. ~~In addition, state boards, agencies, commissions, and institutions shall pay actual cost for records center storage cartons furnished by the Records Management Division for records storage in the State Records Center. There will be no charge for containers or housing of records of enduring value transferred to the State Archives Division under approved records disposition schedules or records disposition authorizations.~~

[OAR Docket #10-676; filed ??-??-??]

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

[OAR Docket #10-636]

RULEMAKING ACTION:
PERMANENT Final Adoption
RULES:
Subchapter 11. 21st Century Quality Jobs Incentive Act [NEW]
150:65-11-1 [NEW]
150:65-11-2 [NEW]
150:65-11-3 [NEW]
150:65-11-4 [NEW]
AUTHORITY:
The legislation establishing the Oklahoma Department of Commerce, 74 O.S. §§ 5001 et seq., and Section 7 of Senate Bill 938 of the 1st Session of the 52nd Oklahoma Legislature executed by the Governor of the State of Oklahoma on May 22, 2009. Also, the authority of the Oklahoma Department of Commerce to charge fees for review of the applications is set forth in 74 O.S. § 5012.1.
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Superseded rules:
150:65-11-1 [NEW]
150:65-11-2 [NEW]
150:65-11-3 [NEW]
150:65-11-4 [NEW]
Gubernatorial approval:
November 2, 2009
Register publication:
27 Ok Reg 283
Docket number:
09-1348
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of this new rule is to provide for orderly application to the Oklahoma Department of Commerce under 21st Century Quality Jobs Incentive Act.
CONTACT PERSON:
Donald R. Hackler, Jr. (405) 815-5359

PURSUANT TO THE ACTIONS DESCRIBED 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 1, 2010:

SUBCHAPTER 11. 21ST CENTURY QUALITY JOBS INCENTIVE ACT

150:65-11-1. Purpose

The purpose of this chapter is to implement the provisions of the 21st Century Quality Jobs Incentive Act, 68 O.S. Section 3911, et seq., which provides appropriate incentives to support the establishment of growth industries in this state.

150:65-11-2. Definitions

For purposes of this chapter, the following words and terms shall have the following meaning unless the context clearly indicates otherwise.

"21st Century Contract" means the contract between the applicant and the Oklahoma Department of Commerce that establishes the incentive benefit amount under the 21st Century Quality Jobs Incentive Act.

"21st Century Contract Incentive" means the amount of the incentive calculated by the Oklahoma Department of Commerce and included in the 21st Century Contract between the applicant and the Oklahoma Department of Commerce.

"Commission" means the Oklahoma Tax Commission established pursuant to 68 O.S. Section 102 and any successor agencies thereto.

"Department" means the Oklahoma Department of Commerce established pursuant to 74 O.S. §§ 5001 et seq. and any successor agencies thereto.

"Director" means the duly appointed and acting Director of the Department or during any period of time that the position of Director is vacant; such term shall refer to the person serving as the acting or interim director.

150:65-11-3. Application

For the purpose of evaluating the applications to the 21st Century Quality Jobs Incentive Act, the Department will require all applicants to submit an application in a form prescribed by departmental guidelines as provided in the application packet. All applications will be required to contain sufficient information to permit the Department to comprehensively review the application.

150:65-11-4. Origination fees

The Department shall charge an origination fee for each approved 21st Century Contract. The fee shall be deducted from the first incentive payment payable by the Commission. The fee shall be $2,500 per contract where the 21st Century Contract Incentive is less than $10,000,000; $5,000 per contract where the 21st Century Contract Incentive is at least $10,000,000 and no more than $50,000,000; and $7,500 per contract where the 21st Century Contract Incentive is more than $50,000,000.

[OAR Docket #10-636; filed ??-??-??]

TITLE 230. STATE ELECTION BOARD
CHAPTER 10. THE COUNTY ELECTION BOARD

[OAR Docket #10-620]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. General Administration of the County Election Board
Part 5. Maintaining the Office
230:10-7-48. Correspondence [AMENDED]
230:10-7-48.1. County Election Board electronic mail addresses [NEW]
Part 7. Public Records
230:10-7-59. Public records [AMENDED]
Part 15. Polling Places
230:10-7-110. Board to provide polling places [AMENDED]
AUTHORITY:
Title 26 O.S., Section 2-107. Secretary of the State Election Board
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Subchapter 7. General Administration of the County Election Board
Part 5. Maintaining the Office
230:10-7-48.1. County Election Board electronic mail addresses [NEW]
Part 7. Public Records
230:10-7-59. Public records [AMENDED]
Gubernatorial approval:
December 3, 2009
Register Publication:
27 Ok Reg 597
Docket number:
10-51
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n/a
ANALYSIS:

The State Election Board began using electronic mail on a regular basis to communicate with County Election Boards in 2009, after all 77 County Election Boards obtained personal computers and Internet and electronic mail services. Several new and amended rules concern the acquisition and configuration of electronic mail addresses to use for corresponding with the State Election Board and for receiving Federal Post Card Application forms for absentee ballots from uniformed services and overseas voters as required by provisions of SB458 and of the federal Military and Overseas Voter Empowerment Act.

Senate Bill 458 also requires the County Election Board protect from public disclosure any electronic mail address provided by a uniformed services or overseas voter for the purposes of absentee voting. One Section is amended to include language on this new, statutory exception to County Election Board open records policy.

One Section is amended to state that Boards of Education may provide space in school buildings for polling places but that they are not required to

do so. The law (Title 26 O.S., Section 3-123), which formerly required such Boards to provide space for polling places, was amended in 2008.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. E-mail: scox@elections.ok.gov Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED 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 1, 2010:

SUBCHAPTER 7. GENERAL ADMINISTRATION OF THE COUNTY ELECTION BOARD

PART 5. MAINTAINING THE OFFICE

230:10-7-48. Correspondence

(a) **Correspondence.** The Secretary of the County Election Board shall keep a copy of each letter that goes out of the office, along with a copy of each letter received. Incoming mail shall be dated when it is received. When possible, correspondence shall be answered on the same day it is received. A copy of the response may be stapled to the original letter. Correspondence shall be filed alphabetically and shall be retained for at least four years.

(b) **Correspondence with the State Election Board.** Correspondence with the State Election Board shall be filed separately from other correspondence, arranged by date. Correspondence with the State Election Board shall be retained for four years.

(c) **Correspondence with other County Election Boards.** Correspondence with other County Election Boards shall be filed separately from other correspondence, arranged alphabetically. Correspondence with other County Election Boards shall be retained for four years.

(d) **Correspondence with Precinct Officials.** Correspondence with Precinct Officials shall be filed separately from other correspondence, arranged by precinct or in alphabetical order. Correspondence with Precinct Officials shall be retained for four years.

(e) **Correspondence by electronic mail.** The requirements for the retention of correspondence outlined in (a) through (d) of this Section also shall apply to correspondence conducted by electronic mail. The Secretary shall retain electronic mail pertaining to the official business of the County Election Board for four years. If the electronic mail message and attachments are printed, only the printed copy shall be retained.

230:10-7-48.1. County Election Board electronic mail addresses

The Secretary of the County Election Board shall obtain at least one electronic mail address to use for correspondence with the State Election Board and to receive completed Federal Post Card Application (FPCA) forms from uniformed services and overseas voters as outlined in 230:30-5-1.1 and 230:30-9-5. The Secretary shall notify the State Election Board of the electronic mail address or addresses to be used for these purposes, and if more than one address is obtained, the Secretary shall designate the address to be used for routine correspondence and the address to be used for the receipt of FPCAs. The Secretary shall ensure that more than one member of the County Election Board staff has access to each such electronic mail address and that each such electronic mail address is checked on at least a daily basis for correspondence and FPCAs. Electronic mail addresses used for the purposes outlined in this Section shall not be personal addresses and shall be configured to include as many of the following elements as possible: the county name, the designation "CEB," the county number, and the designation "OK." One acceptable example of an e-mail address containing most of these elements is "DouglasCEB78@emailservice.com." The Secretary immediately shall notify the State Election Board of any changes to electronic mail addresses used for the purposes outlined in this Section.

PART 7. PUBLIC RECORDS

230:10-7-59. Public records

(a) All records of the County Election Board, except as provided in (b), (c) ~~and~~ , (d) and (e) of this Section, must be made available for public *inspection, copying and/or mechanical reproduction during regular* office hours. [51:24A.5] The County Election Board must provide prompt, reasonable access to its records but may establish reasonable procedures to protect the integrity and organization of its records and to prevent excessive disruptions of its essential functions.

(b) *No information relating to a declination to register to vote in connection with an application made at an office designated a voter registration agency may be used for any purpose other than voter registration*. [26:4-109.2(C)] *The identity of a voter registration agency through which a particular voter registered may not be disclosed to the public*. [26:4-109.2(D)] If a person applies for voter registration in connection with the application for, renewal of or change of address for an Oklahoma driver's license or state identification card, *the office at which the person submits the voter registration application or the fact that the person declined to register shall remain confidential and will be used only for voter registration purposes*. [26:4-109.3(A)]

(c) Members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, corrections officers, and persons covered by victim's protection orders are entitled by law to apply to the Secretary of the County Election Board for restricted records status. [26:4-115.2] The spouse and/or dependent of a voter entitled to apply for restricted records status also may apply for restricted records status. Restricted records status shall apply to the voter registration form in the Central File, to registration information in OEMS, and to materials used to request and cast absentee ballots. Voter registration information for restricted records voters shall be available only to authorized County Election Board personnel for administrative purposes, with the exception that it may be

provided to a candidate or a candidate's representative or other lawful authority in connection with a contest of candidacy, a contest of election, or a petition challenge as provided by law. [26:4-115.2] Restricted records status shall remain in effect until the voter chooses to end it by notifying the Secretary in writing. See 230:15-9-25.

(d) The name, address, and precinct number of an Address Confidentiality Program (ACP) participant who applies to the Secretary of the State Election Board for ACP voter registration and absentee ballots shall not be released to any person for any purpose except by court order. No information concerning an ACP voter shall be entered in OEMS. The name, address and precinct number of an ACP voter shall not appear on any list or report produced by either the State Election Board or the County Election Board.

(e) An electronic mail address provided by a uniformed services voter or an overseas voter for the purposes of absentee voting as provided in 230:30-9-5 and 230:30-9-5.2, shall not constitute public information. [26:14-118] The Secretary of the County Election Board shall ensure that such an electronic mail address is protected from public disclosure. [26:14-118]

PART 15. POLLING PLACES

230:10-7-110. Boards to provide polling places

The Board of Education of any school district may, and the governing board of any municipality, shall furnish a room or rooms in any school building or municipal building for use as a polling place at no cost. [26:3-123]

[OAR Docket #10-620; filed ??-??-??]

TITLE 230. STATE ELECTION BOARD
CHAPTER 15. VOTER REGISTRATION

[OAR Docket #10-621]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 9. Receiving and Processing Voter Registration Applications
Part 1. Responsibilities of the State Election Board for Voter Registration
230:15-9-5. Processing voter registration cancellation information at the State Election Board [NEW]
Part 3. County Election Board Responsibility for Processing Voter Registration Applications
230:15-9-12. Processing voter registration applications at the County Election Board [AMENDED]
Part 5. Processing Voter Registration Applications
230:15-9-18. Entering applications for voter registration in OEMS or MESA [AMENDED]
230:15-9-18.1. Assigning voter registration addresses in the Street Guide [AMENDED]
230:15-9-19. Applications for change of voter registration [AMENDED]
230:15-9-20. Processing applications for name change [AMENDED]
230:15-9-21. Processing applications for change of residence address or mailing address [AMENDED]
230:15-9-22. Processing applications for change of political affiliation [AMENDED]
230:15-9-22.1. Processing application for change of political affiliation during prohibited period [AMENDED]
230:15-9-23. Processing duplicate applications for voter registration [AMENDED]
230:15-9-25. Processing applications for restricted records status [AMENDED]
Subchapter 11. Voter Registration List Maintenance
Part 1. Cancellation of Voter Registration
230:15-11-2. Positive identification required [AMENDED]
230:15-11-5. Potential Deletion Report [AMENDED]
230:15-11-6. Cancellation of registration of deceased voter by next of kin [AMENDED]
230:15-11-6.1. Cancellation of registration of deceased voter upon notice of nursing home administrator [AMENDED]
230:15-11-8. Cancellation for felony conviction [AMENDED]
230:15-11-9. Potential Duplicate Registration Report [AMENDED]
230:15-11-10. Statewide cancellation of true duplicate registrations [AMENDED]

AUTHORITY:
Title 26 O.S., Section 2-107. Secretary of the State Election Board

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n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The State Election Board is in the process of upgrading the Oklahoma Election Management System (OEMS) software and migrating its functions to a modern hardware platform. The software upgrade, which is generally referred to as MESA (Modern Election Support Application), is designed to operate on personal computers and the Internet. The first two modules of MESA have been distributed to County Election Boards and are in wide use, although almost all current functions of MESA duplicate functions in OEMS. Late in 2010 or early in 2011, we anticipate that all voter registration-related functions of OEMS will be transferred permanently to MESA and its new hardware platform. At that point, OEMS will no longer be used for any voter registration processing tasks.

Amendments in several Sections in several Subchapters include references to MESA or eliminate references to OEMS and replace these references with the more generic terms "voter registration software" or "voter registration database," as appropriate. The amendments do not contain substantive changes to the procedures for processing voter registration applications.

Amendments in several Sections concerning the maintenance of voter registration information and the cancellation of voter registrations strengthen language to make clear that certain actions shall be taken and are not subject to the discretion of the County Election Board Secretary.

Amendments in several Sections describe a change in the way certain voter registration cancellations are processed. When an Oklahoma voter registers in another state, the other state sends a cancellation notice to the State Election Board. In the past, these notices were sorted and sent on to the appropriate County Election Board by State Election Board staff members. Now, using the MESA software, the information contained on these out-of-state cancellation notices is entered into the database by State Election Board personnel. The information then appears on the appropriate County Election Board's monthly Potential Deletion Report. Using this report, County Election Board personnel

match the information with the appropriate voter information in the county. If appropriately identified, the registration is cancelled.

One amendment adds a new set of matching criteria to those used in a statewide process to identify duplicate voter registrations. The new set of matching criteria include last name, date of birth, and driver license number.

CONTACT PERSON:

Suzanne Cox, Publications Editor, State Election Board. E-mail: scox@elections.ok.gov Telephone: (405) 521-2391.

PURSUANT TO THE ACTIONS DESCRIBED 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 1, 2010:

SUBCHAPTER 9. RECEIVING AND PROCESSING VOTER REGISTRATION APPLICATIONS

PART 1. RESPONSIBILITIES OF THE STATE ELECTION BOARD FOR VOTER REGISTRATION

230:15-9-5. Processing voter registration cancellation information at the State Election Board

Upon receipt from another state of information that a person registered to vote in Oklahoma has moved to another state and registered there, the State Election Board shall enter the information into MESA. The information then shall appear on the Potential Deletion Report as outlined in 230:15-11-5 for the appropriate County Election Board. The State Election Board shall retain a notice received from another state for 24 months.

PART 3. COUNTY ELECTION BOARD RESPONSIBILITY FOR PROCESSING VOTER REGISTRATION APPLICATIONS

230:15-9-12. Processing voter registration applications at the County Election Board

(a) The Secretary of the County Election Board shall cause all voter registration applications for the county to be processed as soon as possible after they are received from the State Election Board or received in person from an applicant or from a third party on behalf of an applicant. Voter registration application processing shall include entering the information from the application form into OEMS or MESA as required by (b) of this Section and in 230:15-9-18 and subsequently placing the voter registration application form in the appropriate file.

(b) All voter registration applications shall be entered into OEMS or MESA, including those applications that are not signed or appear to omit one or more of the items of required information listed in 230:15-5-84. All information provided by the applicant on the voter registration application form shall be entered into OEMS or MESA.

(c) The Secretary of the County Election Board shall ensure that the person processing voter registration applications and entering the information in OEMS or MESA is familiar with all voter registration rules and procedures and with the appropriate functions of the ~~Voter Registration System in~~ OEMS and MESA software and that the person is able to make appropriate decisions concerning incomplete or duplicate applications. In the event that temporary employees are used to enter applications into OEMS or MESA during peak periods of registration activity, the Secretary shall establish a system to ensure that only fully trained and qualified County Election Board employees make decisions concerning processing of incomplete or duplicate applications.

PART 5. PROCESSING VOTER REGISTRATION APPLICATIONS

230:15-9-18. Entering applications for voter registration in OEMS or MESA

(a) **Entering voter registration application information in OEMS or MESA.** All information provided by the applicant on the voter registration application form shall be entered into OEMS or MESA. Follow the appropriate ~~OEMS~~ software instructions to enter the voter registration data. Refer to the following rules to resolve questions about individual applications.

(1) **Received date.** The received date is the date stamped or written on a voter registration application form by the agency that first receives it from the applicant.

(A) The received date for an application submitted by mail is the date the State Election Board received and stamped it.

(B) The received date for an application submitted at a motor license agency or at any voter registration agency identified in 230:15-5-122 and 230:15-5-123 is the date stamped or written by agency personnel in the space provided for this purpose on the form.

(C) The received date for a voter registration application bearing no stamped or written date is the application date entered by the applicant beside his or her signature.

(2) **Postmark.** The postmark date from a voter registration application submitted by mail shall be entered in ~~OEMS~~ the voter registration software. If there is no postmark or if the date is missing or illegible, leave the postmark field blank.

(3) **Name.** Enter the voter's name exactly as provided on the application form, even if it appears to be incomplete.

(4) **Political affiliation.** An application for voter registration that is valid in all other respects shall not be rejected because the applicant fails to indicate his or her political affiliation. The political affiliation field on the ~~OEMS~~ screen shall be left blank in the following circumstances with the result that ~~OEMS~~ the software automatically will record the applicant's affiliation as Independent. See also 230:15-5-84 and 230:15-9-22.

(A) The applicant left the space for political affiliation blank.

(B) The applicant marked more than one political affiliation and his or her intent cannot be determined.

(C) The applicant wrote the name of a political party or a political organization not currently recognized in Oklahoma.

(5) **Date of birth.** An applicant for new voter registration must provide his or her date of birth on the application form. See 230:15-5-84. An application for new registration that does not include the date of birth shall be rejected. See 230:15-9-31. In the event that a registered voter submits an application for change of registration and does not provide his or her date of birth, the application shall be rejected unless both of the following circumstances exist.

(A) The application is valid in all other respects and County Election Board personnel are able to make positive identification of the voter from other information on the application form and from information already recorded in ~~OEMS~~ the voter registration database.

(B) The voter's date of birth already is recorded in ~~OEMS~~ the voter registration database.

(6) **Identification number.** Enter the Oklahoma driver license number and/or last four digits of the Social Security number. If the applicant does not provide either of these identification numbers, leave these fields blank so that ~~OEMS~~ the software can automatically create and assign a unique identification number to the application.

(7) **Duplicates.** When voter registration application information is entered in OEMS or MESA, the ~~system~~ software automatically searches for and identifies duplicate or potential duplicate records in the county. The search criteria are first name, last name, and date of birth and/or an identification number such as the last four digits of the Social Security number or driver license number. If an application appears to duplicate either an existing voter registration or another pending application, follow the procedures outlined in 230:15-9-23 and the appropriate software instructions to investigate and resolve the potential duplication.

(8) **Residence address.** An applicant for voter registration is required to provide his or her residence address on the application form. Enter the applicant's residence address in the appropriate fields on the ~~OEMS~~ screen. If the address cannot be assigned in the ~~OEMS~~ Street Guide based on the information entered, see 230:15-9-18.1.

(9) **Mailing address.** If the applicant provided a mailing address different from his or her residence address, enter the mailing address. If the applicant's mailing address is the same as the residence address or if the space for mailing address is blank, leave the mailing address field on the screen blank.

(10) **County of Residence.** An applicant for voter registration is required to indicate the county of his or her residence. An application on which the county of residence is not indicated shall be entered in ~~OEMS~~ the voter registration software with one of the following results.

(A) If the address is located within the county, the application shall be approved.

(B) If the address is not located within the county, the application shall be rejected with the "OT" ("Other") rejection code. When the blank rejection notice is printed, write or type the following in the space provided: "You did not indicate the county in which you reside on your application for voter registration. Your application cannot be processed without this information. You must submit a new application form that indicates your county of residence. Application forms are available in public libraries, post offices, and tag agencies across the state and also are available online at www.elections.state.ok.us."

(11) **Rejection codes.** An application for new voter registration that does not contain all the required information listed in 230:15-5-84 shall be rejected. ~~OEMS~~ The software automatically applies a rejection code for an insufficient name, insufficient address, insufficient date of birth, if the application duplicates an existing registration or pending application, and if the applicant is under 18 years of age. (If an applicant who is under 18 will become eligible on or before election day, as described in 230:15-5-2, follow the software instructions to override the rejection code.) If the application is unsigned or if the application must be rejected for any other reason, County Election Board personnel flag the appropriate rejection code on the screen. See 230:15-9-31.

(12) **Source codes.** A code to identify the source of an application for statistical purposes shall be entered in ~~OEMS~~ the voter registration software. If the source of an application is a motor license agency, an agency code also shall be entered. After the source code is entered, the instruction section of the application form bearing the source identification shall be detached and destroyed.

(13) **Previous registration information.** If the applicant provided information about previous voter registration in another state or in another county in Oklahoma, enter the previous registration information in the appropriate fields on the screen. Do not enter information about former registration in the same county in these fields.

(14) **Identification provided.** If an applicant who submitted a voter registration application by mail included identification material with the application, enter the appropriate information in ~~OEMS~~ the voter registration software. (Applicants for voter registration are not required to provide identification.) After entering the information ~~in OEMS~~ about the voter's identification, destroy the identification by shredding it.

(b) **Filing voter registration applications.** If a voter registration application is determined to be valid and approved, place the application form in the appropriate valid application file until voter identification cards are printed. After the voter identification card is mailed to the voter, file the application form in the Central File. If a voter registration application must be rejected, file the application in the appropriate rejected application file.

230:15-9-18.1. Assigning voter registration addresses in the Street Guide

(a) An applicant for voter registration is required to provide election officials with a residence address for voting purposes. In situations where there is no street address consisting of a street name and house number for the residence, the applicant is required to provide a physical description of the residence address that is sufficient to locate said residence on a map for the purpose of determining the applicant's correct precinct, correct school district, and, where necessary, correct municipality. Applications for voter registration shall not be approved and activated unless the residence address can be assigned to a record in the ~~OEMS~~ Street Guide. This shall apply to applications for new registration and to applications for change of registration. For more information about residence addresses, see 230:15-5-84.

(b) When an applicant's residence address cannot be assigned to a record in the Street Guide, County Election Board personnel shall take the following actions before rejecting the voter registration application for insufficient residence address.

(1) If the street address provided by the applicant does not match a Street Guide record, County Election Board personnel shall take the following actions before rejecting the application.

(A) Determine whether the given street address may represent a new street or a new extension of an existing street. Create a new Street Guide entry if necessary.

(B) Determine whether the voter has used a variation of the correct street name. For example, if the voter has given the street name "Elm Street" but the correct name of the street is "Elm Tree Street," enter the applicant's residence address using the correct street name. Do not create a new Street Guide entry for the incorrect variation of the street name.

(2) If the applicant has provided a physical description of the location of the residence that is sufficiently detailed, assign the address in the Street Guide. If the applicant used the map grid printed on the Oklahoma Voter Registration Application form, follow these steps as needed.

(A) If the applicant used the map but also wrote enough information in the address section of the application to assign the applicant in the correct precinct, the map may be discarded.

(B) If information on the map is used to place the applicant in the correct precinct, cut out the map and tape it to the back of the application form. Do not retain any portion of the instruction section that indicates the source of the application.

(C) If the applicant left the address section of the application blank and only provided address information on the map, write "see map" in the address section in such a way that it can be clearly distinguished as an administrative notation. If the applicant wrote anything in the address section, do not write on the application form.

(3) If the applicant has provided a physical description of the location of the residence that is not sufficient to assign the address in the Street Guide, County Election Board personnel are authorized to attempt to obtain information from the County Assessor's office to identify the correct section-township-range description of the voter's residence and to use that information to assign the voter to a section-township-range geographical location in the Street Guide as outlined below.

(A) An exact match between the applicant's full name and full route and box number, as provided on the voter registration application form, is found in the County Assessor's records. By comparing the physical description given by the applicant with the legal description obtained from the Assessor's records, the applicant's residence address can be assigned to a section-township-range geographical location in the Street Guide.

(B) An exact match between the applicant's name and route and box number and a record in the County Assessor's office is not found, but there is sufficient information to indicate that the voter registration applicant may be a family member of a property owner who has a route and box number. The applicant may be assigned in the Street Guide and the voter registration application may be approved and activated. Prepare an STR Confirmation Notice to inform the voter of the section-township-range geographical location to which he or she has been assigned. This notice offers the voter the opportunity to provide additional information if the assignment is not correct. Mail the STR Confirmation Notice to the voter with the voter identification card.

(c) If the residence address provided on a voter registration application cannot be assigned in the Street Guide even after taking the actions listed in (b) of this Section, the application must be rejected. Enter a rejection code in ~~OEMS~~ the voter registration software to generate the appropriate rejection notice for the voter. Follow the ~~OEMS~~ software instructions to enter an explanation to the voter of the specific information needed in order to assign the residence address in the Street Guide and to approve the application.

230:15-9-19. Applications for change of voter registration

(a) **Application for change of registration.** A registered voter may apply to change his or her voter registration by completing and submitting a voter registration application form. Changes of voter registration include but may not be limited to change of residence address, change of mailing address, change of political affiliation, and change of name.

(b) **Determining whether an application is for change of registration.** Before entering information from any voter registration application in OEMS or MESA, County Election Board personnel shall determine whether the applicant already is registered to vote in the county by following the appropriate software instructions. A registered voter who applies to change his or her voter registration is instructed on the application form to enter the former registration information in Section 9 of the Oklahoma Voter Registration Application form or in Boxes A

and B of the federal application form. However, some applicants fail to do this. If voter registration information for the applicant is found in ~~OEMS~~ the voter registration database, the new application information shall be entered as a change to the existing registration even if the voter failed to indicate previous registration information on the application form.

(c) **Exceptions to required information for change of registration.** Some exceptions to the information required on a valid voter registration application, as outlined in 230:15-5-84, may be made in the case of an application for change of registration.

(1) **Political affiliation.** In the event that a registered voter who applies for change of address or change of name fails to indicate political affiliation on the application for the change, the voter's existing political affiliation, as recorded in ~~OEMS~~ the voter registration database, shall remain unchanged. The procedure described in 230:15-5-84(c) shall apply only to applications for new registration in the county.

(2) **Date of birth.** In the event that a registered voter who applies for any change of voter registration fails to provide his or her date of birth on the application for the change, the application shall not be rejected if both of the following circumstances exist.

(A) The application is valid in all other respects and County Election Board personnel are able to make a positive identification of the voter from other information provided on the application form and from information already recorded in ~~OEMS~~ the voter registration database.

(B) The voter's date of birth is already recorded in ~~OEMS~~ the voter registration database.

230:15-9-20. Processing applications for name change

A registered voter may apply to change his or her name by completing and submitting a voter registration application form. An applicant for name change is instructed to provide his or her former name in the appropriate space in Section 9 of the Oklahoma Voter Registration Application form or in Box A of the federal voter registration application. Process applications for name change according to the following procedure.

(1) Enter the applicant's former name, along with his or her political affiliation, date of birth, to bring the current voter registration information to the screen.

(2) Change the applicant's name on the screen. Carefully compare the information displayed on screen with the information provided on the application for any other information that may be changed. Enter into ~~OEMS~~ the voter registration software any other changes that may be indicated on the application form.

(3) Follow the procedure contained in steps (3) through (14) of 230:15-9-18 to complete the application information in OEMS or in MESA.

(4) After the voter identification card has been printed, remove the voter's old registration form from the Central File and retain as outlined in 230:10-7-43.

(5) File the voter's new voter registration application form in alphabetical order in the Central File.

230:15-9-21. Processing applications for change of residence address or mailing address

(a) A registered voter in the county may apply to change his or her residence address within the county by completing and submitting a voter registration application form. An applicant for change of residence address is instructed to provide his or her former residence address in the appropriate space in Section 9 of the Oklahoma Voter Registration Application form or in Box B of the federal voter registration application form. Applications for change of residence address shall be processed according to the following procedure.

(1) Enter the applicant's name, political affiliation, date of birth, the last four digits of the social security number and, if provided, driver's license number to bring the current voter registration information to the screen.

(2) Change the applicant's residence address as indicated on the application form. Carefully compare the information displayed on screen with the information provided on the application form for any other information that may have changed. Enter any other changes that may be indicated on the application form.

(3) Follow the procedure contained in steps (3) through (11) of 230:15-9-18 to complete the application information in OEMS or MESA.

(4) After the voter identification card has been printed, remove the voter's old registration form from the Central File and retain as outlined in 230:10-7-43.

(5) File the voter's new voter registration application form in alphabetical order in the Central File.

(b) A registered voter in the county may apply to change his or her mailing address by completing and submitting a voter registration application form. An applicant for change of mailing address is instructed to provide his or her former address in the appropriate space in Section 9 of the Oklahoma Voter Registration Application form or in Box B of the federal voter registration application form. Applications for change of mailing address shall be processed according to the same procedure outlined in (a) of this Section.

230:15-9-22. Processing applications for change of political affiliation

(a) A registered voter in the county may apply to change his or her political affiliation by completing and submitting a voter registration application form. An applicant for change of political affiliation is instructed to indicate his or her former political affiliation in the appropriate space in Section 9 of the Oklahoma Voter Registration Application form. Applications for change of political affiliation shall be processed according to the following procedure.

(1) Enter the applicant's name, former political affiliation, date of birth, the last four digits of the social security number and, if provided, driver's license number to bring the applicant's current voter registration information to the screen.

(2) Change the applicant's political affiliation as indicated on the application form. Carefully examine the information displayed on screen with the information provided on the application form for any other information

that may be changed. Enter into ~~OEMS~~ the voter registration software any other changes that are indicated on the application form.

(3) Follow the procedure contained in steps (3) through (11) of 230:15-9-18 to complete the remaining application information in OEMS or MESA.

(4) After the voter identification card has been printed, remove the voter's old registration form from the Central File and retain as outlined in 230:10-7-43.

(5) File the voter's new voter registration application form in alphabetical order in the Central File.

(b) Voters are prohibited by law from changing political affiliation during the period from June 1 through August 31, inclusive, in even-numbered years. See 230:15-5-30. Applications for change of political affiliation received during this period shall be held and activated on or after September 1. See 230:15-9-22.1.

(c) Voters who were designated Independent by County Election Board personnel as provided in 230:15-5-84 may declare a political affiliation at any time, including the period described in (b) of this Section. Such voters may submit a new voter registration application form or they may write a letter stating their preferred political affiliation. These declarations shall be subject to the deadline for voter registration applications prior to an election. These declarations of political affiliation shall be processed according to the following procedure.

(1) Locate the voter's ~~voter~~ registration information in OEMS or MESA.

(2) Enter the political affiliation provided by the voter.

(3) If the voter wrote a letter to declare his or her political affiliation, retain it permanently in the Additional Information Correspondence file.

(d) The political affiliations of voters who are registered as members of a political party that loses recognition under Oklahoma law and becomes a political organization as described in 230:15-5-79 shall be changed to Independent in ~~OEMS~~ the voter registration database by the State Election Board. [26:1-110] Such voters subsequently shall be entitled to apply to change their political affiliation to that of the political organization. Such applications shall be processed as outlined in (a) of this Section and shall be subject to the deadline for voter registration applications prior to an election and to the political affiliation change prohibition period in even-numbered years. See (b) of this Section and 230:15-5-86.

230:15-9-22.1. Processing application for change of political affiliation during prohibited period

(a) Registered voters are prohibited by law from changing political affiliations from June 1 through August 31, inclusive, in even-numbered years. The County Election Board Secretary is required by law to hold voter registration applications for change of political affiliation received during this period and to activate the changes on September 1.

(b) Voter registration applications for change of political affiliation received during the prohibited period that include no other voter registration changes shall be processed as follows.

(1) Follow steps 1 through 3 in 230:15-9-22(a). Enter in OEMS or MESA all the information the voter provided on the application. When the new political affiliation is entered, ~~OEMS~~the voter registration software warns that the political affiliation change is invalid and flags the application to hold for activation on September 1.

(2) From June 1 through August 31, request and print Held Change of Affiliation Notices each time voter identification cards and rejection notices are requested and printed. Held Change of Affiliation Notices are letters to voters explaining that their change of political affiliation will be held and activated on September 1.

(3) From June 1 through August 31, request and print the Held Change of Affiliation List each time voter identification cards are requested. The Held Change of Affiliation List contains the names of all voters whose political affiliation changes have been held since the last time this report was requested. Retain the Held Change of Affiliation List as needed.

(4) Mail the Held Change of Affiliation Notice to the applicant.

(5) File the voter registration application in a special file for Pending Affiliation Change Applications. This file may be in a separate section of the regular Pending Applications file.

(6) On September 1, follow these steps.

(A) Request and print voter identification cards.

(B) When voter identification cards are requested, an Affiliation Change Notice letter also is generated to each voter whose political affiliation change has been held. Use of these letters is optional.

(C) Mail voter identification cards and Affiliation Change Notice letter, if used, to voter.

(D) Request and print the Change of Affiliation List and retain it for 24 months.

(E) Move the voter registration application form from the Pending Affiliation Change Applications file to the Central File.

(F) Remove the voter's old voter registration form from the Central File and retain it in the Cancellation File as outlined in 230:10-7-43.

(c) Voter registration applications for change of political affiliation received during the prohibited period that also include other valid voter registration changes shall be processed as follows.

(1) Follow steps 1 through 3 outlined in subsection (a) of 230:15-9-22. Enter in OEMS or MESA all the information the voter provided on the application. When the new political affiliation is entered, ~~OEMS~~ the voter registration software warns that the political affiliation change is invalid and flags the application to hold this change until September 1. Other valid changes, such as changes of name or address, are accepted.

(2) Request and print voter identification cards, rejection notices, and Held Change of Affiliation Notices.

(3) Match the voter's new voter identification card with the Held Change of Affiliation Notice and mail them together to the voter.

(4) Request and print the Held Change of Affiliation List and retain it for 24 months.

(5) Indicate on the new voter registration application form that the political affiliation becomes effective on September 1.

(6) Remove the voter's old voter registration form from the Central File and file it in the Cancellation File unless other information on the old form requires that it remain in the Additional Information Correspondence File.

(7) File the voter's new registration form in the Central File.

(8) On September 1, follow these steps.

(A) Request and print voter identification cards.

(B) When voter identification cards are requested, an Affiliation Change Notice letter also is generated for each voter whose political affiliation change has been held. Use of these letters is optional.

(C) Mail voter identification cards and Affiliation Change Notice letters, if used, to voters.

(D) Print Change of Affiliation List and retain it for 24 months.

(d) Request and print a copy of the Pending Affiliation Change List before the Primary Election and again before the Runoff Primary Election to use to help answer questions from voters about their political affiliation on election day. Print a final copy of this report on September 1 and retain it for 24 months.

230:15-9-23. Processing duplicate application for voter registration

(a) When a voter registration application is entered into OEMS or MESA, the system will search all existing voter registrations and pending applications for potential duplicates. ~~OEMS~~ The voter registration software will display on screen a list of all such potential duplicates. In the event that ~~OEMS detects~~ potential duplicates are detected, County Election Board personnel shall examine the information ~~in OEMS~~ for each potential duplicate detected and shall compare the existing information in ~~OEMS~~ the voter registration database with the information on the voter registration application form that is being processed. A registered voter's registration form from the Central File may be examined, if necessary, to determine whether the application is a duplicate. If a positive identification of the voter or applicant can be made, the following procedure shall be observed:

(1) Examine the information provided on the voter registration application form and carefully compare it to the information on screen. If the application being processed appears to be an exact duplicate of the existing registration or pending application, the application shall be rejected. See 230:15-9-31.

(2) If the application being processed indicates any change of name, address or political affiliation, the application shall be processed accordingly. See 230:15-9-19 through 230:15-9-21.

(b) If a positive identification of the voter or applicant cannot be made, the application shall be processed as an application for new registration in the county. See 230:15-9-18.

230:15-9-25. Processing applications for restricted records status

(a) Members of the judiciary, district attorneys, assistant district attorneys, law enforcement personnel, corrections officers, and persons covered by victim's protection orders are entitled by law to apply to the Secretary of the County Election Board for restricted records status. [26:4-115.2] The spouse and/or dependent of a voter entitled to apply for restricted records status also may apply for restricted records status. Restricted records status shall apply to the voter registration form in the Central File, to registration information in ~~OEMS~~ the voter registration database, to materials used to request and cast absentee ballots, and if specifically requested by the voter, any Declaration of Candidacy filed by the voter. Voter registration information for a restricted records voter shall be available only to authorized County Election Board personnel for administrative purposes, with the exception that it may be provided to a candidate or a candidate's representative or other lawful authority in connection with a contest of candidacy, contest of election, or a petition challenge as provided by law. [26:4-115.2]

(b) A voter who is eligible for restricted records status may apply for such status by writing a letter to the Secretary of the County Election Board setting forth the following information.

(1) Voter's name as it appears on the voter registration form.

(2) Voter's date of birth.

(3) Last four digits of the voter's Social Security number.

(4) Reason for application for restricted records status. (If voter is covered by victim's protection order, include case number, date of issue and the expiration date of the order.)

(5) Voter's signature.

(6) Date.

(c) Upon receipt of an application for restricted records status, the Secretary of the County Election Board shall follow the appropriate MESA software instructions to enter the restricted records status voter's name, political affiliation, precinct number, school district, and municipality. This will cause the name and district information to print in the appropriate Precinct Registry without the voter's residence address.

(1) Make a placeholder for the Central File. Write only the voter's name, date of birth, and political affiliation on a blank voter registration application form. Write the words "Restricted Records" in the space for item 6, "Street address or directions to your home."

(2) Remove the voter's original voter registration application form from the Central File and replace it with the placeholder form.

(3) Check the Additional Information file. Remove any documentation of the voter's registration and attach it to the voter registration application form.

(4) Remove the voter's absentee ballot application from the appropriate file and attach it to the voter registration form.

(5) Locate the voter's registration information in OEMS and follow the appropriate software instructions to delete the registration information.

(6) Attach the voter's application for restricted records status to the voter's registration form and other materials and file in the restricted records status file.

(d) The Secretary of the County Election Board shall designate a file cabinet with a lock or any other appropriate container with a lock as the restricted records status file. Access to the restricted records status file shall be restricted to the Secretary, Assistant Secretary or Chief Clerk and other County Election Board employees authorized by the Secretary.

(e) Restricted records status shall be effective immediately upon receipt of an application from a qualified voter, and it shall remain in effect until the voter chooses to end it. The voter's registration information may be removed from restricted records status only upon receipt of written instruction from the voter.

(f) Any subsequent application for change of voter registration initiated by a restricted records voter shall be processed routinely, with the exception that the voter registration application information shall not be entered in OEMS or MESA and the form shall be filed in the restricted records status file instead of the Central File. If necessary, however, the voter's information shall be modified in the Restricted Records Maintenance area of MESA. Any application for absentee ballots from such a voter also shall be processed manually. The application for absentee ballots shall be filed in the restricted records status file.

(g) A restricted records status voter who votes in person at his or her precinct polling place shall sign the Precinct Registry beside his or her own name. The Secretary shall instruct Precinct Officials in precincts with restricted records status voters that no identification or address confirmation is required for these voters.

(h) The Secretary shall print the Restricted Records List from MESA and provide it to the in-person Absentee Voting Board on each day of in-person absentee voting. A restricted records status voter who votes at the in-person absentee polling place shall sign the Absentee Voting Board Record.

(i) An ACP Absentee Ballot Application form and ACP Voter History Record form received from the State Election Board shall be filed immediately in the restricted records status file. No entry shall be made in OEMS or in MESA concerning ACP voters and the name, address, and precinct number of an ACP voter shall not appear on any list or report.

SUBCHAPTER 11. VOTER REGISTRATION LIST MAINTENANCE

PART 1. CANCELLATION OF VOTER REGISTRATION

230:15-11-2. Positive identification required

A voter whose registration is to be cancelled for any reason first must be positively and accurately identified~~. If there is any doubt as to the identity of the voter,~~ by clear and convincing evidence or the cancellation shall not be processed.

230:15-11-5. Potential Deletion Report

The State Election Board shall prepare and transmit to each county on a monthly basis a Potential Deletion Report. This report compiles information received by the State Election Board from the State Health Department, from the federal court system, from other states, and from other counties in Oklahoma. This report lists persons who have died, persons who have been convicted of felonies in other counties or in federal court, and persons who have registered again in another state or in another county in Oklahoma. The voter registrations of persons listed on the Potential Deletion Report ~~may~~ shall be cancelled upon positive identification of the voter's registration record.

230:15-11-6. Cancellation of registration of deceased voter by next of kin

(a) The registration of a deceased voter ~~may~~ shall be cancelled upon execution of a Cancellation of Registration of Deceased Voter form by the voter's next of kin. [26:4-120.3] The form may be executed at the County Election Board office, at the deceased voter's polling place or at the next of kin's own polling place in the same county on any election day. [26:4-120.3] The form shall be signed by the next of kin and witnessed by either the County Election Board Secretary, Assistant Secretary or Chief Clerk, or by the Precinct Inspector.

(b) The registration of a deceased voter ~~may~~ shall be cancelled upon execution of a Request to Cancel Registration of Deceased Voter form by the voter's next of kin. The form shall be completed and signed by the next of kin and notarized by a Notary Public. [26:4-120.3] The form shall be returned to the County Election Board in the county of the deceased voter's residence. [26:4-120.3] A letter containing all the same information requested on the form, signed by the next of kin, and notarized by a Notary Public also shall be accepted to cancel the registration of a deceased voter.

230:15-11-6.1. Cancellation of registration of deceased voter upon notice of nursing home administrator

An administrator of a nursing home may execute a Notification of Nursing Facility Resident's Death form to notify the Secretary of the County Election Board of the death of a resident of the nursing home who was a registered voter. [26:4-120.3] The administrator's signature on the form may be notarized or it may be witnessed by a member of the nursing home Absentee Voting Board when the Board delivers absentee ballots to residents prior to an election. Upon receipt of such a notification, the Secretary ~~is authorized to~~ shall cancel the voter registration of the deceased voter. The Secretary shall provide copies of the form to the administrator of each nursing facility in the county along with instructions for its use. [26:4-120.3]

230:15-11-8. Cancellation for felony conviction

(a) *The court clerk in each county shall prepare a list monthly of all persons convicted in the county of a felony and shall transmit the list to the secretary of the County Election Board*. [26:4-120.4(B)] *The list shall include information necessary to identify a person on the list as a registered voter prescribed by the Secretary of the State Election Board.* [26:4-120.4(B)] The list prepared by the Court Clerk shall include the name, date of birth, and, if known, the last four digits of the Social Security number, driver license number, and residence address of each person convicted of a felony in the county. The Secretary of the County Election Board shall ~~be authorized to~~ cancel a voter's registration as outlined in (c) of this section upon receipt of a list of felony convictions from the Court Clerk.

(b) The Secretary of the County Election Board shall be authorized to cancel a voter's registration as outlined in (c) of this Section upon receiving a notice of felony conviction from a federal court. [26:4-120.4(A)]

(c) Upon receipt of the monthly felony conviction list from the county Court Clerk, County Election Board personnel shall follow appropriate software instructions to enter information from the list into OEMS. All information on the list shall be entered in OEMS, even if it appears the convicted person may be a resident of another county. Immediately upon entering felony conviction information, OEMS searches the county's voter registration information for potential matches. Any potential matches are brought to the screen and the information in the voter registration record of each potential match can be compared with other information provided by the Court Clerk on the list. If County Election Board personnel are able to make a positive match between a voter registration record and a name on the felony conviction list, the voter registration shall be cancelled. After all the information has been entered, the information is automatically transferred to the State Election Board. OEMS then searches voter registration records statewide for potential matches, and if found, reports them to the appropriate County Election Board. Potential felony conviction matches appear on the Potential Deletion Report in the county where the voter registration record is maintained. County Election Board personnel in that county must examine the information on the Potential Deletion Report and compare it to the identified voter registration record or records to make a positive match. If a positive match is found, the voter registration shall be cancelled. Following cancellation of a voter registration for felony conviction in OEMS, County Election Board personnel shall remove the original voter registration form from the Central File and any documentation in the Additional Information file, note the date the registration was cancelled and the reason for the cancellation. The original registration form shall be retained in the Cancellation File for 24 months.

(d) *The Secretary of the State Election Board, secretaries of county election boards, and their agents and employees shall not be held civilly liable for any action taken based upon information concerning felony convictions received from a United States Attorney or a county court clerk pursuant to subsections A and B of this section if a reasonable effort was made to make an accurate match of the information provided with voter registration records before cancelling any voter's registration.* [26:4-120.4]

230:15-11-9. Potential Duplicate Registration Report

The Potential Duplicate Registration Report lists registered voters in the county with the same last name, first initial and date of birth. When a potential duplicate registration is found, the matching records are listed as a group on the Potential Duplicate Registration Report. After printing the Potential Duplicate Registration Report, the Secretary shall examine the voter registration records (both in ~~OEMS~~ the voter registration database and in the Central File) of each person listed on the report to determine whether a duplicate voter registration has in fact been found. If it is determined that a duplication exists, the Secretary shall further examine both records to determine which of the two records ~~should be deleted~~ shall be cancelled. The Secretary shall delete the information for the cancelled registration from ~~OEMS~~ the voter registration database and ~~removed~~ remove the original application form from the Central File.

230:15-11-10. Statewide cancellation of true duplicate registrations

(a) No later than June 1 of each odd-numbered year, the Secretary of the State Election Board shall initiate a process to identify voters with duplicate voter registrations in one or more counties in Oklahoma. [26:4-120.2(c)] The process in OEMS shall examine and compare all voter registration records in the state to identify the true duplicate registrations. The true duplicates shall be identified by one of the following ~~three~~ criteria.

(1) There is a match of last name, first name, middle name or initial, and date of birth.

(2) There is a match of ~~driver's~~ driver license number, first name, and date of birth.

(3) There is a match of last name, date of birth, and the last four digits of the ~~social security~~ Social Security number.

(4) There is a match of last name, date of birth, and driver license number.

(b) Following identification of true duplicates, the individual records in each set of duplicate records shall be examined to determine which of the duplicate registrations is the most recent. The date of original registration, voter history, and voter activity all shall be examined and considered. The most recent registration record in each set of duplicate registrations shall be retained and all other registration records shall be cancelled. [26:4-120.2(c)]

(c) OEMS shall format for each county a report listing the names of voters in the county whose registration records have been cancelled. The Secretary of the County Election Board shall be required to print the True Duplicates Deleted Report immediately when it is formatted. County Election Board personnel shall use the True Duplicates Deleted Report to remove the registration forms for the cancelled true duplicate voters from the Central File. The registration forms shall be filed in the Cancellation File and shall be retained there for 24 months.

The True Duplicates Deleted Report shall be retained for 24 months. [26:4-120.2(c)]

(d) Questions concerning the cancellation of a true duplicate registration must be resolved by the State Election Board staff because, in most cases, the matching duplicate voter registration records are located in different counties. County Election Board personnel shall relay concerns that a registration may have been cancelled incorrectly by the true duplicates identification process to the State Election Board staff for investigation.

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TITLE 230. STATE ELECTION BOARD CHAPTER 30. ABSENTEE VOTING

[OAR Docket #10-622]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
230:30-1-2. Definitions [AMENDED]
Subchapter 3. Authorization for Absentee Voting
230:30-3-3. Voters eligible for absentee ballots [AMENDED]
Subchapter 5. Applications for Absentee Ballots
230:30-5-1.1. Applications for absentee ballots [AMENDED]
230:30-5-8.1. Time for absentee ballot applications [AMENDED]
230:30-5-8.2. Validity of applications for absentee ballots for all elections [AMENDED]
230:30-5-9. Rejected applications [AMENDED]
Subchapter 7. Absentee Voting Boards
230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
230:30-7-6.1 Training for Absentee Voting Board members [AMENDED]
230:30-7-8. Nursing home ballot box shall be locked [AMENDED]
230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
230:30-7-10. Secretary to indicate date of nursing home visit [AMENDED]
Subchapter 9. Processing Applications
230:30-9-1. Applications processed on day received [AMENDED]
230:30-9-2. Forms needed for processing [AMENDED]
230:30-9-3. Processing applications for absentee ballots [AMENDED]
230:30-9-5. Processing applications from uniformed services and overseas voters [AMENDED]
230:30-9-5.1. ~~Faxing~~ Transmitting absentee ballots to uniformed services and overseas voters by fax [AMENDED]
230:30-9-5.2. Transmitting absentee ballots to uniformed services voters and overseas voters by electronic mail [NEW]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
230:30-11-6. Transmitting absentee ballots [AMENDED]
230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services voters and overseas voters [AMENDED]
Subchapter 13. Federal Write-In Absentee Ballot
230:30-13-2. Receiving and processing federal write-in absentee ballots [AMENDED]
Subchapter 15. State Write-In Absentee Ballots
230:30-15-2. Applications for state write-in absentee ballot [AMENDED]
230:30-15-4. State write-in absentee ballot provided by State Election Board [AMENDED]
230:30-15-5. Processing applications for state write-in absentee ballots [AMENDED]
230:30-15-6. List of candidates [AMENDED]
230:30-15-7. Voters who request both regular and state write-in absentee ballots [AMENDED]
Subchapter 19. Counting the Ballots
Part 1. Counting Ballots on Election Day
230:30-19-6. Marking substitute ballot to count write-in ~~or~~ ballots, faxed ballots, and ballots transmitted to voters by electronic mail [AMENDED]
Subchapter 21. Recording Absentee Voting
230:30-21-4. Retaining absentee ballot materials [AMENDED]
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230:30-3-3. Voters eligible for absentee ballots [AMENDED]
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230:30-5-1.1. Applications for absentee ballots [AMENDED]
230:30-5-8.1. Time for absentee ballot applications [AMENDED]
230:30-5-8.2. Validity of applications for absentee ballots for all elections [AMENDED]
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230:30-7-6. Scheduling Absentee Voting Boards for an election [AMENDED]
230:30-7-6.1 Training for Absentee Voting Board members [AMENDED]
230:30-7-8. Nursing home ballot box shall be locked [AMENDED]
230:30-7-9. Procedure for the nursing home Absentee Voting Board [AMENDED]
230:30-7-10. Secretary to indicate date of nursing home visit [AMENDED]
Subchapter 9. Processing Applications
230:30-9-1. Applications processed on day received [AMENDED]
230:30-9-2. Forms needed for processing [AMENDED]
230:30-9-3. Processing applications for absentee ballots [AMENDED]
230:30-9-5. Processing applications from uniformed services and overseas voters [AMENDED]
230:30-9-5.1. ~~Faxing~~ Transmitting absentee ballots to uniformed services and overseas voters by fax [AMENDED]
230:30-9-5.2. Transmitting absentee ballots to uniformed services voters and overseas voters by electronic mail [NEW]
Subchapter 11. Receiving and Processing Absentee Ballots
230:30-11-2. Opening outer envelopes and examining affidavits [AMENDED]
230:30-11-6. Transmitting absentee ballots [AMENDED]
230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services voters and overseas voters [AMENDED]
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230:30-15-4. State write-in absentee ballot provided by State Election Board [AMENDED]

230:30-15-5. Processing applications for state write-in absentee ballots [AMENDED]

230:30-15-6. List of candidates [AMENDED]

230:30-15-7. Voters who request both regular and state write-in absentee ballots [AMENDED]

Subchapter 19. Counting the Ballots

Part 1. Counting Ballots on Election Day

230:30-19-6. Marking substitute ballot to count write-in ~~or~~ ballots, faxed ballots, and ballots transmitted to voters by electronic mail [AMENDED]

Subchapter 21. Recording Absentee Voting

230:30-21-4. Retaining absentee ballot materials [AMENDED]

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ANALYSIS:

The amendments in Chapter 30 concern implementation of the requirements of SB458, of HB1402, and of the new federal Military and Overseas Voters Empowerment Act (MOVE), as well as the elimination of an obsolete term from the rules. It should be noted that certain provisions of the MOVE Act mirror the requirements of SB458.

Both SB458 and the MOVE Act require the County Election Board to accept applications for absentee ballots from uniformed services voters and overseas voters and the eligible spouses and dependents of both groups by electronic mail. The bill also requires the County Election Board to transmit absentee ballots by electronic mail to uniformed services voters and overseas voters. Amendments in several Sections in several Subchapters reflect these new requirements. Several new forms will be required to implement these procedures. However, the new forms will not be printed. They will be distributed to the County Election Boards only as on-line templates or as PDFs.

HB1402 requires the County Election Board to send an Absentee Voting Board to veteran centers established pursuant to Title 72 of the Oklahoma Statutes. Veteran centers are located in only seven counties - Carter, Cleveland, Comanche, Custer, Latimer, Murray, and Rogers Counties. Voters who are physically disabled and confined to a veteran center are entitled to the services of an Absentee Voting Board in the same manner as physically disabled voters who are confined to a nursing home. Amendments in several Sections in several Subchapters include appropriate references to veteran centers and veteran center voters.

Several Sections in Chapter 30, still contain the term "convalescent hospital." This term no longer exists in the statutes governing absentee voting. It has been used interchangeably with the term "nursing home" for many years, but this usage occasionally causes confusion. Therefore, several amendments eliminate the term from absentee voting rules.

One Section concerning the federal write-in absentee ballot (FWAB) is amended to require the County Election Board to enter information into the computer from a voter's FWAB Affirmation as if it were a Federal Post Card Application form. FWABs are available only to uniformed services and overseas voters as a backup method of voting when they do not receive their regular absentee ballots by mail in time to vote and return them to election officials by election day in time to be counted. Oklahoma has expanded the use of the FWAB to permit its use in primary elections and by uniformed services and overseas voters who have not previously submitted Federal Post Card Application forms requesting regular absentee ballots in time to receive, vote, and return them by election day. Due to recent revisions of the FWAB Affirmation form, the information on the Affirmation is now identical to the information on the Federal Post Card Application. By entering this information into the computer as if it were an application for absentee ballots, the FWAB can be tracked in the same manner as a regular absentee ballot mailed to a uniformed services or overseas voter.

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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 1, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

230:30-1-2. Definitions

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

~~**"Convalescent hospital"** means a nursing facility as defined in Title 62 O.S. 2001, Section 1-1902.~~

"**Federal election**" means an election held on the last Tuesday in July; the fourth Tuesday in August; and the first Tuesday after the first Monday in November in even-numbered years; the first Tuesday in February of an even-numbered year in which the President and Vice President of the United States are to be elected; and the date of a special election called at any other time to fill a vacancy in the office of United States Senator or United States Representative.

"Member of the merchant marine" means a person employed as an officer or crew member of a vessel as identified in 42 U.S.C. 1973ff-6.

"Nursing home" means a nursing facility as defined in Title 62 O.S. 2001, Section 1-1902.

"PDF" means portable document format, a type of computer file used for document exchange.

"Uniformed services" means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard, the merchant marine, the commissioned corps of the Public Health Service, the commissioned corps of the National Oceanic and Atmospheric Administration, and the Oklahoma National Guard.

"Veteran center" means a facility established as outlined in Title 72 O.S., Section 221 et seq of the Oklahoma Statutes.

SUBCHAPTER 3. AUTHORIZATION FOR ABSENTEE VOTING

230:30-3-3. Voters eligible for absentee ballots

(a) A registered voter may request absentee ballots for any election in which the voter is eligible to vote. An absentee voter shall not be required to state any reason for the request. [26:14-105]

(b) Registered voters may apply for absentee ballots by stating one of the following reasons.

(1) **Nursing home voters.** Nursing home voters are registered voters who swear or affirm that they are physically incapacitated and confined to a nursing home ~~or convalescent hospital~~ within the county in which they are registered to vote. [26:14-115] They may vote by absentee ballot.

(2) **Physically incapacitated voters.** Physically incapacitated voters are registered voters who swear or affirm that they are physically unable to vote in person at their precinct polling places on the day of an election because they are physically incapacitated but are not confined to a

nursing home ~~or convalescent hospital~~ within the county in which they are registered to vote. [26:14-110.1(1)] They may vote by absentee ballot.

(3) **Voters charged with the care of physically incapacitated persons.** Voters charged with the care of physically incapacitated persons are registered voters who swear or affirm that they are physically unable to vote in person at their precincts on the day of the election because they are charged with the care of a physically incapacitated person who cannot be left unattended. [26:14-110.1] They may vote by absentee ballot.

(4) **Emergency incapacitated voters.** Emergency incapacitated voters are registered voters who become incapacitated after 5 p.m. on Tuesday preceding an election and are unable to vote at their precinct polling places on election day. [26:14-115.1] They may vote by absentee ballot.

(5) **Uniformed services voters.** Uniformed services voters are residents of Oklahoma who are members of one of the uniformed services of the United States or of the merchant marine and their spouses and dependents who are 18 years of age or older. They may vote by absentee ballot. These persons need not be registered to vote, but they must be qualified to be registered. [26:14-116]

(6) **Overseas voters.** Overseas voters are residents of Oklahoma who are living outside the territorial limits of the United States, and their spouses and dependents, who are 18 years of age or older, and uniformed services voters and their spouses and dependents who, by reason of active duty, are absent from the United States on election day. They may vote by absentee ballot. These persons need not be registered to vote, but they must be qualified to be registered. [26:14-116]

(7) **Veteran center voters.** Veteran center voters are registered voters who swear or affirm that they are physically incapacitated and confined to a veteran center in the county in which they are registered to vote. [26:14-115] They may vote by absentee ballot in the same manner as nursing home voters.

(c) Any registered voter may apply for an in-person absentee ballot at the in-person absentee polling place on Friday or Monday preceding all elections, and also on Saturday preceding state and federal elections. [26:14-115.4(A)] An in-person absentee voter shall not be required to state a reason for the request but shall be required to swear or affirm that he has not voted a regular absentee ballot and that he will not vote at the polling place on election day. [26:14-115.4(A)]

SUBCHAPTER 5. APPLICATIONS FOR ABSENTEE BALLOTS

230:30-5-1.1. Applications for absentee ballots

(a) **Application forms.** Applications for absentee ballots may be made by using the following forms.

(1) **Yellow Application for Absentee Ballots form.** Voters may apply for absentee ballots by completing a yellow Application for Absentee Ballots form and mailing or faxing it to the County Election Board office. Voters also may appear personally at the County Election Board office to complete the form. [26:14-105]

(2) **Pink Application for Absentee Ballots form.** Nursing home voters, physically incapacitated voters, ~~and~~ voters charged with the care of physically incapacitated persons who cannot be left unattended, and veteran center voters may apply for absentee ballots by completing the pink Application for Absentee Ballots form and mailing or faxing it to the County Election Board office. [26:14-110.1, 14-114]

(3) **Federal Post Card Application.** Uniformed services voters and overseas voters may apply for absentee ballots by completing a Federal Post Card Application, also known as a Department of Defense Form 76, and mailing, ~~or~~ faxing, or e-mailing it to the County Election Board office. [26:14-117] Federal Post Card Applications may be obtained from the voting service officer in a military unit and from United States Embassies and Consulates. The form also is available online at **www.fvap.gov.** All completed Federal Post Card Applications must be transmitted to the County Election Board by mail, ~~or~~ by fax, or by e-mail. [26:14-117]

(4) **Green Application for In-Person Absentee ~~Ballot~~ Ballots.** Voters may apply for an in-person absentee ballot by completing a green Application for In-Person Absentee Ballots form at the in-person absentee polling place. [26:14-115.4(A)]

(5) **Application from emergency incapacitated voter.** Emergency incapacitated voters may apply for absentee ballots by making a written request. [26:14-115.1] The written request must be signed by the voter or, if the voter is unable to sign, by a witness. [26:14-115.1] The request must be accompanied by a sworn statement from a duly licensed physician. [26:14-115.1] The request must be transmitted to the County Election Board office by an agent designated by the voter. [26:14-115.1] The white Request for Emergency Incapacitated Absentee Ballot and Sworn Statement by Physician form may be used but is not required.

(b) **Letter suffices.** In all cases, with the exception of the in-person absentee voter, a letter from a voter requesting absentee ballots shall be considered a sufficient application if it contains the information needed to determine the voter's eligibility to vote in the election and to determine where to send the ballots. [26:14-105, 14-110.1, 14-117]

(c) **Telegram suffices in some cases.** In the case of absentee voters, nursing home voters, physically incapacitated voters, ~~and~~ voters charged with the care of physically incapacitated persons, and veteran center voters, a telegram shall be considered a sufficient application if it contains the information needed to determine the voter's eligibility to vote in the election and to determine where to send the ballots. [26:14-105, 14-110.1]

(d) **Facsimile applications accepted.** Absentee voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons,

veteran center voters, uniformed services voters, and overseas voters may submit applications for absentee ballots to the County Election Board by electronic facsimile device (a "fax" machine). Voters may transmit one of the absentee ballot application forms described in (a) of this Section or they may transmit a letter as described in (b) of this Section.

(e) **Electronic mail applications accepted from uniformed services voters and overseas voters only.** Uniformed services voters and overseas voters, including the eligible spouses and dependents of both groups, may apply for absentee ballots by electronic mail. They may send a completed Federal Post Card Application form by e-mail or they may send a written request, as described in (b) of this Section, by electronic mail to the County Election Board in the county of their residence.

(f) **Applications received by State Election Board.** In the event that applications for absentee ballots are received at the State Election Board office by mail, by fax, or by electronic mail, they immediately shall be forwarded to the appropriate County Election Board.

230:30-5-8.1. Time for absentee ballot applications

(a) All absentee voters, except in-person absentee voters and emergency incapacitated voters, may apply any time prior to 5 p.m. on the Wednesday preceding the election. [26:14-103] The application must be in the hands of County Election Board personnel by that time. An application received after 5 p.m. on Wednesday preceding the election - even if postmarked prior to that time must be rejected.

(b) Applications for in-person absentee ballots may be made only at the in-person absentee polling place from 8 a.m. to 6 p.m. on Friday and Monday preceding all elections and also from 8 a.m. to 1 p.m on Saturday immediately preceding state and federal elections . [26:14-115.4]

(c) Applications for emergency incapacitated absentee ballots may be made any time after 5 p.m. on Tuesday preceding an election through 7 p.m. on election day. [26:14-115.1]

(d) The County Election Board office shall remain open until 5 p.m. on Wednesday preceding an election so that applications may be made in person until that time. The Secretary shall cause the County Election Board's post office box, if applicable, to be checked no later than 5 p.m. The Secretary also shall cause the inbox for each County Election Board electronic mail address and any applicable spam or junk mail folders to be checked no later than 5 p.m. for Federal Post Card Application forms.

230:30-5-8.2. Validity of applications for absentee ballots for all elections

(a) Absent voters, nursing home voters, physically incapacitated voters, ~~and~~ voters charged with the care of physically incapacitated persons, and veteran center voters may apply for absentee ballots for all elections in which they are eligible to vote. Such applications for all elections shall be considered valid through December 31 of the calendar year in which they are received. Absentee voters who apply for all elections shall be required to submit a new application for absentee ballots for each calendar year.

(b) Applications for absentee ballots received from uniformed services voters and overseas voters shall be considered applications for all elections in which the voter is eligible to vote. Applications for absentee ballots received from uniformed services voters and overseas voters shall be considered valid through the next two regularly scheduled federal General Elections. For example, an application for absentee ballots from a uniformed services or overseas voter received in February, 2004, shall be considered valid through the federal General Election in November, 2006. An application received in December, 2004, shall be considered valid through the federal General Election in November, 2008.

(c) If absentee ballots mailed to the address provided by the voter on an application for absentee ballots that requests ballots for all elections are returned undelivered to the County Election Board by the postal service, the Secretary of the County Election Board shall be authorized to cancel the application. The application information may be deleted from OEMS. The Secretary shall indicate on the outside of the returned absentee ballot mailing envelope that the application is cancelled as a result of the returned, undelivered ballots. The returned envelope shall be retained for 24 months.

230:30-5-9. Rejected applications

(a) **Reasons for rejection.** An application for absentee ballots shall be rejected if any one of the following conditions, or combination of the following conditions, occurs.

(1) The applicant is not a registered voter in the county.

(2) The application is not properly signed, except as provided in (d) of this Section.

(3) The applicant is not eligible to vote in the election for which ballots are requested.

(4) The application does not contain sufficient information to determine which ballots to send.

(5) The application is received later than 5 p.m. on Wednesday preceding the election.

(6) The application is illegible.

(b) **Processing rejected application.** In the event that a voter's application for absentee ballots must be rejected, the application shall be entered into OEMS and the reason for the rejection shall be noted on the screen. OEMS will create a Notice of Rejection of Absentee Ballot Application for the voter which will detail the reason the application was rejected. If an Application for In-Person Absentee ~~Ballot~~ Ballots has been rejected, the application shall not be entered into OEMS and, therefore, no Notice of Rejection will be created.

(c) **Form of rejection.** In the event that a voter's application for regular mail absentee ballots must be rejected for any reason, the Secretary shall print the Notice of Rejection of Absentee Ballot Application created by OEMS and mail it to the voter. [26:14-133] If there is sufficient time for the voter to return a corrected application, a new application form shall be enclosed with the notice. In the event that an emergency incapacitated voter's application for absentee ballots must be rejected, the Secretary shall so advise the voter's agent and shall provide the agent with a Notice of Rejection of Absentee

Ballot Application form, which shall be completed by the Secretary.

(d) **Exception for applications received by electronic mail from uniformed services and overseas voters.** Applications submitted on the Federal Post Card Application that are received from uniformed services and overseas voters by electronic mail shall be accepted and processed without a physical signature.

SUBCHAPTER 7. ABSENTEE VOTING BOARDS

230:30-7-6. Scheduling Absentee Voting Boards for an election

(a) **Notification of Absentee Voting Board members.** At least ten days before the election, the Secretary of the County Election Board shall notify the members of one or more Absentee Voting Boards of the day or days the services of the Absentee Voting Board will be required. The Secretary also shall request the members of the Absentee Voting Board to meet on Tuesday before the election to make plans for their work.

(b) **Scheduling the nursing home Absentee Voting Board.** On Tuesday before the election, the Secretary shall work with the Absentee Voting Board to schedule visits to each affected nursing home or ~~convalescent hospital~~ veteran center. Visits must be scheduled on Thursday, Friday, Saturday or Monday immediately preceding the election. [26:14-115(1)] Visits shall be planned to all nursing homes or veteran centers in as few days as possible, preferably in a single day. The Secretary shall consult the administrator of each affected nursing home or veteran center to schedule a time that will be convenient for the Absentee Voting Board to visit.

(c) **Scheduling the in-person Absentee Voting Board.** An Absentee Voting Board is required to be on duty at the in-person absentee polling place from 8 a.m. to 6 p.m. on Friday and Monday immediately preceding all elections and also from 8 a.m. to 1 p.m. on Saturday immediately preceding state and federal elections. [26:14-115.4]

(d) **Notifying Sheriff of in-person absentee voting.** The Secretary shall notify the County Sheriff of the dates for in-person absentee voting for an election and shall arrange for the Sheriff to provide security for the memory pack and the voted ballots as outlined in 230:30-7-11.3.

230:30-7-6.1. Training for Absentee Voting Board members

(a) The Secretary of the County Election Board shall train the Absentee Voting Board members in their duties before the Absentee Voting Board makes its first visit to a nursing home or veteran center ~~visit~~ or first provides service to in-person absentee voters. The State Election Board provides the County Election Board Secretary with instructions for conducting training for both nursing home and in-person Absentee Voting Board members.

(1) **Nursing home Absentee Voting Board.** Training for members of a nursing home Absentee Voting Board shall include a review of the blue Instructions for Absentee Voting Board sheet. The Secretary also shall review the types of ballots and the potential combinations of ballots, the contents of the pink absentee voter packet, and the use of the Absentee Voting Board Record, the Spoiled Ballot Affidavit, and the PRECINCT PROBLEM SOLVER.

(2) **In-person Absentee Voting Board.** Training for members of an in-person Absentee Voting Board shall include a review of the green Instructions for Absentee Voting Board for In-Person Absentee Ballots sheet. The Secretary shall provide instructions for using the Central File or an OEMS terminal to verify a voter's registration information and registration status and shall review the types of ballots and potential combinations of ballots. The Secretary also shall review the uses of the Spoiled Ballot Affidavit, the Voter Assistance Form, the Ballot Accounting Forms, and the PRECINCT PROBLEM SOLVER. The Secretary also shall provide instructions on the use of the voting device, the procedures for opening and closing the in-person absentee polling place and the disposition of the memory pack, ballots and other items. If the in-person Absentee Voting Board uses an OEMS terminal, the Secretary shall instruct the Board members to obtain updated voter registration information from inactive voters.

(b) Following the initial training for Absentee Voting Board members, the Secretary shall provide a review of the Absentee Voting Board's duties, if necessary, before it serves in any election.

230:30-7-8. Nursing home ballot box shall be locked

(a) **Nursing home ballot box.** The ballot box to be used by the Absentee Voting Board at the nursing home or veteran center shall be locked before it is removed from the County Election Board office by the Absentee Voting Board. The keys to the locks shall be retained by the Secretary while the ballot box is in the custody of the Absentee Voting Board. After the Absentee Voting Board returns the ballot box to the County Election Board office, the Secretary shall give one key each to the Chairman and Vice Chairman of the County Election Board or shall seal each key in a Key Envelope signed by a member of the Absentee Voting Board.

(b) **Requirements for nursing home ballot box.** The ballot box provided for use by the nursing home Absentee Voting Board shall be constructed of substantial material and must be equipped with three locks, so that the key of one lock will not unlock the others. Each box must be equipped with an opening in the top through which a ballot may be inserted, but must be constructed in such a manner that the box must be unlocked before the ballots can be removed.

230:30-7-9. Procedure for the nursing home Absentee Voting Board

(a) On the day scheduled for the Absentee Voting Board to visit nursing homes and veteran centers, the Board shall meet with the Secretary of the County Election Board at the County Election Board office. The members shall sign the Absentee

Voting Board Record. The ballot box shall be prepared as outlined in 230:30-7-8 and issued to the nursing home Absentee Voting Board members. Adequate supplies and ballots shall be provided to anticipate voter assistance requirements and spoiled ballots. Precautions shall be taken to insure accounting for each ballot. The Secretary shall instruct the Absentee Voting Board as to the type of ballots each voter shall receive in case a voter spoils a ballot and a new ballot must be issued.

(b) The Absentee Voting Board shall observe the following procedure:

(1) The two members of the Absentee Voting Board shall travel together in one automobile, taking all necessary forms and supplies.

(2) Upon arrival at a nursing home or veteran center, the Absentee Voting Board shall make arrangements for those incapacitated voters listed on the Absentee Voting Board Record to vote. Only those persons whose names are on the Absentee Voting Board Record shall be permitted to vote. If the message "Confirm Address" or "Insufficient Address" appears on the Absentee Voting Board Record, the Absentee Voting Board members shall give the voter a copy of the Address Information Requested handout and shall ask the voter to complete an Oklahoma Voter Registration Application form.

(3) The voter must mark his ballots with a ballot marking pen in the presence of the Absentee Voting Board, but in such a manner as to make it impossible for anyone but the voter to tell how the ballots are marked. [26:14-115(3)]

(4) *Insofar as is possible, the voting procedure shall be the same as if the voter were casting his ballot in person at a precinct.* [26:14-115(3)] This includes providing assistance, as provided by law, to persons who are unable to mark their ballots due to physical or visual disabilities or illiteracy. The procedures outlined in the PRECINCT PROBLEM SOLVER shall be followed. However, the Voter Assistance Form shall not be used. The person who marks the voter's ballot shall complete and sign the "Assistant's Oath" on the affidavit envelope. [26:14-113.2]

(5) While a voter may receive assistance, only the voter himself may determine how the ballots are to be marked. If the voter is unable to instruct the person providing assistance, the voter shall not be permitted to vote. If necessary, the voter also may receive assistance to complete the Oklahoma Voter Registration Application.

(6) The procedure outlined in the PRECINCT PROBLEM SOLVER shall be followed if a voter spoils a ballot. The Spoiled Ballot Affidavit shall be used as required.

(7) When the voter has marked his ballots, he shall fold them and seal them in the white ballots envelope. [26:14-115(4)] He then shall seal the white ballots envelope inside the pink affidavit envelope. [26:14-115(4)]

(8) The voter then shall complete and sign the affidavit. [26:14-115(4)] The voter's signature must be witnessed by both members of the Absentee Voting Board. [26:14-115(4)] The members shall sign the affidavit in the space for witnesses but shall not be required to provide their addresses.

(9) The affidavit envelope then shall be placed in the outer envelope and sealed. [26:14-115(5)]

(10) Each outer envelope containing absentee ballots immediately shall be placed in the absentee ballot box.

(11) A member of the Absentee Voting Board shall check either the "Did Vote" column or the "Did Not Vote" column, as appropriate.

(12) All Oklahoma Voter Registration Application forms completed by voters to update their voter registration information shall be placed with other voting supplies for return to the County Election Board office.

(13) When the Absentee Voting Board has completed its ~~visits~~ visit to each nursing home ~~or convalescent hospital~~ or veteran center scheduled for that particular day, the members shall return to the County Election Board office and leave the ballot box in the custody of the Secretary. [26:14-115(5)] The Absentee Voting Board shall account for all supplies and unused ballots. The ballot box shall be removed from the County Election Board office only when the Absentee Voting Board is performing its duties. The ballot box, once locked, shall not be unlocked again until it is time for the County Election Board members to remove the outer envelopes. See 230:30-11-2.

(c) In the event that members of the nursing home Absentee Voting Board learn that a nursing home voter listed on the Absentee Voting Board Record has died, the Absentee Voting Board members shall ask the nursing home administrator to fill out and sign a Notification of Nursing Facility Resident's Death form. One member of the Absentee Voting Board shall witness the administrator's signature. The Absentee Voting Board shall return the signed form to the County Election Board Secretary along with the ballot box and supplies when their duties are concluded.

230:30-7-10. Secretary to indicate date of nursing home visit

After all visits to nursing homes or ~~convalescent hospitals~~ veteran centers have been completed, the Secretary shall enter the month and day of the visit in the application information in OEMS for each voter who voted. The Secretary also shall process any Oklahoma Voter Registration Application forms completed by nursing home or veteran center voters to update their voter registration information.

SUBCHAPTER 9. PROCESSING APPLICATIONS

230:30-9-1. Applications processed on day received

Each application for absentee ballots shall be processed on the same day it is received. In all cases except for nursing homes and emergency incapacitated voters, ballots shall be mailed or electronically transmitted as provided in 230:30-9-5.1 and 230:30-9-5.2 to the voter the same day if ballots are available at the time the application is received.

230:30-9-2. Forms needed for processing

The following materials are necessary for processing absentee ballot applications and shall be maintained in packets:

(1) Absentee voter packet

(A) Mailing envelope

(B) Outer envelope

(C) Yellow affidavit envelope

(D) White ballots envelope

(E) Yellow Instructions for Voting by Absentee Ballot (Absentee Voter)

(2) Incapacitated voter packet

(A) Mailing envelope

(B) Outer envelope

(C) Pink affidavit envelope

(D) White ballots envelope

(E) Pink Instructions for Voting by Absentee Ballot (Incapacitated Voter)

(3) Uniformed services/overseas voter packet

(A) Red and white mailing envelope

(B) Red and white outer envelope

(C) Red and white affidavit envelope

(D) White ballots envelope

(E) Red and white Instructions for Voting by Absentee Ballot (Uniformed Services or Overseas)

(4) Uniformed services/overseas voter packet for fax ballots

(A) Fax cover sheet and letter to voter

(B) Instructions for Voting by Write-In Absentee Ballot

(C) Instructions for Faxing Voted Ballot to State Election Board or County Election Board

(D) Return fax cover sheet

(5) Uniformed services/overseas voter packet for electronic mail ballots

(A) PDF of appropriate state or federal absentee ballot style

(B) PDF of the affidavit

(C) PDF of Instructions for Voter

(D) PDF of return fax cover sheet

230:30-9-3. Processing applications for absentee ballots

Applications from all absentee voters, except uniformed services voters and overseas voters, shall be processed according to the following procedures:

(1) Indicate in the "For County Election Board Use" space the date on which the application is received at the County Election Board office.

(2) Enter the application information into OEMS. When applications from absentee voters, nursing home voters, physically incapacitated voters, voters charged with the care of physically incapacitated persons, ~~and~~ emergency incapacitated voters, and veteran center voters are entered into OEMS, the system automatically verifies the applicant's registration. If an applicant is not registered, see 230:30-9-4.

(3) If a voter requests absentee ballots for a school district or municipality other than the one to which he or she is assigned, mark the appropriate field on the OEMS screen. OEMS will generate a notice that tells the voter that he or she is assigned to a different school district or municipality than the one for which ballots were requested and that ballots for the assigned district or municipality will be issued. If a voter is not assigned to a school district, the school district field will be empty. In this situation only, enter the appropriate code for the school district indicated by the voter on the absentee ballot application in the school district field. If a voter does not reside in a municipality, the municipality field will contain the word "None." If, however, a voter's municipal assignment cannot be determined, the municipal field will be blank. In this situation only, enter the code for the municipality indicated by the voter on the absentee ballot application.

(4) If the application must be rejected for any reason, enter the reason for the rejection in the appropriate place on the screen. OEMS will produce a Notice of Rejection of Absentee Ballot Application letter for the voter. However, in the event that an Application for In-Person Absentee ~~Ballot~~ Ballots has been rejected, it shall not be entered into OEMS.

(5) Designate the election or elections for which the voter is requesting ballots in the appropriate place on the screen.

(6) Write the applicant's voter identification number and registration status (active or inactive) on the application form. File the application form in the appropriate absentee voting materials file. If the applicant is a restricted records status voter, file the application in the restricted records status file.

(7) If the application is from an in-person absentee voter and ballots were issued by the Absentee Voting Board, enter the date the application was processed by the Absentee Voting Board in the appropriate space on the screen to give the voter credit for voting. See 230:30-7-12. If the application was rejected, no entry shall be made in OEMS. A rejected Application for In-Person Absentee ~~Ballot~~ Ballots shall be retained with other rejected applications.

(8) If ballots are available, immediately prepare the appropriate absentee voter packet with the correct ballots for the voter and mail it. See 230:30-9-1 and 230:30-9-2. If the letter "I" appears in the upper-right corner of the absentee mailing label, the voter is either an inactive voter or a voter unassigned to a school district due to insufficient address information. Enclose an Oklahoma Voter Registration Application form and an Absentee Voter Address Information Requested sheet with the absentee voter packet and ballots.

230:30-9-5. Processing applications from uniformed services and overseas voters

(a) **Applications from uniformed services and overseas voters.** Applications for absentee ballots received from uniformed services voters and overseas voters are processed differently than applications from other absentee voters. Uniformed services voters and overseas voters are not required to

be registered to vote in the county in order to vote by absentee ballot. Applications received from uniformed services voters and overseas voters are considered to be applications for all elections in which the voter is eligible to vote, except as outlined in (c) of this Section. Applications from these voters shall be processed according to the ~~following~~ procedures~~:~~ outlined in (b) of this Section.

(b) **Applications received by mail, by fax, or by electronic mail.** Uniformed services voters and overseas voters may submit applications for absentee ballots, usually the Federal Post Card Application (FPCA) form, to the County Election Board by mail, by fax, or by electronic mail. Upon receipt of an application for absentee ballots from a uniformed services or overseas voter, the Secretary of the County Election Board shall cause the application to be processed according to the following procedure.

(1) If the application was received by electronic mail, take these steps.

(A) Print a copy of the electronic mail message and a copy of the attached FPCA form.

(B) Reply to the electronic mail message to notify the voter that the application was received.

(2) Indicate on the application form the date on which it was received at the County Election Board office.

(3) Indicate on the application form whether it was received by mail, by fax, or by electronic mail.

(~~2~~4) Enter the application information into OEMS using the ~~special~~ option for uniformed services (military) and overseas applications. If the voter's address is not located within the county, the application information shall not be entered. The printed application form shall be forwarded immediately to the correct County Election Board. The date the application was received in the first county shall be the received date for the application.

(~~3~~5) Designate the elections for which the voter will receive ballots. If the voter requested that ballots be transmitted by electronic mail, designate only the appropriate state or federal election. (See 230:30-9-5.2 for additional information about requests to transmit ballots by electronic mail.)

(~~4~~6) Write on the application form the voter identification number assigned by OEMS ~~to the application on the form~~.

(~~5~~7) If ballots are available, immediately follow the appropriate steps.

(A) ~~prepare~~ If the voter requested that ballots be mailed, prepare a uniformed services/overseas voter packet with the correct ballots for the voter and mail it.

(B) If the voter requested that a ballot also be transmitted by fax, follow the instructions in 230:30-9-5.1 to prepare and transmit the appropriate federal ballot and balloting materials.

(C) If the voter requested that ballots be transmitted by electronic mail, follow the instructions in 230:30-9-5.2 to prepare and transmit the appropriate state or federal ballot and balloting materials.

(~~6~~8) After processing of the application is completed, file the application form in the appropriate absentee voting materials file.

(~~b~~c) **Validity of applications received from uniformed services and overseas voters.** Applications for absentee ballots from uniformed services voters and overseas voters shall be considered valid through the next two federal General Elections as outlined in 230:30-5-8.2. However, in the event that a uniformed services or an overseas voter requests that ballots be transmitted by electronic mail, the application shall be considered to be for state and federal elections only. ~~if~~If ballots mailed to a uniformed services or overseas voter's address are returned undelivered to the County Election Board, the County Election Board Secretary shall be authorized to consider the application invalid and shall be authorized to delete the application from OEMS. The Secretary shall indicate on the outside of the returned absentee ballot ~~mailing~~ outer envelope that the voter's absentee ballot application has been cancelled as a result of the returned, undelivered ballots. The returned envelope shall be retained for 24 months.

(d) **Updating existing FPCA.** Upon receipt of an FPCA or other communication from a uniformed services voter or an overseas voter that includes an electronic mail address to be used for absentee voting purposes, the Secretary shall determine whether the voter has a currently valid application on file. If so, the Secretary shall remove the existing application form from the file and replace it with the newly received form. [26:14-118(B)] The Secretary shall note on the removed form the reason for the removal.

230:30-9-5.1. ~~Faxing~~ Transmitting absentee ballots to uniformed services and overseas voters by fax

(a) The Secretary of the County Election Board is authorized to ~~fax~~ transmit an absentee ballot for federal offices to a uniformed services voter or an overseas voter by facsimile device (fax) only under the following circumstances.

(1) The voter submits an application for absentee ballots ~~less than 30 days before a federal election~~ and specifically requests that the Secretary transmit by fax a ballot for federal offices to the voter.

(2) The application is received by the County Election Board Secretary in the county of the voter's residence no later than 5 p.m. Wednesday preceding the election.

(3) The voter provides a fax number for receiving the ballot and related materials.

(b) The Secretary shall process the application for absentee ballots according to the procedure outlined in 230:30-9-5 and shall prepare and mail regular absentee ballots to the voter. The Secretary then shall prepare the following materials and immediately shall transmit them by fax ~~them~~ to the voter.

(1) Fax cover sheet and letter to voter~~.~~

(2) Instructions for Voting by Write-in Absentee Ballot~~.~~

(3) A state write-in absentee ballot for the election~~.~~

(A) Determine the appropriate state write-in absentee ballot for the voter.

(B) Verify that the county name is stamped on both the stub and the ballot and that the stub is correctly numbered.

(C) Detach the ballot. Leave the numbered stub in the book of ballots.

(D) Enter the appropriate Congressional District number in the space provided on the ballot.

(4) A list of the candidates for federal offices in the election~~.~~

(5) Instructions for Faxing Voted Ballot to State Election Board

(6) A return fax cover sheet

(c) After ~~faxing~~ transmitting the materials described in (b) of this Section, the Secretary shall attach the original cover sheet to the application form, and then shall file the application in the appropriate absentee voting materials file. Ballots for any future elections not involving federal offices for which the voter is eligible shall be mailed to the voter at the appropriate time according to the procedure outlined in 230:30-9-5(a).

230:30-9-5.2. Transmitting absentee ballots to uniformed services voters and overseas voters by electronic mail

(a) The Secretary of the County Election Board is authorized to transmit absentee ballots and related balloting materials by electronic mail to uniformed services and overseas voters for any election involving state or federal candidates under the following specific circumstances. [26:14-118(B)]

(1) The voter has provided a residence address located within the county and the voter is eligible to vote in the election.

(2) The voter has a valid Federal Post Card Application (FPCA) form, or other valid application as described in 230:30-5-1.1, on file with the County Election Board and is eligible to receive an absentee ballot. [26:14-118(B)]

(3) The voter provides an electronic mail address. [26:14-118(B)]

(4) The voter specifically requests that balloting materials be transmitted by electronic mail. [26:14-118]

(b) Upon receipt of an FPCA that includes a request for ballots to be transmitted by electronic mail, the Secretary shall process the application as outlined in 230:30-9-5. However, instead of preparing ballots to be mailed or faxed as described in that Section, the Secretary shall cause the following procedures to be observed.

(1) The Secretary shall determine the correct absentee ballot style for the voter.

(2) The Secretary shall prepare an electronic mail message to the voter and shall attach each of the following electronic documents to the message.

(A) The PDF of the appropriate ballot style for the voter

(B) The PDF of the Affidavit

(C) The PDF of the Instructions for Returning Voted Ballot to County Election Board.

(3) The Secretary shall enter manually the date the ballot is transmitted by electronic mail in the voter's application information in OEMS. This step must be completed prior to requesting absentee mailing labels to prevent a label from formatting for this voter.

(4) The Secretary shall complete the Ballot Accounting Form for Electronic Mail Ballots.

(c) The Secretary shall review any FPCAs received prior to January 1, 2010, that are valid for state and federal elections after January 1, 2010, for requests for ballots to be transmitted by electronic mail and for electronic mail addresses. Any such requests shall be honored as outlined in this Section.

SUBCHAPTER 11. RECEIVING AND PROCESSING ABSENTEE BALLOTS

230:30-11-2. Opening outer envelopes and examining affidavits

The County Election Board may meet any time after 10 a.m. on the Thursday preceding the election to remove outer envelopes. [26:14-123] Unless the number of absentee ballots is extremely high, this meeting shall be scheduled on the day of the election. Upon meeting, the Board shall unlock each ballot box containing absentee ballots. Each envelope shall be removed from the ballot box. The outer envelopes shall be opened and removed and the affidavit envelopes examined. If an inactive voter has enclosed the Oklahoma Voter Registration Application form inside the outer envelope, set the application aside to be processed later. The examination shall determine whether or not the affidavit is properly executed. The following requirements shall be observed:

(1) The signature on a pink affidavit submitted by a physically incapacitated voter, a voter charged with the care of a physically incapacitated person or an emergency incapacitated voter must be witnessed by two other persons. [26:14-113.2]

(A) No one may witness signatures on more than five of these pink affidavits per election. [26:14-113.2(B)] If someone witnesses signatures on more than five of these pink affidavits, the absentee ballots shall be counted but the witness shall be reported to the District Attorney. See 230:30-23-1.

(B) No one who is a candidate for an office on the ballot may witness a pink absentee ballot affidavit. [26:14-113.2]

(C) No one who is related within the third degree by consanguinity or affinity to a candidate for an office on the ballot may witness a pink absentee ballot affidavit. [26:14-113.2]

(2) The signature on a yellow affidavit submitted by an absentee voter must be witnessed by a Notary Public. [26:14-108] Affidavits from states other than Oklahoma may be notarized by a person other than a Notary Public who is authorized to administer oaths.

(A) The Notary Public must sign and impress the notarial seal on the affidavit for the attestation to be valid.

(B) The number and expiration date of a Notary Public in Oklahoma should be included in the attestation. However, the attestation shall be considered valid even if this information is missing.

(C) No one who is a candidate for an office on the ballot may notarize a yellow absentee ballot affidavit. [26:14-108]

(D) No one who is the chairman or treasurer of the campaign of a candidate for an office on the ballot may notarize a yellow absentee ballot affidavit. [26:14-108]

(E) No one who is related to a candidate within the third degree of consanguinity or affinity may notarize a yellow absentee ballot affidavit. [26:14-108]

(3) The signature on a pink affidavit submitted by a nursing home voter or a veteran center voter must be witnessed by two members of the nursing home Absentee Voting Board, who shall not be required to show their addresses. [26:14-115]

(4) Voters using the red and white affidavit need not have their signatures witnessed.

(5) The Voter's Declaration/Affirmation accompanying a federal write-in absentee ballot shall be examined. The voter's signature need not be witnessed. See 230:30-13-2 for more information about the Voter's Declaration/Affirmation.

(6) The cover sheet used by uniformed services and overseas voters to return voted ballots by fax must include the voter's signature on the affidavit and must include a waiver of right to secret ballot statement. The voter's signature need not be witnessed.

(7) The Affidavit sheet used by a uniformed services voter or an overseas voter to whom ballots and balloting materials were transmitted by electronic mail must include the voter's signature. The signature need not be witnessed. If the Affidavit is properly signed and dated, such ballots shall be accepted and counted, even if they are not enclosed in official election materials envelopes.

230:30-11-6. Transmitting absentee ballots

(a) **Transmitting absentee ballots to voter.** The County Election Board shall transmit absentee ballots to all absentee voters except nursing home absentee voters, veteran center voters, in-person absentee voters, and emergency incapacitated absentee voters by United States mail. [26:14-106; 26:14-111.1; 26:14-118] Absentee ballots for nursing home absentee voters and veteran center voters shall be delivered to the voters in person by the nursing home Absentee Voting Board as outlined in 230:30-7-9. [26:14-115] Absentee ballots for in-person absentee voters shall be issued to the voter by the in-person Absentee Voting Board at the in-person absentee polling place as outlined in 230:30-7-11. [26:14-115] Absentee ballots for emergency incapacitated absentee voters shall be delivered to the voter by the voter's agent as outlined in 230:30-9-6. [~~26:15-115.1~~ 26:14-115.1]

(b) **Transmitting voted absentee ballots from voter to the County Election Board.** All absentee voters except nursing home absentee voters, veteran center voters, in-person absentee voters, and emergency incapacitated absentee voters shall transmit their voted absentee ballots back to the County Election Board by United States mail. [26:14-108; 26:14-113.2; 26:14-120] Express delivery service provided by the United States Postal Service (Express Mail?) is considered United States mail. Voted absentee ballots from nursing home or veteran center absentee voters shall be delivered to the County Election Board office by the nursing home Absentee Voting Board as outlined in 230:30-7-9. [26:14-115] Voted absentee ballots from in-person absentee voters shall be deposited by the voter directly into the appropriate voting device as outlined in 230:30-7-11. [26:14-115.4] Voted absentee ballots from emergency incapacitated absentee voters are delivered to the County Election Board by the voter's agent as outlined in 230:30-9-6. [26:14-115.1]

(c) **Voters may use private mail service.** Absentee ballots may be returned by a private mail service (such as Federal Express?) that provides delivery documentation. The decision to use such a private mail service to return voted absentee ballots, as well as the expense of such service, shall be the voter's.

(d) **Transmitting overseas absentee ballots by fax.** Absentee ballots for federal offices only may be faxed to uniformed services and overseas voters only as outlined in 230:30-11-5.1. Uniformed services voters and overseas voters may return voted absentee ballots by fax only as outlined in 230:30-11-6.1.

(e) **Transmitting absentee ballots by electronic mail.** Absentee ballots for state or federal elections only may be transmitted by electronic mail to uniformed services voters and to overseas voters only as outlined in 230:30-9-5.2. Absentee voters who receive their ballots by electronic mail shall return the voted ballots by regular mail or by fax.

230:30-11-6.1. Receiving voted absentee ballots by fax from uniformed services and overseas voters

(a) All uniformed services and overseas voters are entitled to fax their voted absentee ballot to the State Election Board or to the County Election Board that issued the ballot ~~if they receive their regular mail absentee ballot 30 days or less before the date of the election~~. Uniformed services and overseas voters who request a faxed ballot for federal offices as described in 230:30-9-5.1 must return said ballot by fax. Uniformed services and overseas voters may fax the federal write-in absentee ballot described in 230:30-13-1 through 230:30-13-4 at any time. Uniformed services and overseas voters who request that ballots be transmitted by electronic mail must return said ballot either by regular mail or by fax.

(b) A uniformed services or overseas voter described in (a) of this section may fax a copy of the voted ballot either to the State Election Board or to the County Election Board that issued the ballot in addition to mailing the original ballot to the issuing County Election Board. A fax cover sheet for this purpose may be downloaded and printed from the Federal Voting Assistance Program (FVAP) website: www.fvap.gov. Uniformed services voters may obtain copies of the fax cover sheet from the Voting Service Officers in their units. Overseas

voters may obtain the cover sheet at United States embassies, consulates, and military installations. A voter who chooses to fax a voted ballot must sign a Secret Ballot Waiver and transmit it with the ballot. All faxed ballots must be received by the State Election Board or by the County Election Board no later than 7 p.m. (United States Central Time Zone) on the date of the election in order for the ballot to be counted. In the event that a voter's regular ballot is received by mail at the County Election Board prior to 7 p.m on election day, only the voter's regular ballot shall be counted. The voter shall follow these instructions to fax a voted ballot to the State Election Board or to the County Election Board.

(1) After marking the ballot, make a photocopy of the ballot, reduced as necessary to fit an 8 1/2" by 11" page. Do not alter the original ballot.

(2) Fill out and sign the affidavit envelope included with the mail absentee ballot.

(3) Fill out the fax cover sheet.

(4) Fax the cover sheet, affidavit, and voted ballot to one of the secure numbers provided by the FVAP for ballot transmission.

(5) Immediately mail the voted original ballot to the County Election Board. Follow the instructions included with the ballot.

(c) The Secretary of the State Election Board shall assign one or more employees to receive and process voted ballots faxed by uniformed services and overseas voters. Upon receipt by fax of a voted ballot, the assigned employees shall take the following steps to transmit the ballot and related information to the appropriate County Election Board Secretary.

(1) Verify that each voted ballot is accompanied by a fax cover sheet that includes the following information:

(A) the voter's name

(B) the voter's county of residence in Oklahoma

(C) the voter's signature on the Secret Ballot Waiver

(D) the voter's signed Affidavit if the faxed ballot is a copy of the voter's regular mail absentee ballot

(2) Stamp the fax cover sheet with the date and time it was received and immediately transmit both the cover sheet and the ballot to the appropriate County Election Board Secretary. If the Secretary does not have a fax machine in the office, notify the Secretary that a voted absentee ballot is being transmitted.

(3) In the event that a voted ballot is received without an appropriate identifying cover sheet and/or without the voter's signature on the Secret Ballot Waiver, the ballot shall be set aside in a secure place. If possible, immediately send a notice that the transmission was incomplete and that the ballot cannot be counted. Instruct the voter to send both the cover sheet and the ballot again. Document the receipt of the unidentified ballot and then destroy it.

(4) In the event that an identifying cover sheet is received without the voted ballot, set the cover sheet aside in a secure place. If possible, immediately send notice that the transmission was incomplete and the ballot was not received. Instruct the voter to send both the cover sheet and the ballot again. If the voter does not send the cover sheet and ballot again by 7 p.m. in the United States Central Time Zone on election day, document the receipt of the cover sheet without the ballot, and notify the County Election Board Secretary that the voter attempted to return the ballot but the ballot was not received.

(5) Ballots received by fax after 7 p.m. on election day in Oklahoma shall not be counted.

(6) Mail the original faxed ballot and cover sheet to the appropriate County Election Board.

(d) Upon receipt by fax of a voted ballot from the State Election Board, the Secretary of the County Election Board shall take the following steps.

(1) Attach the fax cover sheet to the ballot with a paper clip, fold the sheets in half and place in the locked absentee ballot box. If the ballot is received from the State Election Board on election day after the absentee ballot box has been opened, place the faxed ballot in a secure place until the County Election Board members are ready to count the ballot.

(2) Enter the date received in the voter's absentee application information in OEMS.

(3) After 7 p.m. on election day, the members of the County Election Board shall mark a substitute ballot and count it as instructed in 230:30-19-6.

(e) Upon receipt by fax of a voted ballot from a uniformed services voter or an overseas voter, the Secretary of the County Election Board shall follow the same steps outlined in (c) of this section.

(f) A voter who faxes a voted ballot to the State Election Board or to a County Election Board as described in this section must sign a Secret Ballot Waiver. The Secret Ballot Waiver is part of the fax cover sheet provided by the FVAP, and also is part of the fax cover sheet provided by the County Election Board to voters who ask for a federal office ballot to be faxed as outlined in 230:30-9-5.1. However, if neither of these cover sheets is available, the voter must include the following signed statement among the materials faxed with the voted ballot. "I understand that by faxing my voted ballot I am voluntarily waiving my right to a secret ballot." This statement must be signed and dated by the voter.

SUBCHAPTER 13. FEDERAL WRITE-IN ABSENTEE BALLOT

230:30-13-2. Receiving and processing federal write-in absentee ballots

Upon receipt of a federal write-in absentee ballot, the Secretary shall indicate the received date on the front of the envelope and then shall place the envelope in the absentee ballot box. When the County Election Board meets to open outer envelopes and examine affidavits as described in 230:30-11-2, the Secretary also shall take the following steps.

(1) After opening the outer envelope, attach the Voter's Declaration/Affirmation form to the secrecy envelope with a paper clip.

(2) Determine whether the voter is a uniformed services voter or an overseas voter by examining item 1a on the Voter's Declaration/Affirmation form.

(A) If the ballot is from an overseas voter, verify that the voter is located outside the United States by examining the information in item 4a "My Current Address (Where I live now)." This address should be located outside the United States. If this address is located within the United States and the voter is an overseas voter, the federal write-in absentee ballot cannot be counted.

(B) If the ballot is from a uniformed services voter, the ballot can be counted even if it was submitted from an address located within the United States.

(3) Examine item 3 "My Voting Residence Address" to determine the voter's correct precinct. Note the precinct number on the Voter's Declaration/Affirmation.

(4) Check the absentee information in OEMS to determine whether the voter submitted an application for regular mail absentee ballots.

(A) If the voter submitted an application for regular mail absentee ballots, determine whether those ballots have been received.

(i) If the voter's regular absentee ballots have been received, the federal write-in absentee ballot shall not be counted. Note the reason the ballot cannot be counted on the Voter's Declaration/Affirmation and set it and the unopened secrecy envelope aside in a secure place.

(ii) If the voter's regular absentee ballots have not been received by 7 p.m. on election day, the federal write-in absentee ballot shall be counted.

(B) If the voter did not submit an application for regular mail absentee ballots, enter in OEMS the information from the voter's affirmation as if it were a Federal Post Card Application. See 230:30-9-5. The ~~the~~ federal write-in absentee ballot shall be counted.

(5) In the event that a voter's federal write-in absentee ballot cannot be counted, the Secretary shall notify the voter in writing of the reason the ballot was rejected.

(6) If a federal write-in absentee ballot is counted for a voter who had previously applied for regular absentee ballots, enter the date the federal write-in absentee ballot was received in the voter's absentee information in OEMS.

(7) Follow the instructions in 230:30-19-6 to count a federal write-in absentee ballot.

SUBCHAPTER 15. STATE WRITE-IN ABSENTEE BALLOTS

230:30-15-2. Applications for state write-in absentee ballot

Uniformed services voters and overseas voters may apply for the state write-in absentee ballot with the ~~Department of Defense Form 76~~ Federal Post Card Application (FPCA) or by writing a letter setting forth substantially the same facts as included on the FPCA. The FPCA or letter may ~~either be mailed or~~ be submitted by regular mail, by electronic facsimile device (a "fax" machine), or by electronic mail as outlined in 230:30-9-5.2. The voter must specifically request the state write-in absentee ballot. ~~The voter must state that due to military contingencies or due to living in an isolated or extremely remote area of the world, the regular absentee ballot application procedure cannot be followed.~~ The remarks section (Section 5) on the FPCA may be used by the voter to request the state write-in absentee ballot. The voter also may request regular absentee ballots. See 230:30-5-5. The voter may request that the state write-in absentee ballot be transmitted by electronic mail. See 230:30-9-5.2.

230:30-15-4. State write-in absentee ballot provided by State Election Board

(a) The State Election Board will provide the Secretary of the County Election Board with a ~~supply of~~ PDF file of each state write-in absentee ~~ballots~~ ballot not less than 90 days before an election involving federal candidates.

(b) Upon receipt of the ~~county's supply of~~ state write-in absentee ballots from the State Election Board, the following procedure shall be observed:

(1) ~~Number the ballot stubs in each book of ballots by hand. Each book of ballots shall be numbered beginning with the number "1."~~Save the PDF file or files on the County Election Board computer.

(2) ~~Stamp the county name on all ballot stubs and all ballots in each book of ballots~~

~~(3)~~ Write or stamp "Special Write-In Ballot" on several red-and-white outer envelopes.

(~~4~~3) Place the ~~supply of state write-in absentee ballots and the~~ prepared outer envelopes in a secure place until an application for the state write-in absentee ballot is received.

230:30-15-5. Processing applications for state write-in absentee ballots

(a) When an application for a state write-in absentee ballot is received from a uniformed services voter or an overseas voter, the following procedure shall be observed to prepare and transmit the ballot by regular mail:

(1) If the application is for a Primary or Runoff Primary Election, determine the voter's political affiliation. See item 7 on the FPCA. If the voter does not indicate a political affiliation in the application for a Primary or Runoff Primary Election, contact the State Election Board for additional instructions.

(2) Determine the appropriate state write-in absentee ballot for the voter.

(3) ~~Detach the state write-in absentee ballot. Leave the numbered stub in the book of ballots.~~ Print one copy of the appropriate state write-in absentee ballot.

(4) Number the stub of the state write-in absentee ballot by hand. Record the number on the appropriate State Write-in Absentee Ballot Accounting Form.

(~~4~~5) Enter the appropriate Congressional district number in the blank space on the ballot.

(~~5~~ 6) Assemble the following materials and mail them to the voter:

(A) the appropriate ballot.

(B) a copy of the letter to the voter.

(C) a copy of Instructions for Voting by Write-In Absentee Ballot.

(D) a uniformed services/overseas absentee voter packet. Use the outer envelopes with "Special Write-in Ballot" written or stamped on the front.

(E) a list of candidates for the offices, if available. See 230:30-15-6.

(b) When an application for a state write-in absentee ballot is received from a uniformed services voter or an overseas voter, and when the voter has requested to receive the state write-in absentee ballot by electronic mail, the procedure outlined in 230:30-9-5.2 shall be observed to transmit the ballot and related balloting materials listed in (a)(6) of this Section by electronic mail.

230:30-15-6. List of candidates

The State Election Board will provide each County Election Board with a list of candidates for each federal office on the ballots as soon as it is available before an election. The list of candidates shall be ~~mailed~~ sent either by regular or electronic mail to voters who request the state write-in absentee ballot. If the list is available when the state write-in absentee ballot is ~~mailed~~ sent, it shall be ~~enclosed~~ sent with the ballot. If the list is not available at the time the ballot is ~~mailed~~ sent, the list shall be ~~mailed~~ sent to the voter as soon as it becomes available by the same method the ballot was sent.

230:30-15-7. Voters who request both regular and state write-in absentee ballots

Uniformed services voters and overseas voters are entitled to apply for both the state write-in absentee ballots and regular absentee ballots for the same election. The two requests may be made in the same application or may be made separately. If a uniformed services voter or an overseas voter requests both regular and state write-in absentee ballots, the state write-in absentee ballot shall be mailed in one set of absentee envelopes as outlined in 230:30-15-5, and the regular absentee ballots shall be mailed in a separate set of absentee envelopes as outlined in 230:30-9-2. The request for regular ballots shall be processed as outlined in 230:30-9-5. In the event that a voter requests that the state write-in absentee ballot be transmitted by electronic mail, the ballot shall be sent according to the procedure outlined in 230:30-9-5.2 and the state write-in absentee ballot shall not be sent by regular mail.

SUBCHAPTER 19. COUNTING THE BALLOTS

PART 1. COUNTING BALLOTS ON ELECTION DAY

230:30-19-6. Marking substitute ballot to count write-in ~~or~~ ballots, faxed ballots, and ballots transmitted to voters by electronic mail

In the event that the County Election Board must count a federal write-in absentee ballot, a state write-in absentee ballot, ~~or~~ a regular ballot received by fax, or an absentee ballot transmitted to the voter by electronic mail, the following procedure shall be observed.

(1) The Secretary shall verify that regular mail absentee ballots from the voter or voters were not received by 7 p.m. on election day.

(2) A federal or state write-in ballot may be counted for federal offices only.

(A) The Secretary shall provide a blank Optech absentee ballot of the appropriate style.

(B) The Chairman of the County Election Board shall read the voter's write-in ballot and the Vice Chairman shall mark the blank Optech ballot for the voter's choice for federal offices only.

(C) The Chairman, Vice Chairman, and Secretary shall review the substitute ballot and shall agree that it ~~has been~~ is marked exactly as the voter's write-in ballot was marked.

(D) The Secretary shall write identical numbers on the back of each original write-in ballot and on the back of the substitute Optech ballot, being careful to avoid the area of the voting tracks. For example, the first such ballot and its substitute shall be marked "1," the second, "2," etc.

(E) The Secretary shall direct a County Election Board staff member to insert the ~~marked Optech~~ substitute ballot in the appropriate absentee voting device.

(~~2~~3) A regular ballot returned by fax shall be counted for all offices and questions for which the voter's ~~intent can be determined~~ markings can be discerned.

(A) The Secretary shall provide a blank Optech absentee ballot identical to the style originally mailed or faxed to the voter.

(B) The Chairman of the County Election Board shall read the voter's choice for each office and question on the ballot and the Vice Chairman shall mark the Optech ballot.

(C) The Chairman, Vice Chairman, and Secretary shall review the substitute ballot and shall agree that it is marked exactly as the faxed copy of the voter's ballot is marked.

(D) The Secretary shall write identical numbers on the back of each faxed ballot and on the back of the substitute Optech ballot, being careful to avoid the area of the voting tracks. For example, the first such ballot and its substitute shall be marked "1," the second, "2," etc.

(E) The Secretary shall direct a County Election Board staff member to insert the substitute ballot in the appropriate absentee voting device.

(4) A regular ballot transmitted to a voter by electronic mail and returned either by mail or by fax shall be counted for all offices and questions for which the voter's markings can be discerned. Follow the steps outlined in (3) (A) through (E) of this Section to count the ballot.

(~~4~~5) In the event that a federal or state write-in ballot is marked for a candidate or a political party not on the ballot in Oklahoma, no substitute ballot shall be marked. The minutes of the County Election Board meeting shall indicate both that the ballot could not be counted and the reason.

(~~5~~6) In the event that a ballot received by fax is illegible and the voter's markings cannot be discerned, no attempt shall be made to mark a substitute ballot. The minutes of the County Election Board meeting shall indicate both that the ballot could not be counted and the reason.

(~~3~~7) The Secretary shall document in the minutes of the County Election Board meeting the number of substitute ballots marked and inserted in the absentee voting device, and the original federal write-in absentee ballot, state write-in absentee ballot, or faxed ballot shall be retained with all other absentee voting materials for the election.

SUBCHAPTER 21. RECORDING ABSENTEE VOTING

230:30-21-4. Retaining absentee ballot materials

All materials used in requesting and casting absentee ballots shall be retained in the office of the County Election Board for 24 months after the date of the election and shall not be removed except under court order. [26:14-132] Applications for absentee ballots that cover more than one election in a calendar year shall be placed in a special file for such applications and shall be retained for 24 months after December 31 of that year. In the case of applications received by electronic mail as outlined in 230:30-5-1.1(e), the electronic mail message containing the application, any printed copy used to process the application, and any electronic mail messages used to transmit ballots and balloting materials as outlined in 230:30-9-5.2 shall be retained for 24 months.

[OAR Docket #10-622; filed ??-??-??]

TITLE 230. STATE ELECTION BOARD CHAPTER 40. TYPES OF ELECTIONS

[OAR Docket #10-623]

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Subchapter 3. Special Elections
Part 9. Substitute Candidates
230:40-3-30. Notification of State Election Board [AMENDED]
Subchapter 5. Municipal Elections
Part 19. Statistical Reports
230:40-5-85. Information on municipal candidate elections [NEW]
Subchapter 7. School Elections
Part 21. Filling Vacancies
230:40-7-91. Methods of filling vacancies [AMENDED]
230:40-7-92. Elections to fill vacancies [AMENDED]
Part 23. Multi-County School Districts
230:40-7-97.1. Elections for technology center districts serving 70 or more school districts [NEW]
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The amendments in Subchapter 3 are needed to implement the provisions of HB1081. This bill provides a revised timetable for political party leaders to supply the appropriate election board with the name of a substitute candidate in the event that a party nominee for office dies prior to the General Election. The time period in which such notification can be made is increased from five to fifteen days following the candidate's death, but it cannot occur less than 60 days preceding the election, for a statewide or federal office, or 55 days preceding the General Election for other offices, including county offices. One Section is amended to reflect these statutory changes.

The amendment in Subchapter 5 is a new Section which requires the County Election Board to provide the State Election Board with certain information regarding elections for municipal offices. The County Election Board Secretary will be required to provide a copy of the resolution calling a municipal election involving candidates, a copy of the Declaration of Candidacy form for each candidate elected to municipal office, and a copy of the Declaration of Candidacy form for each candidate who is unopposed for election to municipal office.

The amendments in Subchapter 7 concern vacancies on the Board of Education and elections held by technology center districts that serve 70 or more school districts.

In 2001, the law concerning vacancies on the Board of Education changed. The law now requires that if a person is appointed to fill a vacancy during the first half of the term of the office, the office must appear as an unexpired term on the ballot at the next ensuing regular election. However, if the vacancy is filled by appointment during the second half of the term of the office, the appointee serves the balance of the unexpired term. Due to an oversight, the

State Election Board's rules have never been amended to reflect this statutory change. We are making these amendments now.

SB275 requires technology center districts that serve 70 or more school districts to nominate and elect Board of Education members by district zone. In other words not only must a candidate for office be a resident of the district zone he or she seeks to represent, but only residents of the zone may vote for the office representing the zone. This is a change. All other technology center districts nominate by zone but elect at large. At the present time, this new law affects only the Kiamichi Technology Center district in southeastern Oklahoma.

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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 1, 2010:

SUBCHAPTER 3. SPECIAL ELECTIONS

PART 9. SUBSTITUTE NOMINEES

230:40-3-30. Notification of State Election Board

(a) **Substitutes for offices filing with State Election Board.** *If the deceased nominee was a candidate who filed his Declaration of Candidacy with the State Election Board, the state central committee of the party affected shall notify the Secretary of the State Election Board of the name of an alternative candidate to be placed on the General Election ballot.* [26:1-105(2)] The notice shall be made in writing within ~~five~~ fifteen days after the death occurs but not later than 60 days prior to the General Election for statewide or federal offices and not later than 55 days prior to the General Election for all other offices. [26:1-105(2)] The notice shall be signed by at least two duly authorized members of the party's state central committee. [26:1-105(2)]

(b) **Substitutes for county office.** If the nominee was a candidate for county office, the county central committee of the political party affected *shall notify the Secretary of the County Election Board of the name of an alternative candidate to be placed on the General Election ballot.* [26:1-105(1)] The notice shall be made in writing within ~~five~~ fifteen days after the death occurs but not later than 55 days prior to the General Election. [26:1-105(1)] The notice shall be signed by at least two duly authorized members of the party's county central committee. [26:1-105(1)]

SUBCHAPTER 5. MUNICIPAL ELECTIONS

PART 19. STATISTICAL REPORTS

230:40-5-85. Information on municipal candidate elections

The State Election Board reports the names of all persons elected to municipal office to the Oklahoma Municipal League. The Secretary of the County Election Board shall send to the State Election Board copies of each of the following documents for every municipal election involving candidates. These documents shall accompany the municipal election analysis forms.

(1) A copy of the resolution calling a regular or special municipal election involving candidates.

(2) A copy of the Declaration of Candidacy form for each candidate elected to municipal office.

(3) A copy of the Declaration of Candidacy form for each candidate who is unopposed for election to municipal office.

SUBCHAPTER 7. SCHOOL ELECTIONS

PART 21. FILLING VACANCIES

230:40-7-91. Methods of filling vacancies

Vacancies on the Board of Education shall be filled by appointment by the remaining members of the Board. [26:13A-110(A)] ~~Persons who are appointed to fill vacancies shall serve until the next election, at which time the office shall be placed on the ballot to fill the balance of the unexpired term.~~ *Persons appointed to fill such 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.* [26:13A-110(A)] *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.* [26:13A-110(A)] *Persons appointed to fill such vacancies after the first half of the term of office for the board position shall serve for the balance of the unexpired term.* [26:13A-110(A)] It is the responsibility of the Board of Education to determine whether a vacancy occurs in the first half of the term of office and whether an unexpired term is placed on the ballot. If the Board of Education does not fill the vacancy by appointment within 60 days after the vacancy is declared, the Board shall call a special election to fill the vacancy. [26:13A-110(B)]

230:40-7-92. Elections to fill vacancies

In the event a vacancy that occurs during the first half of the term of office has not been filled by appointment within 60 days, the Board of Education shall call a special election to fill the vacancy for the unexpired term. [26:13A-110(B)] A resolution calling for the election must be delivered to the County Election Board not less than 60 days preceding the election. See 230:40-7-3 and 230:40-7-47. A special election to fill a vacancy on the Board of Education shall be conducted in the same manner as all other school elections, except that a runoff election shall not be held.

PART 23. MULTI-COUNTY SCHOOL DISTRICTS

230:40-7-97.1. Elections for technology center districts serving 70 or more school districts

The Board of Education for a technology center district that serves 70 or more school districts shall consist of one member elected from each of the district zones. [70:14-108(D)] The electors of each district zone shall elect a person, who shall be a resident of the district zone, to represent the zone on the Board of Education. [70:14-108(D)] As of July 1, 2009, only the Kiamichi Technology Center district is affected by this requirement.

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TITLE 230. STATE ELECTION BOARD
CHAPTER 50. AUTOMATED SYSTEMS

[OAR Docket #10-624]

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230:50-3-32. Use of OEMS and MESA required [AMENDED]
230:50-3-33. ~~Hardware~~ OEMS hardware, software use restricted [AMENDED]
230:50-3-33.1. MESA software use restricted [NEW]
230:50-3-34. County Election Board shall maintain data [AMENDED]
230:50-3-35. Training for County Election Board personnel [AMENDED]
230:50-3-35.2. Instructions for MESA software [NEW]
230:50-3-37. ~~Password~~ Username and password security in OEMS and MESA [AMENDED]
230:50-3-38. ~~Morning~~ OEMS morning routine [AMENDED]
230:50-3-39. ~~System~~ OEMS system backups [AMENDED]
230:50-3-39.1. System backups for computers using MESA software and storing MESA reports [NEW]
230:50-3-40. Conducting daily OEMS backups [AMENDED]
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Since 1992, the State and County Election Boards have used the Oklahoma Election Management System (OEMS), a unified, unitary system of hardware and software, for the administration of voter registration and election management tasks. The State Election Board is in the process of developing and implementing a major hardware and software upgrade to OEMS which is called MESA - Modern Election Support Application. MESA is software designed to run on personal computers and the Internet. The first two modules of MESA were implemented by County Election Boards in 2009. These modules allow the County Election Board to format and print Precinct Registries, to enter voter credit following elections, and to enter voter registration application information. Late in 2010 or early in 2011, all voter registration processing functions will be moved permanently from OEMS to MESA.
The new and amended rules in Subchapter 3 add references to MESA where appropriate and provide instructions and set requirements for the use and maintenance of MESA by County Election Board personnel.
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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 1, 2010:

SUBCHAPTER 3. VOTING DEVICES AND DATA PROCESSING

PART 7. OKLAHOMA ELECTION MANAGEMENT SYSTEM

230:50-3-31.1. Modern Election Support Application

(a) The Modern Election Support Application is a software system developed for the Oklahoma State Election Board for use by the County Election Boards in the administration of voter registration and elections and the performance of various election-related duties. The abbreviation "MESA" shall be used to refer to the software in the rules of the State Election Board. The MESA software is a new function of OEMS (Oklahoma Election Management System) and is the first step in the process of updating the functions of OEMS and of upgrading and modernizing the hardware platform on which it resides. MESA software may be installed on personal computers in the possession of the County Election Board. All County Election Board employees, at the discretion of the Secretary of the County Election Board, may become authorized users of MESA.

(b) County Election Boards are authorized to use the MESA software as necessary in the performance of their official duties. Use of the MESA software is optional in all areas where its functionality duplicates the functionality of OEMS. Use of MESA software is required in all areas where its functionality is no longer supported in OEMS.

230:50-3-32. Use of OEMS and MESA required

The Secretary of the County Election Board shall be required to use OEMS and MESA to perform the administrative functions of the County Election Board included in OEMS and MESA ~~upon implementation of the system in the county~~.

230:50-3-33. ~~Hardware~~OEMS hardware, software use restricted

(a) The hardware and software components of OEMS shall be used only for the election administration functions of the County Election Board. The use of OEMS hardware or software for any purpose not specifically authorized by the Secretary of the State Election Board is prohibited. The hardware and software components of OEMS installed in the County Election Board office are the property of the State Election Board. [26:3-104]

(b) No software shall be installed on the County Election Board's OEMS computer unless it has been either provided by or authorized and approved by the Secretary of the State Election Board. No hardware shall be attached to the County Election Board's OEMS computer unless it has been either provided by or authorized and approved by the Secretary of the State Election Board. The County Election Board Secretary is prohibited from using any additional software or hardware with the OEMS system unless specifically authorized to do so by the Secretary of the State Election Board.

230:50-3-33.1. MESA software use restricted

MESA software shall be used only for the administrative functions of the County Election Board. MESA software shall be used only by trained and authorized County Election Board personnel. No modifications or alterations of the MESA software shall be made by County Election Board personnel unless specifically authorized by the Secretary of the State Election Board.

230:50-3-34. County Election Board shall maintain data

The Secretary of the County Election Board shall be responsible for maintaining in OEMS and in MESA all required records and information for the county. The Secretary shall be responsible for the accuracy of the data entered into OEMS and MESA. The Secretary shall be responsible for providing accurate, up-to-date data to the State Election Board as required.

230:50-3-35. Training for County Election Board personnel

The Secretary of the State Election Board shall provide training for County Election Board personnel in all aspects of the use of OEMS and MESA. Training shall include use of all OEMS hardware and all OEMS and MESA software components ~~of the system~~. ~~County Election Board personnel shall receive all necessary training prior to the implementation of OEMS systems in the county.~~ Only persons who have completed a training program approved by the State Election Board shall be authorized to use OEMS and MESA.

230:50-3-35.2. Instructions for MESA software

The Secretary of the State Election Board shall prepare and distribute appropriate instructions to enable County Election Board personnel to use the MESA software.

230:50-3-37. ~~Password~~ Username and password security in OEMS and MESA

~~Passwords~~ Usernames and passwords are ~~a~~ security ~~feature~~ features of OEMS and of MESA. The County Election Board Secretary, Assistant Secretary or Chief Clerk, and other County Election Board employees authorized by the Secretary to use OEMS and MESA each will have unique usernames and passwords ~~into the system~~. Each user of OEMS and MESA shall be required to keep his or her password secret at all times. Under no circumstances shall a ~~user's~~ username or password be made available to an unauthorized person. ~~Passwords~~ Usernames and passwords shall not be displayed in any location or recorded in any manner where they can be viewed by unauthorized persons. Passwords in OEMS will expire after ninety days of use. Passwords in MESA will expire after 30 days of use. Each authorized user shall be responsible for creating and maintaining his or her own passwords as prompted by the ~~system~~ software.

230:50-3-38. ~~Morning~~ OEMS morning routine

Immediately upon logging on the OEMS system each morning, the Secretary and other authorized users shall check the Events Calendar to determine the status of various scheduled OEMS system processes and reports and to verify that scheduled tasks are performed in a timely manner.

230:50-3-39. ~~System~~ OEMS system backups

County Election Board personnel shall be responsible for backing up information in the OEMS system on a regular basis. Backups are a critical part of the OEMS system. If the County Election Board's OEMS computer is damaged and its data lost, the data can be restored from the most recent backup. In the event data must be restored from a backup, the Secretary shall immediately contact the State Election Board for assistance. Two types of backups shall be conducted regularly. The County Election Board shall receive two tape cartridges, one for each type of backup.

(1) **Daily backups.** One tape cartridge shall be labeled "Tape #1, Daily Backup, (County Name)."

(2) **Weekly backups.** One tape cartridge shall be labeled "Tape #2, Weekly Backup, (County Name)."

230:50-3-39.1. System backups for computers using MESA software and storing MESA reports

It shall be the responsibility of the Secretary of the County Election Board to ensure that system backups of all personal computers in the possession of the County Election Board which contain MESA software and which store MESA reports are conducted on a regular basis. The State Election Board

shall not be responsible for the maintenance of any data stored on a computer owned by the County Election Board.

230:50-3-40. Conducting daily OEMS backups

Daily OEMS system backups shall be requested on Monday, Tuesday, Thursday and Friday each week. Daily OEMS backups are processed by the system at night. Daily OEMS backups shall be requested at the beginning of the business day.

230:50-3-41. Conducting weekly OEMS backups

Weekly OEMS system backups shall be requested at the beginning of the business day on Wednesday each week. Weekly OEMS backups are processed by the system at night.

230:50-3-41.1. Election backups in OEMS

(a) County Election Board personnel shall request and complete an election backup in OEMS when election programming is completed. A new election backup shall be requested and completed each time changes are made in the programming for an election. County Election Board personnel shall request and complete another election backup after all election results have been entered into the system on election night.

(b) County Election Board personnel shall receive a special tape cartridge to use for all election backups. This tape cartridge shall be labeled "Election Setup Backup Tape (County name)." The Election Setup Backup Tape shall be used for no other purpose than for election backups and no other tape shall be substituted for it to conduct election backups unless specific instructions are received from the State Election Board.

(c) County Election Board personnel shall follow all instructions provided by the State Election Board to request and complete election backups.

[OAR Docket #10-624; filed ??-??-??]

TITLE 245. STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
CHAPTER 15. LICENSURE AND PRACTICE OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

[OAR Docket #10-685]

RULEMAKING ACTION:
Permanent Rule Document
RULES:
Subchapter 1. General Provisions
245:15-1-3. [AMENDED]
Subchapter 3. Application and Eligibility for Licensing
245:15-3-7. [AMENDED]
Subchapter 7. Licensure
245:15-7-1. [AMENDED]
245:15-7-5. [AMENDED]
Subchapter 11. Continuing Education
245:15-11-3. [AMENDED]
245:15-11-11. [AMENDED]
Subchapter 13. Minimum Standards for Land Surveying
245:15-13-2. [AMENDED]
Subchapter 17. Licensee's Seal
245:15-17-1. [AMENDED]
245:15-17-2. [AMENDED]
Subchapter 19. Organizational Practice
245:15-19-8. [AMENDED]
245:15-19-9. [NEW]
Subchapter 23. Violations
245:15-23-1. [AMENDED]
245:15-23-2. [AMENDED]
245:15-23-8. [AMENDED]
245:15-23-9. [AMENDED]
245:15-23-11. [AMENDED]
245:15-23-12. [AMENDED]
245:15-23-13. [AMENDED]
245:15-23-14. [AMENDED]
245:15-23-15. [AMENDED]
AUTHORITY:
State Board of Licensure for Professional Engineers and Land Surveyors; Title 59 O.S. Sections 475.1 et seq
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n/a
ANALYSIS:
Revisions to the Administrative Rules regarding the practice of Professional Engineering and Land Surveying. Define Professional Engineer, Retired and professional Land Surveyor, Retired; revised the definition of the related science degree; redefines education requirements for related science degrees; provides reinstatement provisions for retired status; redefines scope of exemptions for continuing education; revises the Minimum Standards for the Practice of Land Surveying to require a survey document for each survey performed and setting monuments; requirements for revising documents; further defines exceptions of which businesses do not need a certificate of authorization and exceptions for network engineering and software engineering.
CONTACT PERSON:
Kathy Hart, Executive Director, (405) 521-2874

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

245:15-1-3. Definitions

The following words or terms, when used in the Rules of Procedure, shall have the following meaning, unless the

context clearly indicates otherwise. Definitions in 59 O.S. Section 475.2 and 65 O.S. Section 3-118 shall be read together with the definitions and interpretations provided in the Rules of Procedure of the Board.

"Accessory to a corner" means any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal filled bottles, steel or wooden stakes, or other objects.

"Certify" or "Certification" or similar expressions relating to engineering or land surveying services shall mean a statement based upon facts and knowledge known to the licensee and is not a guarantee or warranty, either expressed or implied.

"Closure error" means the ratio between the horizontal linear error of closure to the total horizontal distance traversed, with the numerator of the ratio being the number "one".

"Land or boundary survey" means a survey, the primary purpose of which includes, but is not limited to, the determining of the perimeter of a parcel or tract of land by establishing or reestablishing corners, monuments and boundary lines.

"Linear closure" means a measure of the horizontal linear error without regard to direction, between the computed location of the first and last points of a traverse when either the traverse actually returns to its beginning point (geometrically and mathematically closed), or the traverse ends at a point of previously established control relative to the beginning point (geometrically open, but mathematically closed).

"Mortgage ~~inspection report~~Inspection Report" means a representation of the boundaries of a parcel of real property and the improvements thereon, prepared incident to a mortgage of real property.

"Monument" means a physical structure that occupies the exact position of a corner.

"Oklahoma Model Law Engineer" means a person who meets the minimum requirements of this act and:

(A) is a graduate of an engineering curriculum accredited by the Engineering Accreditation Commission (EAC) of the Accreditation Board for Engineering and Technology (ABET) or, has an engineering degree recognized as substantially equivalent to an EAC/ABET degree by the Board, or has a Board-approved related science degree;

(B) has passed the Fundamentals of Engineering examination using the NCEES cut score except that for an applicant having eight years of acceptable engineering experience who obtained an original license prior to December 31, 1996, the Fundamentals of Engineering examination is waived for this definition only;

(C) has a specific record of an additional four years of progressive experience on engineering projects following graduation, or has a board approved related degree and an additional six years of progressive experience on engineering projects following graduation;

(D) has passed the Principles and Practices of Engineering examination using the National Council of Examiners for Engineering and Surveying (NCEES) cut score if the state of Oklahoma required such an examination at the time the comity applicant's original license was granted;

(E) has not been disciplined in any jurisdiction by a Board of licensure for engineering or land surveying or architecture;

(F) has not been convicted of a felony or non-traffic related misdemeanor.

"Positional error" means the difference between the actual position of a corner monument and its described or computed position. This error may be determined by computing the difference between the measured position and the adjusted position of the monument or by measurement of angle and distance between three of the corner monuments on the survey if made with precise surveying instruments using proper procedures.

"Practice of land surveying" as defined by Title 59 O.S. Section 475.2(7)(a) also includes monumenting the subdivision of land into smaller parcels and the preparation of legal descriptions in connection therewith; however, the preparation of legal descriptions by a person who does not monument the land so described is not the practice of land surveying. Preparation of the control portion of geographic information systems and land information systems means the authoritative and monumented ground survey of a system of marks or objects to establish horizontal or vertical positions.

"Professional Engineer, Retired" - The term "Professional Engineer, Retired as used in these rules, shall mean and individual who has been duly licensed as a professional engineer by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the title "Professional Engineer, Retired.

"Professional Land Surveyor, Retired" - The term "Professional Land Surveyor, Retired as used in these rules, shall mean and individual who has been duly licensed as a professional land surveyor by the Board and who chooses to relinquish or not to renew a license and who applies to and is approved by the Board to be granted the use of the title "Professional Land Surveyor, Retired.

"Related science degree" means one of the following: a degree from an ABET accredited engineering technology program of four (4) years or more, or a degree from an architecture program accredited by the National Architectural Accrediting Board (NAAB). Degrees of four (4) years or more in other sciences will be deemed a related science degree only if approved by the Board after a review of the curriculum. Provided, after July 1, 2016, non-accredited technology degrees shall no longer be eligible for consideration as a related science degree, but may be considered by the Board as a step towards licensure under 245:15-3-7(2)(B)(ii). Further, degrees of four (4) years or more in mathematical, physical, or engineering sciences may only be considered as a related science degree if they were obtained from a university with an EAC/ABET accreditation in a discipline of engineering, and must include a minimum of 8 hours of mathematics beyond trigonometry and 20 hours of engineering sciences.

Otherwise, the degree may be considered as a step towards licensure under 245:15-3-7(2)(B)(ii).

"Rules of professional conduct for Professional Engineersand LandSurveyors" means those rules promulgated by the Board.

"Signature" means "manual signature" or "digital signature" and shall be defined as follows:

(A) Manual signature means the handwritten name of a person applied to a document that identifies the person, serves as a means of authentication of the contents of the document, provides responsibility for the creation of the document and provides for accountability for the contents of the document.

(B) A digital signature shall carry the same weight, authority, and effects as a manual signature.

"Survey plat", "sketch", or "map", or similar document, shall mean any drawing of a parcel or tract of real property used for the purpose of depicting the results of a field survey.

SUBCHAPTER 3. APPLICATION AND ELIGIBILITY FOR LICENSING

245:15-3-7. Qualifications for engineer license

To be eligible for consideration for licensure as a Professional Engineer or certification as an Engineer Intern, the applicant must be of good character and reputation. Applicants must meet all qualifications as contained within the Statutes and the Rules of the Board. Applications shall be individually reviewed by the Board. Evidence of minimum qualifications is required by the Board in accordance with the following:

(1) Engineer Intern:

(A) Graduation and Examination - A graduate of an EAC/ABET accredited engineering program of four (4) years or more, or an engineering program of four (4) years or more determined by the Board to be substantially equivalent to an EAC/ABET accredited engineering program in the United States, or an applicant who has completed ninety (90) semester hours or more of academic requirements towards such degree for graduation, shall be admitted to ~~an eight hour written~~a Board approved NCEES examination in the fundamentals of engineering. Upon passing such examination and providing proof of graduation, the applicant shall be certified as an engineer intern, if otherwise qualified.

(B) Alternative Graduation, Experience, and Examination - A graduate ~~holding~~of a related science program ~~degree or a degree from a non accredited engineering program of four (4) years or more, other than the ones approved by the Board as being substantially equivalent to an EAC/ABET accredited engineering degree,~~ other than those approved in 245:15-3-7(1)(A) or an applicant who has completed ninety (90) semester hours or more of academic requirements towards such degree for graduation~~, and following the date of degree, a specific record of one (1) year or more of progressive experience in engineering projects of a grade and character satisfactory to the Board,~~ shall be admitted to ~~an eight hour written~~a Board approved NCEES examination on the fundamentals of engineering. Upon passing such an examination, providing proof of graduation and providing proof of a specific record of one year or more of progressive engineering experience in engineering projects of a grade and character satisfactory to the Board, the applicant shall be certified as an engineer intern, if otherwise qualified. No examination shall be administered following July 1, 2020, for applicants applying under this Section of the Rules for licensure as a Professional Engineer who do not meet these educational requirements even if the applicant's application was approved by the Board prior to July 1, 2016.

(C) A graduate of a four (4) year degree program in a science not considered ~~a~~ an equivalent engineering or a related science degree by the Board must ~~be followed by~~complete twelve (12) hours of graduate level courses towards a Masters Degree in engineering from an institution with a comparable EAC/ABET accredited undergraduate engineering program before being considered for approval as a related science degree by the Board. Following completion of the undergraduate degree program and twelve (12) hours of graduate level courses towards the Masters Degree, the graduate shall be admitted to a Board approved NCEES examination in the fundamentals of engineering. Upon passing such examination, completing the required additional education towards a Masters Degree in engineering, and providing proof of a specific record of one year or more of progressive engineering experience in engineering projects of a grade and character satisfactory to the Board, the applicant shall be certified as an Engineer Inter, if otherwise qualified.

(D) Foreign degrees not determined by the Board to be substantially equivalent to an EAC/ABET accredited engineering degree may be considered following a degree evaluation by an evaluation service approved by the Board. The maximum equivalency granted for all foreign degrees, except those determined to be substantially equivalent to an EAC/ABET accredited engineering degree, shall be that of a related science degree.

(2) Professional Engineer (original license):

(A) Graduation, Experience, and Examination - A graduate of an EAC/ABET accredited engineering program of four (4) years or more, or an engineering program of four (4) years or more determined by the Board to be substantially equivalent to an EAC/ABET accredited engineering program in the United States, and following the date of degree a specific record of an additional four (4) years or more of progressive experience on engineering projects of a grade and

character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight hour~~a Board approved NCEES written examination in the fundamentals of engineering, and, if passed, then shall be admitted to ~~an eight hour written~~a Board approved NCEES examination in the principles and practice of engineering. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice engineering in this state, if otherwise qualified.

(B) Alternative Graduation, Experience and Education -

(i) A graduate holding a related science degree ~~or a degree from a non-accredited engineering program of four (4) years or more, other than the ones approved by the Board,~~other than those approved in 245:15-3-7(2)(A) and following the date of degree a specific record of six (6) years or more of progressive experience on engineering projects of a grade and character which indicates to the Board that the applicant may be competent to practice engineering, shall be admitted to ~~an eight hour written~~A Board approved NCEES examination on the fundamentals of engineering, and if passed, then shall be admitted to an eight-hour written examination in the principles and practice of engineering. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice engineering in the state, if otherwise qualified. No examination shall be administered following July 1, 2020, for applicants applying under this Section of the Rules for licensure as a Professional Engineer who do not meet these education requirements even if the applicant's applicant was approved by the Board prior to July 1, 2016.

(ii) A graduate of a four (4) year degree program in a science, not considered ~~a~~ an equivalent engineering or a related science degree by the Board, must ~~be followed by~~complete twelve (12) hours of graduate level courses towards a Masters Degree in engineering from an institution with a comparable EAC/ABET accredited undergraduate engineering program before being considered for approval as a related science degree by the Board. Following completion of the undergraduate degree program and twelve (12) hours of graduate level courses towards the Masters Degree in engineering, the graduate shall be admitted to a Board approved NCEES examination in the fundamentals of engineering and if passed shall be admitted then shall be admitted to a Board approved NCEES examination in the principles and practice of engineering. Upon passing such examinations, completing the required additional education towards the Masters Degree in engineering, and providing proof of a specific record of six years or more of progressive engineering experience in engineering projects of a grade and character satisfactory to the Board, the applicant shall be granted a certificate of licensure to practice engineering in this state, if otherwise qualified.

(iii) Foreign degrees not determined by the Board to be substantially equivalent to an EAC/ABET engineering degree may be considered following a degree evaluation by an evaluation service approved by the Board; however maximum equivalency granted shall be that of a related science degree.

(C) Experience credit may be claimed to the date of the application. Experience record is to be continuous from beginning to the date of the application. Experience time shall not exceed elapsed calendar time. Applications with insufficient experience will be rejected by the Board. Only experience obtained directly within the professional field will be considered as qualifying experience by the Board and must be verified. Experience should be gained under the supervision of a licensed professional engineer or, if not, an explanation should be made showing why the experience should be considered acceptable. Experience gained under the technical supervision of an unlicensed individual may be considered if the appropriate credentials of the unlicensed supervisor are submitted and approved by the Board. The following areas of experience will be considered creditable if the experience involves the application of engineering principles~~.~~:

(i) Evaluation, selection and application of standard engineering techniques, procedures and criteria, using judgment in making adaptations and modifications.

(ii) Engineering research and development.

(iii) Plan, design and analysis of engineering projects, systems and/or manufactured products.

(iv) Construction of engineering projects or systems .

(v) Applications and operational analysis of engineering projects, systems or facilities.

(vi) Teaching in a college or university offering an approved program of four (4) years or more of advanced engineering subjects and related courses.

(D) A maximum of six (6) months experience may be allowed for successful completion of an EAC/ABET accredited engineering cooperative education program with work experience meeting (2)(A) of this Sections.

(E) Concurrent time, that is, time spent in engineering work while attending school will be credited either as education experience or work experience but not both.

(F) Applicants, applying under (2)(A), (2)(B)(I), or (2)(B)(iii), who successfully complete graduate study leading to a Master's Degree in engineering

may be awarded one (1) year's experience provided that at the time the Master's Degree in engineering was awarded the institution had a bachelor's level EAC/ABET accredited engineering program of four (4) years or more or an engineering program of four (4) years or more determined by the Board to be substantially equivalent to an EAC/ABET accredited engineering program. If a Ph.D. in engineering is completed under the same conditions, two years total experience may be awarded. The two years awarded include the one year awarded for the master's degree. If the Ph.D. in engineering is completed under the same conditions but without the master's degree in engineering which does not follow an EAC/ABET accredited engineering curriculum of four (4) years or more or an engineering curriculum of four (4) years or more recognized by the ABET Washington Accord Agreement, one year of experience may be awarded for the combined master's degree and Ph.D.

(G) Accredited engineering programs of six (6) years or more which confer a master's of science in engineering without first conferring a bachelor of science in engineering may be accepted under 2(A) and may be allowed the additional one year of engineering experience under 2(F) of this section.

(H) Applicants shall submit a minimum of five (5) references, three (3) of whom shall be Professional Engineers having personal knowledge of the applicant's engineering experience, none of whom may be current members of the Board. These references should verify the periods of experience since the beginning of the history, leaving no gaps in dates. Comity applicants who obtained their original license more than ten years prior must list all engineering experience obtained since their original license, but shall only be required to verify the most recent ten years of experience. The Board cannot give credit for engineering experience that has not been verified by one or more references.

(I) When the requirements of the Statutes and of this Chapter are met, the applicant shall be admitted to, and must pass, an examination covering the laws, rules, procedures and practices pertaining to engineering in the state of Oklahoma.

245:15-3-8. Qualifications for land surveying licensure

To be eligible for consideration for licensure as a Professional Land Surveyor or certification as a Land Surveyor Intern, an applicant must be of good character and reputation. Evidence of minimum qualifications is required by the Board in accordance with the following requirements~~; however, subject to the education exception in 245:15-3-8(c) until July 1, 2014, an applicant for the Fundamentals of Land Surveying Examination shall not be admitted to the exam after July 1, 2008 unless the applicant has graduated from a surveying program of two (2) years or more accredited by an accrediting body approved by the Board or graduated from a surveying or related science program of four (4) years or more other than programs approved by the Board as being of satisfactory standing~~:

(1) Land Surveyor Intern:

(A) A graduate of a surveying program of four (4) years or more approved by the Board, or an applicant who has completed sixty (60) semester hours or more of academic requirements for graduation, shall be admitted to ~~an eight-hour written~~a Board approved NCEES examination in the fundamentals of surveying. Upon passing such examination and providing proof of graduation, the applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(B) A graduate of a surveying program of two (2) years or more approved by the Board, or an applicant who has completed forty-five (45) semester hours or more of academic requirements for graduation from a two-year surveying program approved by the Board shall be admitted to an eight-hour written examination in the fundamentals of surveying. Upon passing such examination and providing proof of graduation the applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(C) A graduate of other academic programs of two (2) years or more approved by the Board, which shall include the Board-approved Core Curriculum in surveying, or an applicant who has completed forty-five (45) semester hours or more of academic requirements for graduation, including twenty-one (21) semester hours or more of the Core Curriculum, from another academic program of two (2) years or more approved by the Board, shall be admitted to ~~an eight-hour written~~a Board approved NCEES examination in the fundamentals of surveying. Upon passing such examination, providing proof of graduation and providing proof of a specific record of one year or more of progressive experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, the applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(D) An applicant who provides proof of completion of sixty (60) credit hours approved by the Board, which shall include the Board-approved Core Curriculum in surveying, or an applicant who has completed forty-five (45) semester hours or more of academic requirements for graduation, including twenty-one (21) semester hours or more of the Core Curriculum, shall be admitted to ~~an eight-hour written~~a Board approved NCEES examination in the fundamentals of surveying. Upon passing such examination and providing proof of completion of the educational requirements and a specific record of one year or more of progressive experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, the

applicant shall be certified as a Land Surveyor Intern, if otherwise qualified.

(2) Professional Land Surveyor (original license):

(A) Graduation, Experience, and Examination:

(i) A graduate of a surveying program of four (4) years or more approved by the Board and a specific record of four (4) years or more of progressive combined office and field experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, of which no less than two (2) years experience must be following the date of the degree, who has also passed an eight-hour written examination in the fundamentals of surveying shall be admitted to a ~~six-hour written~~Board approved NCEES examination in the principles and practice of surveying and an Oklahoma Law and Surveying ~~written~~ examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(ii) A graduate of a surveying program of two (2) years or more approved by the Board and a specific record of six (6) years or more of progressive combined office and field experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying and who has also passed ~~the eight-hour written~~a Board approved NCEES examination in the fundamentals of surveying , shall be admitted to a ~~six-hour written~~ Board approved NCEES examination in the principles and practice of surveying and an Oklahoma Law and Surveying ~~written~~ examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(B) Alternative Graduation, Experience and Examination:

(i) A graduate of other academic programs of two (2) years or more, approved by the Board, which shall include the Board-approved Core Curriculum in surveying and a specific record of six (6) years or more of progressive combined office and field experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, who has also passed ~~an eight-hour written~~a Board approved NCEES examination in the fundamentals of surveying, shall be admitted to a ~~six-hour written~~Board approved NCEES examination in the principles and practice of surveying and an Oklahoma Law and Surveying ~~written~~ examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(ii) An applicant who provides proof of completion of sixty (60) credit hours, approved by the Board, which shall include the Board-approved Core Curriculum in surveying, and a specific record of six (6) years or more of progressive combined office and field experience satisfactory to the Board on land surveying projects of a grade and character which indicates to the Board that the applicant may be competent to practice land surveying, who has also passed ~~an eight-hour written~~a Board approved NCEES examination in the fundamentals of surveying shall be admitted to a ~~six-hour written~~Board approved NCEES examination in the principles and practice of surveying and an Oklahoma Law and Surveying ~~written~~ examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified.

(C) Long Established Practice and Examination:

(i) An applicant with a specific record of nine (9) years or more of practice in land surveying of a grade and character which indicates to the board that the applicant may be competent to practice surveying shall be admitted to an eight-hour written examination in the fundamentals of surveying, and, if passed, then shall be admitted to a six-hour written examination in the principles and practice of surveying and an Oklahoma Law and Surveying written examination. Upon passing such examinations, the applicant shall be granted a certificate of licensure to practice land surveying in this state, if otherwise qualified. Provided, after July 1, 2014, the record of practice in land surveying specified in this paragraph shall not be considered by the Board as minimum evidence that an applicant is qualified for licensure as a professional land surveyor. No examination shall be administered following July 1, 2014, for applicants applying under this section of the rules for licensure as a Professional Land Surveyor, even if the applicant's application was approved by the Board prior to July 1, 2014.

(D) Experience record may be claimed to the date of the application. Experience record is to be continuous from the beginning to the date of the application. Experience time shall not exceed elapsed calendar time. Applications with insufficient experience will be rejected by the Board. Only experience obtained directly within the land surveying area will be considered as qualifying experience by the Board. Experience should be gained under the supervision of a licensed professional surveyor, or if not, an explanation should be made showing why the experience should be considered acceptable. The following listed experience will be considered to be of a grade and character satisfactory to the Board.

(i) "Office experience" which includes, but is not limited to, land surveying activities, where the applicant:

(I) Assists in the planning, directing and analyzing necessary for the preparation of surveys, plats, and related documents.

(II) Reduces and evaluates land surveying data.

(III) Develops procedures and systems for the collection, reduction, adjustment and use of land surveying data.

(IV) Prepares data to be used by field surveyors or field crews.

(V) Coordinates the preparation and processing of maps, plats, reports, descriptions, or other documents.

(VI) Researches records to obtain survey and title data.

(VII) Performs boundary analysis and reconciles records and field evidence to identify boundary line's discrepancies.

(ii) "Field experience" which includes, but is not limited to, land surveying activities, where the applicant:

(I) Assists in determining field survey methods and procedures, including selection of accuracy standards.

(II) Selects or verifies that the correct control monumentation is used to establish the survey datums (horizontal and vertical) and selects "on the ground" locations for control monuments.

(III) Inspects monumentation in the field and/or examines field evidence for the determination and identification of physical evidence.

(IV) Reviews measurements observations with the responsibility for accuracy, completeness, and consistency.

(V) Reviews, determines procedures for and prepares field notes and records for proper application of field survey procedures.

(VI) Plans field checks, reviews field checks, and, based on such checks, determines if completed field survey plats are accurate and sufficient.

(VII) Searches for boundary and control monuments; assists in analyzing field evidence; compares record data to found physical evidence; compares record data to measured data, documents discrepancies; assists in acquiring and documenting testimony regarding boundary locations; recommends boundary locations and/or establishment; selects or verifies that the correct controlling monuments are used to locate or establish boundary points and lines.

(VIII) Recommends when existing boundary monuments are to be replaced; selects the methods to be used for replacing and resetting monuments.

(IX) Functions as a "party chief," "chief of parties," or lead person in charge of field surveyors or field crews performing land surveying services of a grade and character satisfactory to the Board.

(E) Applicants shall submit a minimum of five (5) references, at least three (3) of whom shall be Professional Land Surveyors having personal knowledge of the applicant's land surveying experience and none of whom may be current members of the Board. These references should verify the periods of experience since the beginning of the history, leaving no gaps in dates. Comity applicants who obtained their original license more than ten years prior must list all surveying experience obtained since their original license, but shall only be required to verify the most recent ten years of experience. The Board cannot give credit for surveying experience that has not been verified by one or more references.

SUBCHAPTER 7. LICENSURE

245:15-7-1. Certificate of Licensure

(a) Licensure certificates shall be issued to individuals meeting statutory licensure requirements and the current Rules of Procedure of the Board. The certificate will identify the licensee by name and license number, show the effective date, confirm the licensee's qualifications and acknowledge the licensee's right to practice engineering or land surveying, as the case may be, in the State of Oklahoma.

(b) Certificate of Licensure will be issued by the Board for the life of the licensee, subject to powers of renewal, reinstatement, suspension, revocation, penalties, orders or refusal to renew for cause, vested in the Board by the Statutes.

(c) When a professional engineer or land surveyor in good standing desires to retire his or her license, he or she may do so upon application to the Board, subject to reinstatement and continuing education requirements by the Board.

(~~c~~d) Individuals holding a Certificate of Licensure shall display or maintain it at the licensee's place of practice and be prepared to substantiate biennial license renewal.

(~~d~~e) Duplicate original Certificates of Licensure will be issued to a licensee provided:

(1) The current license renewal is effective;

(2) The licensee makes written request for a replacement of certificate;

(3) The licensee certifies that the original certificate has been lost, damaged or destroyed; and

(4) The licensee pays the prescribed fee.

(~~e~~f) Duplicate Certificates of Licensure will be issued for display at multiple places of practice upon a written request and payment of the prescribed fee. However, each duplicate certificate will be marked as such.

245:15-7-5. Reinstatement of revoked or retired licenses

(a) Licenses revoked for nonpayment of fees, failing to fill out and return a required continuing education log form, ~~failing to fill out a reinstatement form for inactive retired licensee, or~~ failing to return the renewal form for licensee over the age of 70, or licenses that were voluntarily retired by the licensee may be reinstated by making written application for reinstatement within one hundred eighty days after expiration and payment of the prescribed renewal fee and penalty. After one hundred eighty (180) days of revocation, a new application and fees will be required, which shall be considered specifically by the Board, both from the standpoint of competency and character. If reinstatement is within one hundred eighty (180) days following the date of revocation, then licensure will be deemed to have been continuous. Practicing your profession with a revoked or retired license during this reinstatement period is a violation of Title 59, Section 475.1 et seq and the Rules of this Board.

(b) If a license revoked for non-payment or a retired license remains canceled or suspended for a period exceeding three (3) consecutive years, such former licensee's application for re-licensure may not be considered by the Board without the former licensee taking and passing a current examination as prescribed by the Board.

(c) Licenses suspended, refused to renew, penalties, orders issued or revoked for cause, may be reinstated only by Board action and only then in the manner determined by such Board action. Request for reinstatement of a license shall show the Board that the public interest will not suffer by reason of the reinstatement and shall be addressed to the Chair at the Board office. The Board, by Statute, has the discretion as to whether to reinstate the Certificate of Licensure or Certificate of Authorization or deny it.

SUBCHAPTER 11. CONTINUING EDUCATION

245:15-11-3. Scope and exemptions

(a) Licensees shall be required to meet the continuing educational requirements of the rules for professional development in this subchapter as a condition for licensure renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge.

(b) A licensee may be exempt from the professional development educational requirements for one of the following reasons:

(1) New licensees by way of examination or comity shall be exempt for their first renewal period.

(2) A licensee serving on temporary active duty in the Uniformed Services of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year shall be exempt from obtaining the professional development hours required during that year.

~~(3) A licensee called to emergency service by state or federal emergency disaster declaration for a period of time exceeding one hundred twenty (120) consecutive days in a calendar year shall be exempt from obtaining the professional development hours required during that year.~~

(3~~4~~) A licensee experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

(4~~5~~) A licensee who elects to choose Retired status at the time of renewal shall be exempt. ~~is 62 years of age or older on the date of a biennial renewal who certifies that they have not practiced the profession in Oklahoma for which exemption is sought since the date of their immediate prior biennial license renewal and are not currently practicing their profession in Oklahoma for which exemption is sought, may be exempt.~~In the event such person elects to return to active practice of professional engineering or surveying, 30 PDH's must be earned before returning to active practice.

245:15-11-11. Disallowed credit; failure to comply

If a licensee fails to provide a log form showing 30 PDH's per biennial renewal period by their expiration date the license will not be renewed. If the Board disallows claimed PDH's, the licensee shall have 120 days after notification to substantiate the original claim or to earn other credit to meet the minimum requirement. Failure to comply with an audit or submitting false information to the Board on the log form in an attempt to renew a license ~~is~~are ~~aviolation~~ violations of Board Rules and may lead to disciplinary action.

SUBCHAPTER 13. MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING

245:15-13-2. Minimum Standards

(a) **Definitions**: as used in these standards, the following terms shall have the following meanings where the context permits as provided in 59 O.S. 471.1 et seq and Chapter 245:15-1-3 of the Rules of the Board.

(b) **Research and investigation.** Every property boundary survey shall be made in accordance with the boundary description, as provided to or as created by the surveyor, as nearly as is practicable. The surveyor, prior to making a survey, shall acquire available necessary survey data, which may include record descriptions, deeds, maps, abstracts of title, section corner ties, government notes, subdivision plats, road records, and other available section and boundary line location data in the vicinity. The surveyor shall analyze the data and make careful determination of the record title boundary of the property to be surveyed. From the information gathered, the surveyor, or those working under his or her direct control and personal supervision, shall search thoroughly for all controlling corners and all other available field evidence of boundary location. In the event of the discovery of a material disagreement with the work of another surveyor, the surveyor shall make reasonable efforts to contact the other surveyor in an attempt to resolve the disagreement.

(c) **Minimum technical standards for land or boundary surveys (field and office).**

(1) In order for a plat, subdivision plat, map, or sketch of a survey to be acceptable in terms of this rule, it must be complete and shall be certified or otherwise stated as meeting these minimum technical standards.

(2) All measurements made in the field shall be in accordance with the United States Standard, using either US Survey Feet or meters. All measurements shall be referenced to the horizontal or vertical plane, with the exception of geodetic surveys.

(3) All survey ~~drawings~~documents produced by an individual practicing under his or her own name shall bear the name, address, and telephone number, along with the license number, seal, signature, and date of signature of the surveyor. All survey ~~drawings~~ documents produced by a firm shall bear the name, address, telephone number, and Certificate of Authorization number ~~and expiration date of the Certificate of Authorization of the firm issuing the drawing~~, along with the name, license number, seal, signature, and date of signature of the surveyor.

(4) All survey ~~drawings~~documents must bear the date of the last site visit and bear the date of any revisions thereon. If the site visit was performed on multiple dates, the drawing may specify the range of those dates.

(5) A designated north arrow and scale of the map shall be shown prominently upon the drawing.

(6) Any symbols and/or abbreviations representing physical objects used on the drawing will be clearly noted upon the drawing.

(7) A reference to all bearings shown must be clearly stated, i.e., whether to 'True North'; 'Grid North as established by state plane datum'; 'Assumed North based on the bearing of a well established line'; a 'Deed call for a particular line'; or 'the bearing of a particular line shown upon a plat'; etc.

(8) Referencing surveys.

(A) Surveys based on the United States Public Land Survey System shall be referenced to original or properly restored corners. The appropriate Bureau of Land Management Manual of Surveying Instructions shall be used as a guide for the restoration of lost or obliterated corners and subdivision of sections into aliquot parts.

(B) Lot surveys within platted subdivisions shall be referenced to existing corner monuments within the subdivision as necessary to verify the survey.

(9) Where evidence of inconsistencies is found, such as overlapping descriptions, hiatuses, excess or deficiency, or conflicting boundary line or monuments; the nature and extent of the inconsistencies shall be shown on the drawing.

(10) All survey drawings shall show the change in direction between lines, lines and curves, and between adjacent curves, by angles, bearings or azimuths. Circular curves shall show: 1. The length of radius; 2. The arc distance; and 3. The chord distance and chord bearing. Sufficient information must be shown to mathematically close all lots and/or parcels.

(11) All easements, rights-of-way and building lines drawn or referenced on recorded subdivision plats on or across the land being surveyed and the width of the rights-of-way of all section lines adjoining or within the surveyed property shall be shown upon the survey drawing. Physical evidence of roadways providing access to or through the property being surveyed shall be shown and/or noted. If location of easements or rights-of-way, other than those drawn or referenced on recorded subdivision plats is required, this information must be furnished to the surveyor.

(12) The land surveyor shall establish or confirm a monument or confirm the prior placement of monuments at each and every property corner on the boundary line or boundary lines of the parcel or tract of land being surveyed. In such cases where the placement of a required monument at its proper location is impractical, a witness or reference monument shall be placed with the data given to show its location upon the ground in relation to the boundary lines or corner. In any case the type and size of all monuments, either found or set, and the relationship of the monuments to the surveyed lines and corners will be shown on the drawing. Where practical, monuments shall be constructed of material capable of being detected with the conventional instruments for finding ferrous or magnetic objects. All set monuments shall have affixed thereto a durable marker or cap bearing, at a minimum, the license number of the land surveyor in responsible charge, or the Certificate of Authorization number of the firm performing the survey. Monuments for the exterior corners of a subdivision shall be set by the surveyor who certified the plat of the subdivision prior to the recordation of the subdivision plat. It is the responsibility of the surveyor to set the interior corners on all lot and block corners prior to the conveyance of the lot, block or any part thereof within thirty days of completion of the infrastructure improvements, but no later than one year after recordation of the subdivision plat.

(13) The accuracy of the measurements for the survey shall be based upon the type of survey, and the current or expected use of the land. The accuracy of the measurements thus performed shall be substantiated by the computations of the traverse; the relative error of closure permissible shall be no greater than the following standards given below:

(A) Where there is or will be zero lot line construction on small tracts in a high density urban area, the allowable closure error is 1:10,000 and the allowable positional error is plus or minus 0.10 feet.

(B) In residential or commercial subdivisions where the length of lines does not exceed 300 ft, the area of tracts does not exceed 2 acres, and there is no plan for zero lot line construction, the allowable closure error is 1:10,000 and the allowable positional error is plus or minus 0.25 feet.

(C) In suburban or rural residential or industrial tracts where the length of lines does not exceed 1000 feet and the area of tracts is between 2 and 40 acres, the allowable closure error is 1:7,500 and the allowable positional error is plus or minus 0.50 feet.

(D) Rural tracts of 40 acres or more where the corners of the tract may be connected with traverse legs in excess of 1000 feet, the allowable closure error is 1:7,500 and the allowable positional error is plus or minus 1.5 feet.

(E) Rural tracts of 40 acres or more in rough or tree covered terrain where the corners of the tract must be connected with short traverse lines because of poor visibility between the corners of the tract, the allowable closure error is 1:5,000 and the allowable positional error is plus or minus 3.0 feet.

(F) Field work which has a closure error greater than the maximum allowed, or linear error of closure greater than the maximum positional error shown, shall be considered unacceptable and shall be corrected. Adjustment of a traverse must not shift the position of any point more than the maximum positional error listed above.

(G) In lieu of maximum allowable positional error, the latest Accuracy Standards for ALTA/ACSM Land Title Surveys may be used for determining minimum accuracy requirements.

(14) When special conditions exist that effectively prevent the survey from meeting these minimum standards, the special conditions and any necessary deviation from the standards shall be noted upon the drawing. It shall be a violation of this rule to use special conditions to circumvent the intent and purpose of these minimum standards.

(15) ~~A survey plat, sketch or map must be created at any time a new parcel of land is created by a field survey, or if there are inconsistencies between an existing legal description and evidence found on the ground. In any event, every survey plat, sketch or map must contain the legal description of the land being surveyed, either on the face of the survey plat or attached to and referenced to the survey plat.~~ A survey plat, sketch or map must be created whenever a land or boundary survey is done. Every survey plat, sketch or map must contain the legal description of the land being surveyed, either on the face of the survey plat or attached to and referenced to the survey plat.

(16) Additions or deletions to survey drawings by other than the signing party or parties is prohibited without written consent of the signing party or parties.

(d) **Minimum Standards for Legal Descriptions.**

(1) Metes and bounds descriptions prepared shall at a minimum contain the following items:

(A) A preamble containing the Quarter Section, Section, Township, Range, Principal Meridian (Indian or Cimarron) and the County and/ or City of the tract of land being described or a preamble containing the Lot and/or Block number, subdivision name and if available, the recording information of the platand the City, if applicable, and County in which it is filed of record, and

(B) A beginning point (if applicable) referenced to a point such as a section corner, quarter-section corner, sixteenth section corner, or a Lot/Block corner of a recorded subdivision, and

(C) Distances listed to the nearest hundredth of a foot (if surveyed), and

(D) Bearings or angles listed in degrees, minutes and seconds (if surveyed), and

(E) A reference to all bearings shown must be clearly stated, i.e., whether to 'True North'; 'Grid North as established by state plane datum'; 'Assumed North based on the bearing of a well established line'; a 'Deed call for a particular line'; or 'the bearing of a particular line shown upon a plat', and

(F) Curved lines with circular curves shall show: 1. Direction of the curve (right or left); 2. The radius; 3. Arc distance; and 4. Chord distance and chord bearing, and

(G) The name and license number of the professional surveyor who prepared the description, and

(H) The date of preparation of the legal description, and

(I) Each metes and bounds description must return to the Point of Beginning and close mathematically within the allowable closure error stated in this subchapter.

(2) Aliquot descriptions may be used in lieu of a metes and bounds description and shall at a minimum contain the following items: Quarter Section, Section, Township, Range, Principal Meridian (Indian or Cimarron), city (if applicable) and the County of the tract of land being described.

(3) Lot and block description may be used in lieu of a metes and bounds description and shall at a minimum contain the following items: Lot and/or Block number, subdivision name, City (if applicable), the County in which it is filed of record and, if available, the recording information of the plat.

(4) A written legal description of the surveyed tract of land must provide sufficient information to locate the property on the ground and distinctly set it apart from all adjoining properties.

(e) **Mortgage ~~inspection report~~Inspection Report.** A Professional Land Surveyor may, based upon their general knowledge of land boundaries and monuments in a given area, prepare a Mortgage Inspection Report for the use of a specific client. Such report shall be prominently labeled 'Mortgage Inspection Report' and shall not be designated as or construed as being a Land or Boundary Survey, and the statement furnished on the certificate shall be similar to the following form%%:

MORTGAGE INSPECTION REPORT

'This Mortgage Inspection Report was prepared for ?(individual or firm)?. It is not a land or boundary survey plat, and it is not to be relied upon for the establishment of fence, building or other future improvement lines. The accompanying sketch is a true representation of the conditions that were found at the time

of the inspection, and the linear and angular values shown on the sketch, if any, are based on record or deed information and have not been verified unless noted.'

Any further statements shall be made only after proper research, investigation and boundary analysis is conducted per 245:15-13-2(a) through (d).

SUBCHAPTER 17. LICENSEE'S SEAL

245:15-17-1. Licensee's seal

(a) Every person authorized to practice engineering or land surveying by a certificate of licensure ~~shall procure~~may obtain a seal with which to identify all final engineering and land surveying papers or documents, including drawings, specifications, plans, reports, land surveys, plats, land descriptions, design information, construction documents, calculations, addenda, change orders, field orders and other documents of service involving the practice of engineering or land surveying issued by the licensee for use in the State of Oklahoma whenever presented to a client or any public agency to certify that the work thereon was done by the licensee or under the direct control and personal supervision of the licensee.

(b) The seal required shall be of a type which will make an image on the surface of original documents and duplications of original documents. The use of a rubber stamp or electronic digitization which produces an accurate and legible image of the seal is permissible when duplicate copies of originals are required.

(c) The seal of the licensee shall consist of two (2) concentric circles. The inner circle shall have inscribed the licensee's name and number, which shall correspond to the name and certificate number shown on the Certificate of Licensure. The area between the two (2) circles shall be inscribed with the word "Oklahoma" at the bottom reading counter-clockwise and the words "Licensed Professional Engineer" or "Licensed Professional Land Surveyor" at the top reading clockwise. The seals commercially designated as 1 7/8" seal, with an inner circle of 1 1/8" diameter and an outer circle of 1 3/4" diameter, or the 1 5/8" seal, with an inner circle of 1 1/16" diameter and an outer circle of 1 9/16" diameter, are acceptable, as shown in Appendix A of this Chapter. Reproduction of the original documents with the required seal may produce a different seal size provided the seal remains completely legible.

(d) A licensee who practices in other than their full legal name shall register the name customarily used in professional practice with the Board together with a copy of their signature for such customarily used name. The seal may be inscribed with the registered, customarily used name, and the signature affixed across or adjacent to the seal shall be the name inscribed on the seal. A seal and signature affixed in a registered, customarily used name shall have the same force and effect as the seal and signature affixed in a licensee's full legal name.

(e) Existing seals containing the words "Registered Professional Engineer", "Registered Professional Land Surveyor", and "Registered Land Surveyor" may continue to be used.

245:15-17-2. Use of seal

(a) The application of the licensee's signature and date of signature to a sealed document shall constitute certification that the work thereon was done by the licensee or under the licensee's direct control and personal supervision and that the licensee accepts full responsibility and liability for the professional work represented thereon. Authorized use of the prescribed seal is an individual act. The licensee is responsible for its security at all times. The licensee shall permit no other person, firm, or entity to use the prescribed seal. The seal shall be affixed to documents and instruments only during the time the licensee's license is current and in good standing. Whenever the seal is applied, the document must be signed by the licensee thereby certifying that he or she is competent in the subject matter and was in direct control and personal supervision of the work product.

(b) Licensees must affix their seal, signature and date of signature to ~~drawings~~documents or drawings which reflect work for which the licensee has responsible charge, including revisions and addenda thereto. In the case when multiple licensees are involved, each sheet in a set of drawings shall contain the seal, signature and date of the licensee responsible. A licensee not practicing as, or through a firm shall also include contact information to include address and phone number.

(c) Regarding professional engineering, the licensee is responsible for meeting all of the following requirements to be in direct control and personal supervision of the work:

(1) The licensee supervises the preparation of the plans, specifications, drawings, reports, or other documents and has input into their preparation prior to their completion and reviews the final plans, specifications, drawings, reports, or other documents prior to signing and sealing the work; and

(2) The licensee has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports, or other documents prior to signing and sealing the work; and

(3) The intent of the definition of direct control and personal supervision may be met if all provisions of the definition are met using remote electronic or communication means.

(4) An engineer who signs and seals work must be capable of answering questions as to the engineering decisions made during the work on the project in sufficient detail as to leave little doubt as to the engineer's competence for the work performed. It is not necessary to defend decisions, as in an adversary situation, but only to demonstrate the engineer who is in direct control and personally supervising the work made them and possessed sufficient knowledge of the project to make them. The individual should be able to clearly define the degree of control over the work and how it was exercised, and should be able to demonstrate that the engineer was answerable within said degree of control necessary for the work done.

(5) The intent of the law shall not be met if an unlicensed person independently performs engineering work, to then be reviewed, signed and sealed by a professional engineer. An unlicensed person may only be used if the

professional engineer is personally directing the unlicensed person and the work is performed concurrent with the supervision.

(d) Regarding land surveying, the licensee is responsible for meeting all of the following requirements to be in direct control and personal supervision of the work:

(1) The licensee directly controls and personally supervised the surveying work; and

(2) The licensee has the authority to, and does, make any necessary and appropriate changes to the work prior to signing and sealing the work; and

(3) All surveying offices must have a professional land surveyor physically present at the location to be in responsible charge of, and in direct control and supervision of the work; and

(4) A surveyor who signs and seals work must be capable of answering questions as to the surveying decisions made during the project in sufficient detail as to leave little doubt as to the surveyor's involvement with the work performed. It is not necessary to defend decisions, as in an adversary situation, but only to demonstrate that the surveyor who is in direct control and personally supervising the work made them and possessed sufficient knowledge of the project to make them. The licensee should be able to clearly define the degree of control over the work and how it was exercised, and should be able to demonstrate that the surveyor was answerable within said degree of control necessary for the work done.

(5) The intent of the law shall not be met if an unlicensed surveying crew independently performs surveying work, to then be reviewed, signed and sealed by a professional land surveyor. An unlicensed surveying crew may only be used if the professional land surveyor in direct control and supervision of the work is personally directing the land surveying crew and the work is performed concurrent with the supervision.

(e) In the case of bound documents, licensees must affix their seal, signature and date of signature to the cover sheet or index page, which identifies all documents bound together for which the licensee has responsible charge. In the absence of covers and index pages each document must have the seal, and dated signature of the licensee who has responsible charge. For bound documents involving multiple licensees, either each document in the bound set must be sealed, signed and dated by the licensee in responsible charge for that portion of the work, or the cover sheet or index page must be sealed, signed and dated by each licensee with a breakdown of the licensee in responsible charge of each document clearly identified.

(f) In the case when the work consists of a letter or report prepared by a single licensee, the licensee need only seal, sign and date the first page, title page or signature page of the document.

(g) The Statute, 59 O.S., Sections 475.1 et seq. and Rules of the Board in this Chapter describe the use of the seal of the licensee. The seal, signature and date of signature shall be placed on all final engineering and land surveying documents whenever presented to a client or any public agency to certify that the work thereon was done by the licensee or under the responsible charge of the licensee. In lieu of sealing, signing and dating each copy of the work, the seal, signature and date shall be placed on originals, tracings, or other reproducible documents by the licensee in such a manner that when the originals, tracings, or other reproducible documents are reproduced the seal, signature and date will be legible.

(h) Work of a preliminary nature, submitted to obtain comments and not for formal approval, shall be clearly marked with the following statement: 'This document is preliminary in nature and is not a final, signed and sealed document'.

(i) An Engineer Intern or Land Surveyor Intern shall not have a seal.

(j) Drawings, reports, or documents that require a signature may be signed using a digital signature. The digital signature must be:

(1) Unique to the person using it;

(2) Capable of verification; and

(3) Under the sole responsibility and control of the licensee affixing it.

(A) A scanned image or other reproduction of an original signature may be used in lieu of an original signature or digital signature if accompanied by an original handwritten date.

(B) A digital signature having an electronic authentication process attached to or logically associated with the electronic document may also be used and does not need to include the handwritten date, but must be dated. In this instance, the digital signature shall be linked to a document in such a manner that the data in the document can be verified as being unaltered since the time that the digital signature was affixed.

(k) In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a site adaptation of a standard design plan, a successor licensee may take responsible charge over, and complete the work, in accordance with the provisions of this Chapter. A licensee shall perform or have responsible charge over all professional engineering or land surveying services to include development of a complete design file including work or design criteria, calculations, code research, field notes, and any necessary and appropriate changes to the work. The burden is on the successor licensee to demonstrate such compliance. The non-professional services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee's professional work. The licensee shall have direct control and personal supervision over the engineering or surveying work and the signed, dated, and sealed originals of all documents over which the licensee has taken responsible charge under this provision. A professional engineer or land surveyor who adopts, signs, and seals work previously engineered or surveyed under this provision shall perform sufficient review and calculation to ensure that all standards of practice required of licensees are met, including satisfying the relevant criteria stated in paragraph (c)(iv) and (d)(iv) above and shall take professional and legal responsibility for documents signed and sealed.

(l) A licensee may take responsible charge over a standard, prototypical design plan, including drawings and specifications in printed or electronic form, for the purpose of adapting the plan to a specific site in this state, provided the licensee's work is completed in accordance with the provisions of this Chapter. This provision shall apply to both site adaptation of new structures and site adaptation for construction in an existing structure. In the case of an existing structure, the engineering for modifications to the existing structure and any of its systems shall be under the responsible charge of persons licensed in this state. Standard, prototypical designs that may be site adapted under this provision are drawings and specification documents prepared for the purpose of defining the Owner's requirements but not yet completed for construction on a specific site. Site adaptation shall not include, and this provision does not authorize, a licensee to take responsible charge over work designed for construction on a specific site in this state that was prepared by a person not licensed in this state. Standard prototypical design plans shall not be released publicly or submitted to a client or user unless the plans are marked with a statement substantially equivalent to 'This document is preliminary in nature and is not a final, signed and sealed document'. The statement shall not be removed until an Oklahoma licensee has taken responsible charge of the work and the work is dated and issued under the seal and signature of an Oklahoma licensee. A licensee shall perform or have responsible charge over all professional engineering services to include development of a complete design file including work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The burden is on the successor licensee to demonstrate such compliance. The non-professional services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee's professional work. The licensee shall have direct control and personal supervision over the engineering work and the signed, dated, and sealed originals of all documents over which the licensee has taken responsible charge under this provision.

(m) Any revision to a document containing the seal and signature of a licensee shall be identified and dated. Revisions not done by the original licensee must be signed and sealed by the licensee in responsible charge of the revision. At no time shall a successor licensee remove the seal and signature of the original licensee in responsible charge of the work.

(n~~m~~) Record drawings prepared to reflect changes made during construction based on the record of changes made to construction drawings and changes to the construction observed by the licensee or on the licensee's behalf or reported by contractors is deemed a drafting service and shall not require a licensee's seal, signature, and date of signature.

(o~~n~~) In the case of a firm, each separate document, the first page of a bound document, and, in the case of multiple licensees, the portion of the work for which each firm is responsible, shall also show the name of the firm, the firm's Certificate of Authorization number, ~~and the renewal date of the Certificate of Authorization~~ and contact information for the firm.

SUBCHAPTER 19. ORGANIZATIONAL PRACTICE

245:15-19-8. Firms required to file with Secretary of State; restriction on similar names

(a) Failure to properly file a Certificate of Incorporation or authentication and maintain same with the Secretary of State ~~shall~~may result in revocation of the Certificate of Authorization and disciplinary action pursuant to the Rules of this Chapter.

(b) The name of a firm or entity shall not be the same as or deceptively similar to the name of any other firm or entity then existing. The name shall not be the same or deceptively similar to any name that has existed within the preceding three (3) years, without the written consent of the previously existing firm or entity.

245:15-19-9. Exceptions

(a) A firm whose business does not consist, either wholly or in part, of the rendering of engineering or land surveying services to the public is allowed without obtaining a Certificate of Authorization, providing they are also in compliance with OAC 245:15-19-7.

(b) The work of a person rendering engineering or land surveying services to a firm as an employee of the firm, when the services are rendered in carrying on the general business of the firm and the general business does not consist, either wholly or in part, of the rendering of engineering or land surveying servicers to the public, is allowed under the provision of O.S. Title 59, Section 475.1 et seq.

(c) The use of the terms 'network engineering' or 'software engineering' by firms and 'network engineer' or 'software engineer' by individuals is allowed under provisions of O.S. Title59, Section 475.1 et seq. Firms may not use the word engineer or any derivative thereof in the name of the firm and individuals and firms are prohibited from offering or performing professional engineering services without being duly licensed or authorized to do so.

SUBCHAPTER 23. VIOLATIONS

245:15-23-1. Prima facie evidence

(a) A person, firm, or entity shall be construed to practice or offer to practice engineering or land surveying, who does any of the following:

(1) practices any branch of the professions the board regulates, or

(2) by display or verbal claim, sign, advertisement, contract, card or other printed, engraved, or written instrument or device, bearing a person's, firm's, or entity's name or in any other way represents to be a Professional Engineer or Land Surveyor, or a firm providing or having the qualifications to provide engineering or land surveying services, or

(3) through the use of some other title implies that the person, firm, or entity is a Professional Engineer or Land

Surveyor, or a firm providing engineering or land surveying services, or

(4) holds himself/herself or itself out as having the qualifications to, is able to, or who does contract, offer or perform any engineering or land surveying service.

(5) The following actions shall not be violations under 59 O.S. 475.1 et seq and the rules of the Board provided that the licensee is licensed in the licensee's home jurisdiction, meets the requirements of licensing for Oklahoma, discloses that the licensee is not licensed in Oklahoma, and obtains a license in Oklahoma prior to commencing the practice of engineering or land surveying in Oklahoma:

(A) Advertising in national publications or electronic media, ~~or~~ provided there is no offering of professional services in jurisdictions where not licensed

(B) Responding to letters of inquiry regarding requests for ~~qualifications and interest from out-of-state engineers or land surveyors, or~~ proposals, provided there is written disclosure that the engineer/surveyor and firm are not licensed in this jurisdiction and the response is limited to inquiries regarding the scope of project and to demonstrate interest

(C) Responding to letters of inquiry from prospective clients, provided there is written disclosure that the engineer/surveyor and firm are not licensed in this jurisdiction and the response is limited to inquiries regarding scope of project and to demonstrate interest.

(D) Using the title/designation Professional Engineer, Licensed Engineer, P.E., Professional Land Surveyor, Licensed Land Surveyor, or P.L.S. or the like on letterheads, or business cards~~.~~ from an office in the jurisdiction where licensure is held

(b) Regardless of the above, proposals may not be submitted, contracts signed, or work commenced until the engineer/surveyor and firm become licensed in Oklahoma.

(c) Any violation of such action noted by this Section shall be sufficient to justify an injunction or any other order or a conviction without evidence of a general course of conduct. The Board shall determine if other legal procedures and penalties are necessary and shall have the power to proceed with any and all legal procedures in addition to the injunction or other such orders issued.

245:15-23-2. Grounds for violations and penalties - Conduct

(a) **Knowledge of Rules.** All persons licensed under the provisions of the act are charged with having knowledge of these Rules as well as amendments from time-to-time which are made known in writing to every licensee and applicant for licensure.

(b) **Convictions.** A licensee of this Board who has been fined, received a reprimand, had a license revoked, suspended, or denied in another jurisdiction for reasons or causes which the Board finds would constitute a violation of the law governing the practice of engineering or surveying in this jurisdiction or any rule or regulation promulgated by this Board may be cause for levying a fine, reprimanding the licensee, denying, revoking, or suspending a license to practicing engineering or surveying by the licensee in this jurisdiction.~~Grounds for denial, revocation, suspension, refusal to issue, restore or renew, place on probation, fine or reprimand, orders, injunctions, administrative and/or criminal penalties includes:~~

~~(1) Fraud, deception or misrepresentation in obtaining or attempting to obtain or renew a Certificate of Licensure, Certificate of Authorization, or in taking the examinations administered by the Board;~~

~~(2) Noncompliance with statutory requirements or rules in this chapter for qualifying for licensure;~~

~~(3) Violating the statutes regulating professional engineering and land surveying or any rule in this chapter, regulations or order issued by the Board;~~

~~(4) Violating any of the provisions of the "Corner Perpetuation and Filing Act (65 O.S. 1981, 3.116-3.123) or any requirements, rules and regulations or order issued by the Board;~~

~~Conviction of or entry of a plea of nolo contendere or no contest to any crime, whether a felony or a misdemeanor which includes dishonesty as an essential element, or which is directly related to the practice of engineering or land surveying;~~

~~(6) Violating any other jurisdiction's licensure laws, requirements or rules and regulations;~~

~~(7) Fraud or Misrepresentation (Refer to 245:15-23-4)~~

~~(8) Gross negligence (Refer to 245:15-23-5);~~

~~(9) Gross incompetence (Refer to 245:15-23-6);~~

~~(10) Misconduct or Dishonest practice (Refer to 245:15-23-7);~~

~~(11) Failure, within 30 days, to provide information requested by the Board through its executive director, director of enforcement or counsel, as a result of a formal or informal complaint to the Board;~~

~~(12) Violating any terms of probation or suspension imposed by the Board;~~

~~(13) Unauthorized or misuse of seal which shall include, but is not limited to, sealing, or signing or dating in connection with a seal any documents not prepared under the licensee's direct control and personal supervision;~~

~~(14) Habitual intoxication or addiction to the use of alcohol or illegal use or distribution of a controlled dangerous substance;~~

~~(15) Violating the Oklahoma Minimum Standards for the Practicing of Land Surveying;~~

~~(16) Nonpayment of fees or penalties shall result in revocation.~~

245:15-23-8. Duty to refer alleged violations to Director of Enforcement [REVOKED]

~~When information comes to a licensee, the Board, or its employees concerning alleged misconduct by any person, firm, entity or licensee, whether through formal or informal channels, it shall be the duty of such person, firm, or entity to refer such information to the Director of Enforcement.~~

245:15-23-9. Filing a complaint; forms and evidence

~~To bring allegations of a violation, the person, licensee, firm, or entity, shall contact the Board office and provide all information requested. The complainant may document the allegations with evidence available and submit one copy of the documentation to the Board office. The Executive Director or Director of Enforcement of the Board shall make appropriate inquiry to verify such information and shall, based upon such information and inquiry, proceed to one of the following courses:~~

(a) Proceedings to levy a fine upon an individual, licensee, entity or firm, or to reprimand, place on probation, suspend, refuse to renew, or to revoke an individual's Certificate of Licensure or a firm's Certificate of Authorization may be initiated by any person who may prefer charges of violations of these Rules.

(b) All charges may be made on forms prescribed by the Board, which are available from the Board. The information requested may include the name and address of the complainant and the respondent, a concise statement of the complaint with facts supporting the allegations that a violation has occurred and statement of the relief sought. The complainant may remain anonymous if sufficient information is provided to conduct an investigation.

(c) When a complaint is received by the Board in which an individual, licensee or firm is charged with a violation, it is referred to an investigation committee designated by the Executive Director. The investigative committee makes a determination if probable cause exists for taking further action or for issuing a complaint. Action against the individual, licensee, entity or firm holding a Certificate of Authorization may be brought in the name of the Board or brought before the Board in the name of the claimant versus the respondent.

(d) In the event the investigation committee determines that a probable cause exists, the legal counsel of the Board is requested to prepare a formal complaint.

(e) The formal complaint shall be personally served or mailed to the last known address of the parties charged or firm holding a Certificate of Authorization at least 30 days before the date fixed for hearing.

(f) The complaint shall show the time, place, and nature of the hearing, a statement of legal authority and jurisdiction under which the hearing is to be held, a reference to the particular section of the statutes and rules involved, and a short and plain statement of the matters asserted. The notice of the formal complaint shall indicate that at any hearing the accused individual, licensee, entity or firm holding a Certificate of Authorization shall have the right to appear in person or by counsel or both to cross-examine witnesses in his/her or its defense and to produce evidence and witnesses of his/her or its own defense. If the accused person or firm fails or refuses to appear, the Board may proceed to hear and determine the validity of the charges.

(g) In contested cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the court of common pleas shall be followed. The Board shall give effect to the rules of privilege recognized by law. Objection to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties involved will not be prejudiced substantially, any part of the evidence may be received in written form. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Any party may conduct cross-examination. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

~~(1) Terminate the investigation when it appears no violation has occurred or there is insufficient evidence to support any violation, or that the Board lacks jurisdiction; or~~

~~(2) Refer the matter to the investigation committee; or~~

~~(3) Appoint an individual investigator; or~~

~~(4) Attempt informal resolution of the matter; or~~

~~(5) Refer directly to Board; or~~

~~(6) Refer the matter to other Boards, Agencies, or Authorities.~~

245:15-23-11. Investigation committee [REVOKED]

~~(a) **Appointment; officers.** The investigation committee, appointed by the Executive Director, shall investigate cases referred to it.~~

~~(b) **Duties.** It shall be the duty of the investigation committee, upon request from the Executive Director or Director of Enforcement, to investigate whether there exists probable cause to believe that a violation has occurred and to determine whether the institution of formal or administrative proceedings is justified. The investigation shall be conducted with reasonable dispatch. The investigation committee shall report to the Executive Director the result of any investigation promptly upon its conclusion.~~

~~(c) **Expenses.** The travel expenses of members of the investigation committee shall be paid by the Board as provided in the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. All travel by members of the committee shall be approved by the Chair of the Board prior to the travel occurring.~~

245:15-23-12. Investigation report and recommendations [REVOKED]

~~The Director of Enforcement shall forward the investigation committee's report to the Board' s legal counsel who after review with the investigative committee and Director of Enforcement or the Executive Director shall proceed with the recommendations, provided such recommended action conforms to law and established policy of the Board and is supportable based upon evidence considered by the investigation committee and any additional evidence discovered after the review by~~

~~the investigative committee and the conclusions drawn therefrom. Court proceedings will not be instituted unless the investigation committee and counsel to the Board are agreed and such action is ordered by the Board based upon review of the recommendations of the investigation committee and counsel of the Board.~~

245:15-23-13. Investigator [REVOKED]

~~Investigations may, at the discretion of the Executive Director or Director of Enforcement, be assigned to individual investigators who may be employed or retained on a full or part-time basis by the Board for such purpose.~~

245:15-23-14. Civil and formal proceedings [REVOKED]

~~Civil or formal proceedings in matters involving violations shall be brought by the legal counsel in the name of the Board based upon recommendation of the investigation committee, Director of Enforcement and as ordered by the Board. The formal complaint shall be signed by the legal counsel to the Board and shall include a concise statement of the allegations and particular sections of Statutes and Rules involved.~~

245:15-23-15. Hearings

(a) **General provisions.**

~~(1) The Board shall set a time and place for the hearing of the formal complaint, provided that such hearing shall not be set less than thirty (30) days from mailing by certified mail of notice of the proceeding to the licensee, firm, entity, or person at the last known address according to Board records or information.~~

~~(2) Such notice shall include a copy of the formal complaint, including a statement of the time, place and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing is held; a reference to the particular sections of statutes or rules involved and a short and plain statement of the matters asserted or issues involved. At any hearing, the parties thereto shall be afforded the opportunity to respond, present evidence, and argue on all issues involved.~~

~~(3) Unless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, consent order, or default.~~

(1~~4~~) At any hearing, the licensee, firm, entity, or person, charged with misconduct or violation shall enjoy the rights:

(A) against self-incrimination; and

(B) of confidential communication with his/her spouse, attorney, clergyman, priest and/or physician; and

(C) of withholding confidential or privileged records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States; and

(D) of cross examination; and

(E) of counsel.

(2~~5~~) All motions, except for a motion to continue, must be filed seven (7) days prior to the scheduled date of the hearing. Responses to motions, if any, must be filed two (2) days prior to the hearing.

(3~~6~~) The parties shall exchange names of all witnesses they anticipate testifying ten (10) days prior to the hearing. Additional witnesses may be called subject to the approval of the Board.

(4~~7~~) The first motion for a continuance filed on behalf of a party may be granted by the Executive Director.

(b) **Hearing record.**

(1) The hearing records shall include:

(A) all pleadings, motions and intermediate rulings;

(B) evidence received or considered;

(C) questions and offers of proof, objections, and ruling thereon;

(D) proposed findings and exceptions;

(E) any decision, opinion, or report by the officer presiding at the hearing, if any;

(F) any records, including records of the Board, of which the Board chooses to take judicial notice;

(G) all staff memoranda or data submitted to the hearing officer, if any, or member of the agency in connection with their consideration of the case.

(2) Oral proceedings or any part of the oral proceedings shall be transcribed on request of any party. The requesting party shall pay all costs incurred for the original transcript and other parties requesting copies shall bear the cost of additional copies.

(3) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(c) **Methods of hearings.** Hearings shall be conducted by one of the following methods as determined by the Board:

(1) by the Board;

(2) by a member or emeritus member of the Board or its designee acting as hearing examiner;

(3) by an attorney licensed to practice before the Supreme Court of the State of Oklahoma acting as hearing examiner.

(d) Unless precluded by law, any party may waive rights and proceed by stipulation, agreed settlement, consent order or default. No provision in the rules shall be construed as prohibiting the Board from continuing to a later date, suspending or holding in abeyance any formal or civil proceeding pending the outcome of informal negotiation or informally agreed upon terms.

[OAR Docket #10-685; filed ??-??-??]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 20. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

[OAR Docket #10-670]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
252:20-1-3 [AMENDED]
AUTHORITY:
Environmental Quality Board powers and duties: 27A O.S. §§ 2-2-101 and 4-2-102
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
Incorporated standards:
References to 40 C.F.R. changed to July 2009
Incorporating rules:
252:20-1-3
Availability:
Copies are available for review at the Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, Monday through Friday, 8:00 a.m. to 4:30 p.m.
ANALYSIS:
In 2008, EPA finalized several changes to the Emergency Planning and Community Right-to-Know Act (EPCRA) regulations (40 CFR Parts 355 and 370). These changes are being incorporated by reference in this rule amendment by changing the date from 2004 to 2009.

The Tier I and Tier II forms and their instructions have been removed from the code of federal regulations (CFR). They may now be found on EPA's Web site: www.epa.gov/emergencies. The revised regulation includes a description of the requirements for Tier I and Tier II. Facilities are now required to report their North American Industry Classification System (NAICS) code on the Tier I or Tier II form. Also, the chemical or common name of the chemical as provided on the Material Safety Data Sheet must be provided on the Tier II form.

When determining whether the threshold quantity of an extremely hazardous substance (EHS) has been met, facilities must include the total quantity of that EHS present in the pure form as well as in any mixture, even if any mixture including the EHS is also being reported as a hazardous chemical.

For hazardous chemicals that are mixtures and do not contain any extremely hazardous substance, facilities have an option when determining whether the threshold quantity is present: (1) add together the quantity present in its pure form and as a component in all mixtures (even if the mixture is also being reported as a hazardous chemical), or (2) consider the total quantity of each mixture separately.

CONTACT PERSON:
Monty Elder, Customer Services Division, Department of Environmental Quality, P.O. Box 1677, Oklahoma City, OK 73101-1677, e-mail at monty.elder@deq.ok.gov, phone 405-702-1000, or fax 405-702-1001.

PURSUANT TO THE ACTION DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2010:

252:20-1-3. Incorporations by reference

(a) **Reference to CFR.** Reference to Title 40 of the Code of Federal Regulations (40 CFR) shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning, and Community Right-to-Know Regulations, July, ~~2004~~2009.

(b) **Incorporation.** The following Parts of 40 CFR are, unless otherwise specified, incorporated by reference in their entirety:

(1) Part 355 (Emergency Planning and Notification);

(2) Part 370 (Hazardous Chemical Reporting: Community Right -to-Know);

(3) Part 372 (Toxic Chemical Release Reporting: Community Right-to-Know).

(c) **Interface with CFR.** In the Parts of 40 CFR incorporated by reference, the term "Commission" shall mean the Department.

(d) **References incorporated.** Incorporation by reference of a provision of the Code of Federal Regulations also incorporates all citations and definitions contained therein.

(e) **Penalties.** Penalties cited in 40 CFR are subject to limitations under Oklahoma law.

[OAR Docket #10-670; filed ??-??-??]

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

[OAR Docket #10-671]

RULEMAKING ACTION:
Permanent Final Adoption
RULES:
Subchapter 15. Motor Vehicle Pollution Control Devices [REVOKED]
252:100-15-1 through 252:100-15-6 [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]
AUTHORITY:
Environmental Quality Board; 27A O.S. §§ 2-2-101 and 2-2-201; and Oklahoma Clean Air Act, 27A O.S. §2-5-101 *et seq.*
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Oklahoma Department of Environmental Quality (DEQ) is proposing to revoke OAC 252:100-15, Motor Vehicle Pollution Control Devices because DEQ does not currently have the legal authority to enforce these rules.
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, 2010:

SUBCHAPTER 15. MOTOR VEHICLE POLLUTION CONTROL DEVICES [REVOKED]

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

~~This Subchapter is for the purpose of preventing, abating, and controlling air pollutants which would otherwise be emitted through the operation of motor vehicles and of motor vehicle engines.~~

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

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

~~**"Evaporating loss control system"** means a system or device designed and installed in such a manner as to reduce or prevent the emission to the atmosphere of the vapors of the hydrocarbon fuel contained in the fuel tank, carburetor, and/or fuel pump of the motor vehicle.~~

~~**"Exhaust emission control system"** means a system, device, or engine modification designed and installed in such a manner as to reduce or prevent the emission to the atmosphere of air pollutant gases, vapors, and particulate matter released from the motor vehicle engine through the exhaust manifold and tailpipe.~~

~~**"Motor vehicle"** means a self-propelled, wheeled vehicle designed for normal use on public streets and highways.~~

~~**"Motor vehicle pollution control device"** means any or all of the devices or systems referred to in this Subchapter and designed to control or prevent air pollution emissions from motor vehicles.~~

~~**"New vehicle"** means a motor vehicle which is in the possession of persons in the channels of commerce in such a manner that the vehicle is not subject to registrations with the Oklahoma State Tax Commission by the ultimate purchaser.~~

~~**"Positive crankcase ventilator"** means a system or device designed and installed in such a manner as to prevent or reduce the release or emission to the outside atmosphere of gases and/or vapors produced or otherwise present in the crankcase of the engine of a motor vehicle.~~

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

~~This Subchapter shall apply to all motor vehicles, registered or subject to registration with the Oklahoma State Tax Commission, in which, as new vehicles, motor vehicle pollution control devices have been installed by virtue of federal laws and regulations, in effect now and hereafter, requiring such devices to be installed. However, nothing in this Subchapter shall supersede or otherwise modify such federal laws and rules, nor shall anything in this Subchapter be construed to require the installation of motor vehicle pollution control devices on motor vehicles not referred to by such federal laws and rules.~~

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

~~No person shall cause, suffer, allow, or permit the removal, disconnection, and/or disabling of a positive crankcase ventilator, exhaust emission control system, or evaporative loss control system which has been installed on a motor vehicle; nor shall any person defeat the design purpose of any such motor vehicle pollution control device by installing therein or thereto any part or component which is not an authentic replacement part or component of the device.~~

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

~~For the purpose of routine maintenance, repair, or testing of the motor vehicle, its components, or the motor vehicle pollution control devices, the motor vehicle or its engine may not be operated on public streets or highways with the motor vehicle pollution control devices removed or otherwise rendered inoperable.~~

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

~~Operation of a motor vehicle or its engine which uses liquefied petroleum gas as fuel is hereby exempted from provisions of this Subchapter.~~

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX E. PRIMARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	PM-10	PM 2.5	Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max				40 mg/m^3 (2) 35 ppm			
8-hr. max				10 mg/m^3 (2) 9 ppm	(4) 0.075 ppm		
24-hr. max	365 ug/m^3 (2) 0.14 ppm	(7) 150 ug/m^3	(5) 35 ug/m^3				
Rolling 3-month average							(3) 0.15 ug/m^3
Annual	80 ug/m^3 (1) 0.030 ppm		(6) 15 ug/m^3			100 ug/m^3 (1) 0.053 ppm	

(1) Annual arithmetic mean

(2) Not to be exceeded more than once per year

(3) Not to be exceeded more than once during a 3-year period as provided in 40 CFR 50, Appendix R.

(4) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.075 ppm, as provided in 40 CFR 50.15.

(5) The standard is attained when the 98th percentile concentration is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(6) The standard is attained when the annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(7) The standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 ug/m^3, as determined in accordance with 40 CFR 50, Appendix K is equal to or less than one.

APPENDIX F. SECONDARY AMBIENT AIR QUALITY STANDARDS [REVOKED]

APPENDIX F. SECONDARY AMBIENT AIR QUALITY STANDARDS [NEW]

	Sulfur Dioxide	(6)PM-10	PM 2.5	(6)Carbon Monoxide	Ozone	Nitrogen Dioxide	Lead
1-hr. max							
3-hr. max	1300 ug/m^3 (2)0.5 ppm						
8-hr. max					(4)0.075 ppm		
24-hr. max							
Rolling 3-month average							(3) 0.15 ug/m^3
Annual			(5) 15 ug/m^3			100 ug/m^3 (1) 0.053 ppm	

(1) Annual arithmetic mean

(2) Not to be exceeded more than once per year

(3) Not to be exceeded more than once during a 3-year period as provided in 40 CFR 50, Appendix R.

(4) The standard is attained when the computed 3-year average of the annual 4th-highest daily maximum 8-hour average does not exceed 0.075 ppm, as provided in 40 CFR 50.15.

(5) The standard is attained when the annual arithmetic mean is equal to or less than the numerical standard as determined by 40 CFR 50, Appendix N.

(6) PM-10 and carbon monoxide have no secondary standard.

[OAR Docket #10-671; filed ??-??-??]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 205. HAZARDOUS WASTE MANAGEMENT

[OAR Docket #10-672]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]
AUTHORITY:
Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101, 2-2-201, 2-2-104, 2-7-105 and 2-7-106
DATES:
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N/A
INCORPORATION BY REFERENCE:
Incorporated standards:
Reference to Title 40 of the Code of Federal Regulations changed to "as amended through July 1, 2009."
Incorporating rules:
252:205-3-1
Availability:
From the contact person listed below
ANALYSIS:
The purpose of the proposed amendment is to incorporate by reference the federal hazardous waste regulations found in 40 CFR Parts 124 and 260-279 revised as of July 1, 2009, except for the revisions to 40 CFR published at 73 FR 64668 - 64788 (October 30, 2008), "Revisions to the Definition of Solid Waste: Final Rule."
CONTACT PERSON:
Jon Roberts (405) 702-5153, 707 North Robinson, Fifth Floor, Oklahoma City, Oklahoma 73102. Mailing address is P. O. Box 1677, Oklahoma City, OK 73101-1677. E-mail address is jon.roberts@deq.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 JULY 1, 2010:

SUBCHAPTER 3. INCORPORATION BY REFERENCE

252:205-3-1. Reference to 40 CFR

(a) ~~When~~ **Incorporation date.** Except as provided in subsection (b), when reference is made to Title 40 of the Code of Federal Regulations (40 CFR), it shall mean (unless otherwise specified) the Hazardous Waste Regulations, Monday, May 19, 1980, as amended through July 1, ~~2008~~ 2009.

(b) **Excluded provisions.** None of the revisions to 40 CFR published at 73 FR 64668 - 64788 (October 30, 2008), "Revisions to the Definition of Solid Waste: Final Rule" are incorporated herein.

[OAR Docket #10-672; filed ??-??-??]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 611. GENERAL WATER QUALITY

[OAR Docket #10-673]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
252:611-1-3. Adoption and 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.*
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N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
40 CFR, Part 130, July 1, 2009, unless otherwise specified
Incorporating rules:
OAC 252:611-1-3
Availability:
The federal rules incorporated above will be 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 B Friday (excluding holidays) from the hours of 8:00 a.m. B 4:30 p.m., by September 1st..
ANALYSIS:
The Department proposes to update its rules concerning entities required to receive a water quality certification from the Oklahoma Department of Environmental Quality, pursuant to Section 401 of the Clean Water Act, when

the entity is required to obtain a federal permit. The change will modify the date of the incorporation by reference of certain federal regulations. The change updates the publication date of the federal rules from July 1, 2008, to July 1, 2009.

CONTACT PERSON:

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, 2010:

252:611-1-3. Adoption and incorporation by reference

40 CFR Part 130 is adopted and incorporated by reference, as published on ~~July 1, 2008~~ July 1, 2009, and the requirements contained therein are, unless otherwise specified, adopted and incorporated by reference in their entirety.

[OAR Docket #10-673; filed ??-??-??]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 623. PRETREATMENT FOR CENTRAL TREATMENT TRUSTS

[OAR Docket #10-674]

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:

September 1, 2009, through October 5, 2009

Public hearing:

October 13, 2009, and November 19, 2009

Adoption:

November 19, 2009

Submitted to Governor:

November 30, 2009

Submitted to House:

November 30, 2009

Submitted to Senate:

November 30, 2009

Gubernatorial approval:

December 29, 2009

Legislative approval:

Failure of the Legislature to disapprove the rules resulted in approval on March 24, 2010

Final adoption:

March 24, 2010

Effective:

July 1, 2010

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:

The following sections of 40 CFR, as published on July 1, 2009:

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., by September 1st.

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, 2008 to July 1, 2009.

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, 2010:

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, 2008~~ July 1, 2009 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 #10-674; filed ??-??-??]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 631. PUBLIC WATER SUPPLY OPERATION

[OAR Docket #10-675]

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:

September 1, 2009, through October 5, 2009

Public hearing:

October 13, 2009, and November 19, 2009

Adoption:

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November 30, 2009

Submitted to House:

November 30, 2009

Submitted to Senate:

November 30, 2009

Gubernatorial approval:

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Legislative approval:

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July 1, 2010

SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

Incorporated standards:

40 CFR, Parts 141 and 143, as published on July 1, 2009, except the following:

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.

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., by September 1st.

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, 2008, to July 1, 2009.

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, 2010:

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, 2008~~July 1, 2009, 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;
(4) 40 CFR §§ 141.700 - 141.723.

[OAR Docket #10-675; filed ??-??-??]

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

[OAR Docket #10-639]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 5. Fair Hearings
Part 9. Adoption and Foster Care
340:2-5-91 [AMENDED
(Reference APA WF 09-30)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Title 10A of the Oklahoma Statutes.

DATES:

Comment period:

January 15, 2010 through February 16, 2010

Public hearing:

None requested

Adoption:

February 23, 2010

Submitted to Governor:

February 23, 2010

Submitted to House:

February 23, 2010

Submitted to Senate:

February 23, 2010

Gubernatorial approval:

March 26, 2010

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 20, 2010.

Final adoption:

April 20, 2010

Effective:

June 1, 2010

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

ANALYSIS:

Revisions to Subchapter 5 of Chapter 2 amend the rules for consistency with revisions to Subchapter 1 of Chapter 75 regarding to whom a fair hearing may be granted.

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 1, 2010:

SUBCHAPTER 5. FAIR HEARINGS

PART 9. ADOPTION AND FOSTER CARE

340:2-5-91. ~~Hearings~~Fair hearings conducted by the Appeals Unit

(a) **Purpose.** The primary purpose of the fair hearing is to safeguard the rights of clients and provide recourse to address infractions of individual rights and interests. Administrative fair hearing may be granted to foster parents, adoptive parents, or kinship guardians.

(~~a~~b) **Foster parents.** An administrative hearing is granted to foster parents ~~if the~~whenOklahoma Department of Human Services (~~DHS~~OKDHS) ~~has~~:

(1) ~~denied their~~denies the foster parent's claim for foster care maintenance payments;

(2) ~~paid~~pays foster care maintenance payments in an amount lower than the amount claimed;

(3) does not ~~paid~~pay the foster care maintenance payments to the foster parent in a timely manner;

(4) ~~closed~~closes the foster home ~~or has not returned a child removed from a foster home due to a child abuse or neglect investigation,~~unless the court ordered the child removed from the foster home or upheld a decision removing the child from the foster home; ~~or~~

(5) does not return a child in OKDHS custody removed from the foster home due to a child abuse or neglect investigation, and the foster parent:

(A) was not provided notice of the foster parent's right to be heard during proceedings before the court; or

(B) received the notice, attempted to have the court hear the question but was denied a right to be heard by the court regarding the decision not to return the child during a hearing, and the court never heard the question about whether the child should be returned; or

(~~5~~6) ~~notified~~notifies the foster ~~home~~parent of an overpayment ~~which~~ the foster ~~home~~parent disputes.

(~~b~~c) **Adoptive parents.** An administrative hearing is granted to adoptive parents ~~if DHS has~~when OKDHS:

(1) ~~denied their~~denies the adoptive parent's application for adoption assistance;

(2) ~~approved their~~approves the adoptive parent's application for adoption assistance in an amount less than requested;

(3) ~~modified~~modifies or ~~terminated~~terminates adoption assistance without the concurrence of the adoptive parents; ~~or~~

(4) ~~delayed~~delays or ~~denied~~denies an authorized adoptive placement with an out-of-state family; or

(5) notifies the adoptive parent of an overpayment the adoptive parent disputes.

(d) **Kinship guardians.** An administrative fair hearing may be granted to kinship guardians when OKDHS:

(1) denies a kinship guardianship assistance payment as indicated on Form 04AN011E, Request for Review of Denial;

(2) approves the kinship guardianship payment in an amount less than requested;

(3) delays or denies an authorized kinship guardian placement out-of-state with the kinship guardian; or

(4) notifies the kinship guardian of an overpayment the kinship guardian disputes.

[OAR Docket #10-639; filed ??-??-??]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #10-640]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program
340:10-2-1 through 340:10-2-4 [AMENDED]
340:10-2-8 [AMENDED]
Subchapter 3. Conditions of Eligibility - Need
Part 1. Resources
340:10-3-5 through 340:10-3-6 [AMENDED]
Part 3. Income
340:10-3-31 [AMENDED]
340:10-3-33 [AMENDED]
Part 5. Assistance Payments
340:10-3-56 [AMENDED]
340:10-3-58 [AMENDED]
Subchapter 9. Conditions of Eligibility - Relationship of Payee to Child
340:10-9-1 [AMENDED]
Subchapter 10. Conditions of Eligibility - Deprivation
340:10-10-1 [AMENDED]
340:10-10-3 [AMENDED]
Subchapter 20. Diversion Assistance
340:10-20-1 [AMENDED]
Subchapter 22. Temporary Assistance for Needy Families (TANF) Supported Permanency Program
340:10-22-1 [AMENDED]
(Reference APA WF 09-07, 09-12, 09-15, 09-26)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 230.65 of Title 56 of the Oklahoma Statutes; the American Recovery and Reinvestment Act of 2009 which established the Emergency Contingency Fund for state TANF Programs as Section 403(c) of the Social Security Act; 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:
January 15, 2010 through February 16, 2010
Public hearing:
None requested
Adoption:
February 23, 2010
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March 26, 2010

Legislative approval:
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June 1, 2010
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:
March 12, 2009
Register publication:
26 Ok Reg 767
Docket number:
09-478
Superseded rules:
Subchapter 22. Temporary Assistance for Needy Families (TANF) Supported Permanency Program
340:10-22-1 [AMENDED]
(Reference APA WF 09-07)
Gubernatorial approval:
June 23, 2009
Register publication:
26 Ok Reg 2808
Docket number:
09-1196
Superseded rules:
Subchapter 3. Conditions of Eligibility - Need
Part 5. Assistance Payments
340:10-3-56 [AMENDED]
(Reference APA WF 09-12)
Gubernatorial approval:
August 18, 2009
Register publication:
27 Ok Reg 17
Docket number:
09-1239
Superseded rules:
Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program
340:10-2-3 through 340:10-2-4 [AMENDED]
Subchapter 3. Conditions of Eligibility - Need
Part 3. Income
340:10-3-33 [AMENDED]
(Reference APA WF 09-15)
Gubernatorial approval:
October 8, 2009
Register publication:
27 Ok Reg 156
Docket number:
09-1295
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Revisions to Subchapter 2 of Chapter 10 amend the rules to: (1) clarify deprivation when both parents are ineligible aliens; (2) update information about the Work Opportunity Tax Credit; (3) clarify that payment of flex funds are allowed as long as the service was rendered after application or request for flex funds; (4) change the name of the Work Supplementation Program (WSP) to Subsidized Employment Program (SEP); (5) change SEP participation requirements for participants and employers; (6) update language to current terminology; and (7) add clarifying language.

Revisions to Subchapter 3 of Chapter 10 amend the rules to: (1) clarify definition of exempt vehicles; (2) increase the allowable exclusion of a combination of irrevocable burial contracts, revocable prepaid burial contract, and the cash value of life insurance; (3) explain that applicants are eligible to receive the same standard deduction for work related expenses as recipients; (4) clarify how income is determined; (5) remove reference to voucher benefits for a child born ten months from the date of application; (6) change the name of the WSP to SEP; (7) update language to current terminology; and (8) add clarifying language.

Revisions to Subchapter 9 of Chapter 10 clarify verification of relationship.

Revisions to Subchapter 10 of Chapter 10: (1) clarify which deprivation factors apply to one or two parent households; (2) clarify when both parents are ineligible aliens, the family does not qualify as a two parent family; and (3) specify what happens when the primary wage earner is not able to participate in TANF Work activities after certification.

Revisions to Subchapter 20 of Chapter 10 clarify that a stepparent may be included in the diversion assistance benefit.

Revisions to Subchapter 22 of Chapter 10 amend rules to broaden eligibility for the Supported Permanency Program to reduce delay in achieving permanency for children.
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 1, 2010:

SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

340:10-2-1. Work requirements

All parents or needy caretakers who apply for or receive cash assistance from Oklahoma are required to be engaged in a work activity. The parent(s) or needy caretaker must participate in work activities for the number of hours weekly that are necessary to move that person into employment and self-sufficiency.

(1) **Work-eligible person.** A work-eligible person is defined as an adult or minor head-of-household included in the Temporary Assistance for Needy Families (TANF) assistance unit. Excluded from this definition is a parent providing care for a disabled family member living in the home who does not attend school on a full-time basis, provided the need for such care is supported by medical documentation.

(2) **Minimum hours of work activities.**

(A) All TANF applicants and recipients who meet the definition of a work-eligible person are required to participate the minimum hours of work activities.

(i) A work-eligible person must participate an average of 30 hours per week, with the exception of a single custodial parent with a child under age six who must participate an average of 20 hours per week.

(ii) In a two-parent family, when deprivation is based on incapacity, the non-incapacitated adult must participate in work activities an average 30 hours per week, unless:

(I) required in the home to provide care for the incapacitated work-eligible parent; or

(II) he or she is a custodial parent with a child under age six. In this instance the non-incapacitated adult must participate an average of 20 hours per week.

(iii) In a two-parent family, when deprivation is based on unemployment, one adult must participate in work activities an average of 35 hours per week and the other adult must participate an average of 30 hours per week. If one parent is an ineligible alien, the other parent must participate an average of 35 hours per week. If both parents are ineligible aliens, the family does not qualify as a two-parent family as the work requirement cannot be met.

(iv) To determine the average weekly countable work hours for a work-eligible person who is self-employed, the worker:

(I) determines the person's monthly countable earned self-employment income per OAC 340:10-3-32;

(II) divides that figure by the federal minimum wage; and

(III) divides that figure by 4.3 which equals weekly countable work hours.

(B) Hours missed due to holidays and a maximum of an additional 80 hours of excused absences count as hours of participation for any unpaid scheduled work activity.

(i) Federal law establishes public holidays. State holidays are ordered observed by the Governor. If the facility where the participant is scheduled to attend is open on a designated holiday, this day is not considered a holiday for participation purposes.

(ii) Excused absences are reasonable, short-term hours missed from a scheduled work activity. There are a maximum of 80 hours of excused absences in any 12-month period. No more than 16 hours of excused absences in a month are counted as hours of TANF Work participation. All excused absences must be approved by the worker. An excused absence is defined as:

(I) unavailability of appropriate child care;

(II) illness or injury of the participant or a family member who lives in the household. The family member must meet the definition of a relative per OAC 340:10-9-1;

(III) scheduled doctor appointments for the participant or a family member who lives in the household;

(IV) court-required appearance by the participant;

(V) required attendance at parent and teacher conferences by the participant;

(VI) temporary unavailability of planned transportation when needed or inability to arrange for transportation;

(VII) occurrence of inclement weather that prevented the participant, and other persons similarly situated, from traveling to, or participating in, the prescribed activity;

(VIII) crisis intervention needed due to domestic violence issues;

(IX) family crisis; or

(X) required attendance of the participant for a specific appointment by another governmental entity.

(iii) To count an excused absence or holiday as hours of participation, the person must have been scheduled to participate in an allowable work activity for the period of the absence. Participation allowances are paid for approved holidays and approved excused absences.

(3) **Work activities.** Work activities are defined as core and non-core and must be scheduled, structured, and supervised. TANF Work participants are placed in core work activities when appropriate.

(A) Core work activities are:

(i) unsubsidized employment that is full-time or part-time employment in the public or private sector that is not subsidized by TANF or any other public program;

(ii) subsidized private sector employment that is employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient;

(iii) subsidized public sector employment that is employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient;

(iv) Work Experience Program (WEP) that is a work activity that provides a person with an opportunity to acquire general skills, training, knowledge, and work habits necessary to obtain employment;

(v) on-the-job training that is training in the public or private sector that a paid employee receives while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job;

(vi) job search that is the act of seeking or obtaining employment and job readiness that prepares the person to seek or obtain employment, and includes life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable; and

(vii) vocational training, not to exceed 12 months, that are organized educational programs directly related to the preparation of persons for employment in current or emerging occupations requiring training.

(B) Non-core work activities are:

(i) job skills training directly related to employment that is training or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace;

(ii) education directly related to employment, in the case of a recipient who has not received a high school equivalency, that is education related to a specific occupation, job, or job offer; and

(iii) satisfactory school attendance at a secondary school or in a course of study leading to a General Educational Development (GED) certificate, in the case of a recipient who has not completed secondary school or received such a certificate, that is regular attendance with the requirements of the secondary school, or in a course of study leading to a GED certificate.

(4) **Limitations and special rules.**

(A) A single custodial parent who has not attained 20 years of age and has not completed high school is determined to be in a work activity for the month if the recipient maintains satisfactory attendance at a secondary school or equivalent during the month.

(B) A single custodial parent or the non-incapacitated adult in a family where deprivation is based on incapacity who has a child under the age of four months is not required to participate in a work activity. The recipient can use this special rule for a lifetime limit not to exceed 12 months.

340:10-2-2. Sanction process

(a) **Applicability.** The sanction process provides for the determination of good cause and the use of penalties for individuals who refuse or fail to participate in assigned work activities.

(b) **Failure or refusal to participate.** It is the responsibility of the worker to make the determination that an individual has refused or failed to participate without good cause in an assigned work activity.

(1) Refusal to participate occurs when an applicant or recipient states orally or in writing that he or she will not participate or continue to participate in work activities. Refusal also occurs when an individual's action or inaction indicates the individual, without good cause for refusing, will not participate in the program.

(2) Failure to participate in the program includes failure to:

(A) assist in the assessment and development of employability plans which includes screening for substance abuse and literacy;

(B) attend orientation, scheduled meetings, or assessments;

(C) maintain a minimum of required hours in scheduled activities;

(D) accept or maintain appropriate employment;

(E) report absences from the work activity to the worker, facility coordinator, or employer; or

(F) comply with a substance abuse treatment plan.

(c) **Failure to participate without good cause.** The worker must contact the individual ~~must be contacted~~ to determine good cause. If it is determined at this contact that good cause does exist, the worker assists the individual with either updating the employability plan or helping the individual resume the activity as soon as possible. If it is determined there is not good cause for failure to participate or no contact was completed, the worker closes or denies the cash assistance.

(d) **Determination of good cause.** All good cause situations are temporary in nature. An individual may have good cause for refusing or failing to participate in Temporary Assistance for Needy Families (TANF) Work. The worker determines whether or not good cause exists.

(e) **Procedure following denial of cash assistance.** When an application for cash assistance is denied for failure to participate in the work activity without good cause, a new application must be completed.

(f) **Procedures following termination of cash assistance.**

(1) When there has been no contact with the individual 30 calendar days after the effective date of closure, the worker makes a home visit to determine the family's circumstances and offers appropriate services, unless the worker's personal safety is in question.

(2) Individuals who agree to participate within 60 calendar days of the date of the benefit termination may have their benefit recertified on reconsideration of the administrative action. The effective date of the recertification is dependent upon the successful participation of the individual in an assigned work activity and the circumstances of the case.

(g) **TANF hearing.** An individual who responds to a written notice of denial or termination of cash assistance as a result of failure or refusal to participate in work activities, and the matter cannot be resolved locally, is assisted in requesting a hearing before a hearing officer in accordance with OAC 340:2-5.

(h) **Grievances and appeals by employees of Work Experience Program (WEP), ~~Work Supplementation Program (WSP)~~Subsidized Employment Program (SEP), and On-the-Job Training (OJT) facilities.** Grievances may be filed by employees of facilities where TANF work participants are assigned to WEP, ~~WSP~~SEP, or OJT, when they believe they have been harmed by the violation of one of the assurances in paragraph (1) of this subsection.

(1) WEP, ~~WSP~~SEP, or OJT assignments must not result in the filling of any established vacancy which:

(A) results in the displacement of any currently employed worker or position, including partial displacement, such as a reduction in hours or non-overtime work, wages, or employment benefits;

(B) impairs existing contracts for services;

(C) results in the employment or assignment of a participant, or the filling of a position, when any other person is on lay-off from the same organizational unit, or when an employer has terminated any employee or otherwise reduced its work force with the effect of filling the vacancy created by hiring a participant whose wages are subsidized under this program; or

(D) infringes in any way upon promotional opportunities of any currently employed individual.

(2) If an employee or authorized representative wishes to file a grievance for any of the reasons stated in paragraph (1) of this subsection, the request is submitted in writing to the attention of the county director of the county in which the alleged violation occurred. The request:

(A) contains the date of the request, the date of the alleged violation, and a description of the alleged violation including the effect on the employee;

(B) is signed by the employee or authorized representative; and

(C) includes the mailing address and telephone number of the person signing the request.

(3) The worker contacts the individual making the request within ten calendar days from the date of receipt of the request in the local office, and attempts to resolve the grievance on an informal basis.

(A) When the grievance cannot be resolved on an informal basis within the ten calendar days, the case is referred to the county director for review and assistance in resolving the grievance.

(B) If the grievance is not resolved within ten calendar days from the date of referral to the county director, the county office notifies the employee in writing of the:

(i) point(s) still at issue in the grievance; and

(ii) right to request a fair hearing within 30 calendar days of the date of this decision.

(C) The 20-day period allowed for resolution of the grievance is part of the 90-day period allowed for disposition of the appeal if the employee appeals.

340:10-2-3. Employability planning

(a) **Scope and applicability.** The employability planning process begins at intake and continues as long as there are employment barriers or family circumstances which interfere with the participant obtaining and retaining employment. The worker and the participant initiate Form 08TW002E, TANF Work/Personal Responsibility Agreement. In the development of the employability plan, the worker takes into consideration the need for English as a second language, basic education, literacy, learning disabilities, counseling or treatment for substance abuse or mental health issues, and crisis intervention for domestic violence.

(1) Substance abuse screening is required for every new Temporary Assistance for Needy Families (TANF) participant.

(2) Literacy screening is required for individuals who have not obtained a high school diploma or General Educational Development (GED) certificate and have demonstrated a lack of literacy skills.

(b) **Interest and ability assessments.** Assessments are required to determine the participant's skills, abilities, and barriers. Assessment tools used are the Washington State Learning Disability Screen, the Test of Adult Basic Education (TABE) locator, the TABE battery, the Career Occupation Preference System (COPS), Key Train, and Career Readiness Certification.

(1) The use of these assessments provides the worker, participant, assessment specialist, and/or community partners with:

(A) an indication of possible learning disabilities;

(B) a measurement of the participant's skills, abilities, interests, and aptitude; and

(C) meaningful information to create a valid employability plan.

(2) Participants referred for testing are informed of the use that is made of the test results. Test scores are kept confidential but may be shared with community partners. Referrals for testing are made by use of Form 08TW003E, Interagency Referral and Information. Participants in formal assessments are eligible for participant allowances and child care.

(c) **Employability planning.** The worker and the participant use the information from the assessment and other relevant information to develop a plan for securing employment. The employability plan includes establishing both short and long term goals, including specific occupational goals, activities, and services which are necessary to achieve the goals.

(1) The employability plan may include staffing with other community partners for assignment to specific work activities, collaboration with other agencies for services such as job placement, training, and education, and the provision of social services. The plan must identify specific needs and activities required to reach the occupational goal and estimated dates for achievement. The plan may include more than one activity at a time based on the participant's specific needs and the hours available. The employability plan is a part of the social services plan for the entire family. It must be realistic and within the participant's ability to complete.

(2) The participant is informed that the employability plan is updated as necessary to account for situational changes. The employability plan is reviewed with the participant and updated as changes occur and at the completion of any work activity. If no changes have occurred, the worker reviews the employability plan within six months.

(3) Participants who are employed with income insufficient to close the case must have a plan designed to upgrade employment. These plans must not interfere with current employment.

(d) **Work activities.** Participants are assigned to one or more activities and scheduled the minimum number of hours as required. The participant signs Form 08TW002E, when any work activity other than the Work Experience Program or ~~Work Supplementation~~Subsidized Employment Program (SEP) is approved.

(1) Assignments must be within the scope of the participant's employability plan.

(2) The assignment must be related to the capability of the participant to perform the task on a regular basis.

(3) The daily commuting time to and from home to the assigned education, employment, or training site is

normally less than two hours. Commuting time does not include the time required to transport a child to and from a child care facility. Where longer travel time is normal in the community, the round trip commuting time may not exceed the general community standards.

(4) When child care is required, it must be of the participant's choosing. It must be available during the hours the participant is engaged in any work activity, plus any additional commuting time.

(5) Assignments which are discriminatory in terms of age, sex, race, religion, ethnic origin, or physical or mental disability are not made.

(6) The site of the assignment must not be in violation of established and applicable health and safety standards.

(7) The participant is not referred for a work activity unless supportive services necessary for participation are available. The cessation or withdrawal of such services constitutes good cause for refusal to participate.

(8) When the agreed upon employability plan requires hours in excess of the minimum requirement, the participant must participate the agreed upon number of hours.

340:10-2-4. Employment

(a) **Applicability.** Temporary Assistance for Needy Families (TANF) Work activities are designed to assist the participant in obtaining employment to achieve economic self-sufficiency. Work allows participants to enhance their self-esteem and to become more independent. Every effort is made to assist participants in securing jobs which provide financial security and opportunities for advancement. The appropriate employment criteria for subsidized and unsubsidized employment are included in paragraph (1) through (5) of this subsection.

(1) Appropriate employment may be temporary, permanent, full-time, part-time, or seasonal work, as long as the daily and weekly hours of employment do not exceed those customary to the occupation.

(2) The wage must meet or exceed the federal or state minimum wage laws or the prevailing rate for similar employment, whichever is applicable. The state law applies when federal law does not cover the job.

(3) A participant is not required to accept employment if the position offered is vacant due to a strike, lockout, or other bona fide labor dispute.

(4) A participant is not required to work for an employer if this is contrary to the conditions of membership in the union governing that occupation. Employment not governed by the rules of the union to which the participant belongs may be appropriate.

(5) A participant is not required to accept employment that results in the net loss of income.

(b) **Unsubsidized employment.** The State Work Incentive Program and any employment for which the employer does not receive reimbursement for any portion of the wages paid are examples of unsubsidized employment.

(1) **State Work Incentive Program.** The State Work Incentive Program is designed to assist in employing TANF participants into entry level positions in all branches of state government. Oklahoma Department of Human Services (OKDHS), in cooperation with other state agencies and the Office of Personnel Management, coordinates job placements for those TANF participants who are referred for the program by Form 08TW023E, State Work Incentive Referral.

(A) Employment of eligible participants can be considered for positions of unclassified status for a two year period in a full-time or part-time capacity. These positions are not included within any limitation on full-time equivalent employee positions for any agency.

(B) Participants hired under this program are eligible for leave and other benefits that are available to other state employees, subject to other eligibility requirements, and may be reassigned or promoted while they are in the program.

(C) Participants hired are exempt from probationary hiring procedures. They can be considered for conversion to the permanent classified status after two years of continuous participation in the program.

(D) Requirements for placing employees in permanent status include:

(i) completing satisfactory performance ratings which are conducted during employment; and

(ii) having possession of the minimum requirements stated in the job specifications.

(2) **Other unsubsidized employment.** Unsubsidized employment includes any employment in which a participant is hired by a private or public employer and there is no reimbursement of any portion of the wages paid to the recipient.

(c) **Subsidized employment.** The ~~Work Supplementation~~Subsidized Employment Program (~~WSP~~SEP), on-the-job training (OJT), and Supported Transitional Employment Program (STEP) are examples of subsidized employment. The employment criteria in subsection (a) apply.

(1) **~~WSP~~SEP.** ~~WSP~~SEP is a subsidized employment ~~opportunity~~program through which a TANF participant is hired in full-time employment with OKDHS reimbursing the employer for partial wages ~~paid at a maximum of $250 per month~~ for up to ~~six~~four months. Public agencies, nonprofit private agencies, and private employers are eligible to participate. ~~Payments to employers and supplemental payments to WSP participants are made from a wage pool created by diversion of the TANF participant's cash assistance.~~ State agencies expressing an interest in participating in the program are informed that the ~~$250~~subsidized employment reimbursement cannot be used to claim matching federal funds. If, for any reason in any given month, a ~~WSP~~SEP participant is paid less than the amount of his or her cash assistance at the time of entry into the program, the ~~WSP~~SEP participant ~~will receive~~receives a supplemental ~~check~~TANF benefit. ~~WSP~~SEP participants are entitled to all benefits from the employer which are available to other employees. ~~Participation is limited to one adult per assistance unit and to a six-month period during the lifetime of the participant.~~

~~The six month period may or may not be consecutive or with the same employer.~~ Participants are assigned based on their employability plan and the availability of appropriate and willing employers. ~~The employer retains the satisfactory WSP participant on a permanent basis following the contract period.~~

(A) **Participant requirements.** TANF participants must be:

(i) ~~be~~ included in ~~a~~the cash assistance unit; and

(ii) ~~be~~ available for immediate employment~~;~~

~~(iii) have participated in Job Search; and~~

~~(iv) be assigned to a job at a salary exceeding their cash assistance~~.

(B) **Position requirements.** ~~Positions~~Position requirements must include information listed in (i) through (vi):

(i) be ~~permanent, not less than 30 hours per week, and pay at least 65 cents above the federal minimum wage~~full-time with an average of 35 hours per week;

(ii) be at a salary not less than $10 per hour;

(iii) provide the same wages, benefits, and working conditions as provided to other employees who are performing a substantially equivalent job~~. Tips are~~;

(iv) not ~~considered~~considering tips as part of the wages~~. All~~;

(v) ~~contracts must~~ conform to the Equal Employment Opportunity Commission and fair employment practices, for example, nondiscrimination regarding age, race, sex, national origin, or disability~~.~~; and

(vi) ~~Contracts~~contracts are not written for positions:

(~~i~~I) when there is a strike, lockout, or the contract would cause displacement of other employees;

(~~ii~~II) that involve commission sales when ~~the federal minimum wage~~at least $10 per hour is not guaranteed; or

(~~iii~~III) that are casual, intermittent, or seasonal labor.

(C) **Recruitment of employers.** Human services center (HSC) designated staff recruits employers interested in SEP. The employer ~~can be~~is asked to ~~identify~~ notify HSC designated staff of potential positions ~~during the initial interview to facilitate contract negotiations and~~with job specifications and qualifications in order to match the employer with an appropriate TANF ~~participants with employers~~participant referral. All SEP referrals are made by HSC designated staff using Form 08TW011E, Subsidized Employment Program (SEP) Referral.

(i) The program explanation emphasizes that employers are expected to retain the ~~WSP~~SEP participant in full-time employment unless there is good cause for the dismissal. Employers who fail to continue the successful ~~WSP~~SEP participant's employment without good cause are not granted subsequent contracts. Good cause reasons for dismissal are:

(I) lay-off due to economic reasons which result in a reduction in force;

(II) the employee is frequently absent from work or engages in disruptive or inappropriate behavior; or

(III) the employee is unable to perform at an acceptable skill level.

(ii) Before new or additional contracts are written with an employer, ~~WSP~~SEP employees or other employees in lay-off status must be recalled.

(iii) ~~Human services center (~~HSC~~)~~designated staff has the responsibility for ensuring the employer is complying with the contract.

(D) **~~WSP~~SEP placements.** The ~~worker~~HSC designated staff arranges interviews between participants and potential employers. ~~WSP~~SEP participants may begin employment any time during the month. The employer is informed that reimbursement begins after the participant has completed the first ~~month after the cash assistance is diverted to the wage pool~~30 calendar days of employment.

(i) Following the employer's agreement to participate and ~~the employer's~~ selection of a TANF participant, ~~the worker~~HSC designated staff negotiates the contract, Form 08TW017E, Subsidized Employment Program (SEP) Contract, with the employer. Negotiation must include the beginning date of employment, the salary the employee will be paid, and the planned number of ~~months the subsidy will be received~~hours per week the participant will be employed.

(ii) Upon receipt of the contract, ~~the county director~~HSC designated staff reviews it for completeness and, if approved, signs and dates the contract. ~~The worker~~ HSC designated staff delivers the employer's copy of the contract ~~with a supply of~~and Form 08TW018E, ~~Work Supplementation Program Invoice, and a copy of the instructions for the form~~Subsidized Employment Program (SEP) Invoice, for requesting reimbursement.

(iii) ~~The worker~~HSC designated staff contacts the participant ~~and~~to complete and sign Form 08TW006E, ~~Work Supplementation~~Subsidized Employment Program (SEP) Temporary Assistance for Needy Families (TANF) Participant Agreement~~, is completed in duplicate and signed by the worker and participant~~.

(~~iii~~iv) If a contract is not approved, a letter is mailed by the HSC designated staff to the employer explaining the reason for the disapproval. ~~The~~HSC designated staff notifies the participant ~~is notified~~by either telephone or letter that the

contract was not approved ~~and that a placement will be negotiated with a new employer~~.

(E) **Program procedures.** The procedures for programs listed in (i) through (iv) of this subparagraph are used.

(i) **~~Cash~~TANF cash assistance.** Under ~~WSP~~SEP, eligibility for ~~cash assistance~~TANF cash assistance is frozen. During the period of participation, the ~~cash~~TANF assistance unit cannot be determined ineligible.

(ii) **Medical benefits.** ~~WSP~~SEP participants whose TANF cash assistance is frozen, continue to be eligible for SoonerCare (Medicaid) benefits unless found ineligible for a reason other than earned income.

(iii) **Food benefits.** ~~WSP~~SEP participants ~~may be eligible for food benefits. Eligibility for food benefits is determined based on OAC 340:50-7-29~~whose TANF cash assistance is frozen and who are receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) benefits in accordance with OAC 340:50-11-20 continue to receive SSNAP benefits without consideration of the SEP income during the period of participation as long as household composition remains the same. Once SEP participation period ends and the TANF benefit closes, the household may be eligible for transitional food benefits in accordance with OAC 340:50-11-27.

(iv) **Child care.** Child care plans must be explored with each ~~WSP~~SEP participant. During the SEP participation period while the TANF cash assistance is frozen and the child is still considered a TANF recipient, the child remains predetermined eligible for child care subsidy benefits with a zero family share co-payment in accordance with OAC 340:40-7-1.~~When purchased child care services are required~~Once the SEP participation period ends and the TANF benefit closes, the participant's earnings are considered income, and family share co-payments are computed in accordance with OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart.

(F) **~~Wage pool payments.~~** ~~Under WSP, the diversion of the cash assistance creates a wage pool from which payments are made to employers and cash assistance supplemental payments are issued to WSP participants.~~

~~(i)~~ **Payment of employers.** Employers are eligible for ~~reimbursement of the first $250 of the gross wages paid to each WSP participant. Payment to the employer is made the month following the month the cash assistance is diverted to the wage pool.~~:

(i) reimbursement of 100% of the employee's gross wages for the first 30 days of employment capped at a maximum of 40 hours per week at $12 per hour;

(I) Employers are eligible to apply for reimbursement 30 calendar days following the date of hire.

(II) Employers file for reimbursement by submitting Form 08TW018E directly to Family Support Services Division (FSSD) TANF Section~~the HSC at the first of the month~~with proof of the participant's earnings for the last six months attached.

(III) When a business changes ownership, the ~~WSP~~SEP contract transfers with the business. When change of ownership occurs mid-month, the original owner maintains the right to file a claim for reimbursement for ~~that~~the transfer month. The new owner may claim for subsidized wages for the remaining months of the original SEP agreement.

(ii) reimbursement of 50% of the employee's gross wages based on hourly wage up to the maximum of $12 per hour the following three months, provided employee remains employed a minimum of 35 hours per week and earning at least $10 per hour up to 40 hours per week; and

(iii) a bonus equal to 100% of the unsubsidized portion of wages up to 40 hours per week for the four month subsidized period provided the SEP employee remains employed a minimum of 35 hours per week, earning a minimum $10 per hour, and the employer retains the employee for a minimum period of six months after the subsidized agreement ends.

(~~ii~~G) **Supplemental payments to ~~WSP~~SEP participants.** ~~The Family Support Services Division (~~FSSD~~)~~automatically issues supplemental payments for months in which income shown on Form 08TW018E is less than the amount of the ~~WSP~~SEP participant's cash assistance prior to entering the program.

(H) **SEP contract period completions.** At the end of the fourth month of subsidized employment, TANF eligibility is reviewed for continued eligibility.

(~~G~~I) **~~Terminations~~SEP contract terminations.** ~~The closing date of the authorization is the last day of employment under the contract. When employment ends prior to the end of the contract, the authorization must be closed prior to the next deadline for cash assistance changes~~At any time the SEP placement is terminated during the four months of subsidized employment, TANF eligibility is reviewed for continued eligibility.

(2) **OJT.** OJT is subsidized employment in which a participant is hired by a private or public employer and, while engaged in productive work, receives training that provides knowledge or skills essential to the full performance of that job. During the OJT period, the employer receives reimbursement for a portion of the wages paid to the employee.

(A) Participants who have successfully completed the Work Experience Program, have a recent history of employment, or who have been through a job readiness activity are the primary candidates for OJT referral.

(B) Income from OJT is considered as any other earned income. Transitional child care and medical benefits are explained to the participant at the time of entry into OJT.

(3) **STEP.** STEP is a subsidized employment program which provides comprehensive support services that lead to permanent employment placements for TANF participants. These services are contracted with specified vendors who provide temporary paid work experience to program participants in a supportive work environment. When the participant is accepted into the program, his or her TANF benefit remains active with no cash benefit issued. If eligible, the participant continues to receive other program benefits.

(d) **Work Opportunity Tax Credit (WOTC).** The WOTC law permits for-profit employers to take a credit on their federal income tax when workers from certain target groups are hired. Workers in these target groups have faced significant barriers to employment. The WOTC is equal to ~~40%~~between 25% to 40% of the first year wages, up to ~~$6,000~~$9000, depending on the number of hours the employee works and the applicable target group for that person. ~~To claim the credit, the employee must be retained at least 180 days or work at least 400 hours.~~The main objective of this program is to enable the targeted employees to gradually move from economic dependency into self-sufficiency as they earn a steady income and become contributing taxpayers, while the participating employers are compensated by being able to reduce their federal income tax liability.

(1) WOTC is available to employers for workers hired from targeted groups. The targeted groups are:

(A) ~~cash assistance~~TANF recipients who have received assistance for nine months out of the last 18 months;

(B) qualified veterans. Qualifed veterans are persons who have received food benefits for at least three consecutive months within the last 15 months preceding the date of hire;

(C) qualified ex-felons. Qualified ex-felons are persons who were convicted of a felony and within the last year were either convicted or released from prison;

(D) designated community residents. Designated community residents are persons who have attained age 18 but not yet 40 years of age on the hiring date and his or her principal place of residence is within an Empowerment Zone, Enterprise Community, or a Rural Renewal County and for persons who begin work for an employer after May 25, 2007. This High-Risk Youth group has been renamed "Designated Community Resident" and expanded to include residents of Rural Renewal Counties;

(E) vocational rehabilitation recipients. Vocational rehabilitation recipients are persons with a disability who have received or are receiving vocational rehabilitation from a rehabilitation agency approved by the State or Department of Veterans Affairs;

(F) qualified summer youth employees. Qualified summer youth employees are persons at least 16 but not 18 on the hiring date and who has a principal residence in an Empowerment Zone, Enterprise Community, or Rural Renewal County hired between May 1 and September 15;

(G) qualified food benefit recipients. Qualified food benefit recipients are persons who are at least 18 but under age 40 who are:

(i) members of a household that received food benefits for the last six consecutive months prior to their hiring date; or

(ii) able-bodied adults without dependents no longer eligible for benefits who reside with a household currently receiving food benefits or a household that received food benefits for at least three months out of the last five consecutive months prior to the hiring date;

(H) qualified recipients of Supplemental Security Income (SSI). Qualified recipients of SSI are persons who have received SSI for any month during the 60 calendar days before the date of hire; ~~and~~

(I) long-term ~~family assistance~~TANF recipients. Long-term TANF recipients are persons certified by a designated local agency as being members of families:

(i) who have received TANF payments for at least 18 consecutive months ending on the hiring date;

(ii) who have received TANF payments for a total of at least 18 months, whether consecutive or not, after August 5, 1997 if the persons are hired within two years after the date the 18 month total is reached;

(J) Hurricane Katrina employees. Hurricane Katrina employees do not require certification;

(K) unemployed veterans. Unemployed veterans are persons hired after 2008 and before 2011 who:

(i) have been discharged or released from active duty in the United States Armed Forces at any time during the five year period ending on the hiring date; and

(ii) received unemployment compensation under state or federal law for at least four weeks during the one year period ending on the hiring date; and

(L) disconnected youth. Disconnected youth are persons who are certified as:

(i) having attained age 16 but not 25 on the hiring date;

(ii) not regularly attending any secondary, technical, or post-secondary school during the six month period preceding the hiring date;

(iii) not regularly employed during the six month period preceding the hiring date; and

(iv) not readily employable by reason of lacking a sufficient number of basic skills.

(2) Through an agreement with the Oklahoma Employment Security Commission, OKDHS issues WOTC conditional certification forms for recipients of OKDHS benefits.

(3) ~~The~~U.S. Department of Labor Form ETA-9062, Conditional ~~Certificate~~Certification Work Opportunity and Welfare-to-Work Tax Credits, ~~Form ETA 9062,~~ and a letter from the worker stating the number of months the participant has received OKDHS benefits must be given to the participant to present to the employer on or before the first day of employment. An explanation is given to the participant about the purpose of the form and that the tax credit may help the participant get a job.

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 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~~not to be used for reimbursement of expenses already paid by the participant or others.

(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.** Work activity payments are issued to persons participating in or ready to participate in assigned work 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, clothing, or personal items. The maximum amount approved cannot exceed $40 per month.

(2) **Participant allowances.** Daily cash allowances, up to a maximum of $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) $8 each day when the work activity equals four hours or less; or

(ii) $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.

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 1. RESOURCES

340:10-3-5. Personal property

(a) This subsection describes personal property and how it is considered in determining eligibility for Temporary Assistance for Needy Families (TANF).

(1) **Household goods and equipment.** Items essential to day-to-day living such as clothing, furniture, and other similarly essential items of limited value are excluded as resources.

(2) **Livestock and equipment used in a business enterprise.** A person's equity in livestock, equipment, or inventory of merchandise in a business enterprise is considered as a resource only if the person is not actively engaged in the business enterprise. Equity is not counted if the person actively participates in the business or is only temporarily inactive, for example, incapacitated and can reasonably expect and has plans to resume the business enterprise. Equity is established on the basis of oral or written information which the person has at hand and counsel with persons who have specialized knowledge about the particular resources.

(3) **Livestock and home produce used for home consumption.** Any livestock or produce grown and used by the assistance unit for home consumption is exempt.

(4) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as a resource. The person's statement that he or she has no money on hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the person does not have records to verify the amount on deposit, verification is obtained from bank records. Section 167.1 of Title 56 of the Oklahoma Statutes provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the person or the Oklahoma Department of Human Services (OKDHS).

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the person to establish what, if any, portion of the account represents savings. Any income deposited during the current month is not considered.

(B) Accounts owned jointly are considered available to the person unless it can be established what part of the account actually belongs to each of the owners, the money is separated, and the joint account is dissolved.

(5) **Insurance policies and prepaid funeral benefits.**

(A) **Life insurance policies.** The cash surrender value (CSV) less any loans or unpaid interest of life insurance policies owned by members included in the TANF cash assistance is counted as a resource. Dividends which accrue and remain with the insurance company increase the amount of the resource. Dividends paid to a person are considered as income. Assignment of the face value of a life insurance policy to fund a prepaid burial contract is not counted as a resource. In this instance, the amount of the face value of the life insurance is evaluated according to (C) or, if applicable, (D) of this paragraph.

(B) **Burial spaces.** The value of a burial space for each family member whose needs are in the cash assistance or whose income and resources are considered when computing the cash assistance is excluded from resources.

(C) **Burial funds.** Revocable burial funds not in excess of $1500 for each person included in the assistance unit are excluded as a resource if the funds are specifically set aside for the burial arrangements of the person. Any amount in excess of $1500 for each person included in the assistance unit is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered prepaid burial policies.

(i) Burial funds means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the person's burial expenses.

(ii) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing burial funds as described in (i) of this subparagraph.

(iii) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the person and by the amounts in an irrevocable trust or other irrevocable arrangement.

(iv) Interest earned or appreciation on the value of any excluded burial funds is excluded if left to accumulate and become a part of the burial fund.

(v) If the person did not purchase the prepaid burial, even if the person's money was used for the purchase, the person is not the owner and the prepaid burial funds cannot be considered a resource to the person.

(D) **Irrevocable burial contract.** Oklahoma law provides that a purchaser of a prepaid funeral contract may elect to make the contract irrevocable. Irrevocability becomes effective 30 calendar days after the contract is signed.

(i) If the irrevocable election was made prior to July 1, 1986, and the person received assistance on July 1, 1986, the full amount of the irrevocable contract is excluded as a countable resource. This exclusion applies only if the person does not add to the amount of the contract. Interest accrued on the contract is not considered as added. Any break in assistance requires that the contract be evaluated at the time of reapplication.

(ii) If the effective date for the irrevocable election or application for assistance is July 1, 1986, or later, the amount in any combination of an irrevocable contract, revocable prepaid burial contract or trust, and the cash value of unassigned life insurance policies cannot exceed ~~$7500~~ $10,000. When the principal amount exceeds ~~$7500~~$10,000, the person is ineligible for assistance. Accrued interest is not counted as a part of the ~~$7500~~$10,000 limit, regardless of when it is accrued.

(iii) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser or the purchaser's guardian or a person with power of attorney for the purchaser.

(E) **Medical insurance.** When a person has medical insurance whether directly purchased or available in conjunction with employment, the available benefits are applied toward the medical expense for which the benefits are paid. If an assignment of the insurance is not made to the vendor and payment is made directly to the person, the payment must be applied to the cost of medical services. Any amount remaining after payment for medical services is considered a resource.

(6) **Stocks, bonds, mortgages, and notes.** The person's equity in stocks and bonds, including United States Savings Bonds, Series A through EE, is considered a resource.

(A) The current market value less encumbrances is the equity.

(B) Except for a bond which has been held beyond the maturity date, the current value is the redemption value listed in the table on the back of the bond for the anniversary date most recently reached.

(C) If the bond has been held beyond maturity date, it has continued to draw interest.

(D) The amount which can be realized from notes, mortgages, and similar instruments, if offered for immediate sale, constitutes a resource.

(7) **Non-negotiable resources.** Installment payments received on a note, mortgage, and similar instruments, for which a buyer cannot be found, are considered as monthly income.

(8) **~~Automobiles~~Vehicles, pickups, and trucks.** ~~The~~For each automobile, pickup, truck, motorcycle, or other vehicle, the market value of each year's make and model is established on the basis of the average trade-in value. In the event the person and worker cannot agree on the value of the vehicle, the person secures written appraisals by two persons familiar with current values. If there is substantial unexplained divergence between these appraisals or between the blue book value and one or more of these appraisals, the worker and the person jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and acceptable to both the person and worker.

(A) **Exempt ~~automobiles~~vehicles.** One automobile, pickup, truck, motorcycle, or other vehicle used for the primary source of transportation for each assistance unit not to exceed an equity of $5,000 is exempted. The amount of the equity in excess of $5,000 is considered against the resource limit.

(B) **Other vehicles.** The equity in other automobiles, pickups, and trucks as well as other personal property including boats, travel trailers, motorcycles, motor homes, campers, and similar items is considered a resource. The current market value less encumbrances on the vehicle is the equity. Only encumbrances that can be verified are considered in computing equity.

(9) **Lump sum payments.** A lump sum settlement which compensates for the loss of a resource such as an automobile may be disregarded in the amount used to replace the loss.

(A) The person is given a reasonable amount of time to replace the loss not to exceed 30 calendar days. Extension beyond 30 calendar days may be justified in special instances when completion of the transaction is beyond the person's control.

(B) Any amount remaining after the replacement of the loss is considered as income.

(C) Income tax refunds, except for the portion that represents an earned income tax credit (EITC), must be treated as a resource and considered available to the person upon receipt.

(D) Retirement benefits received as a lump sum payment at termination of employment are considered a resource. These benefits are not treated as

income because the retirement contribution was regarded as income in the month earned and withheld by the employer.

(10) **Individual Development Accounts (IDAs).** IDAs are dedicated savings accounts that are used for a qualified purpose such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the IDA administrative entity.

(A) IDAs are managed by community organizations and accounts are held at local financial institutions.

(B) Cash deposits and interest accrued from the deposits made by a person in an IDA up to $2,000 are not considered as income or resources in determining TANF eligibility.

(C) The account deposits must be made from earned income, EITCs, or tax refunds.

(11) **Saving For Education, Entrepreneurship, and Downpayment (SEED) Initiative accounts.** SEED accounts are dedicated savings accounts for persons age 13 through 18 that are used for a qualified purpose such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the administrative entity. SEED accounts are managed by community organizations and accounts are held at local financial institutions. Cash deposits and interest accrued from the deposits made by a person in a SEED account up to $2,000 are not considered as income or resources in determining TANF eligibility.

(b) This subsection describes resources disregarded in determining need. Disregarded resources are:

(1) food benefit allotments under the Food and Nutrition Act of 2008;

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

(3) education grants, including work study, scholarships, and similar grants, if receipt is 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. The borrower's acknowledgment of obligation to repay, with or without interest, is considered to indicate that the loan is bona fide. If the loan agreement is not written, Form 08AD103E, Loan Verification, is completed by the borrower attesting the loan is bona fide and signed by the lender verifying the date and amount of loan;

(5) Indian payments, including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded. Any income from mineral leases or tribal business investments is disregarded as long as the payments are paid per capita. 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 allowances for school expenses made available upon petition, in writing, from funds held in trust for the student;

(7) trusts of a child(ren)included in a TANF benefit if it is determined by the worker the funds are to be used for educational purposes for the child(ren). Any court established trust must be examined to determine if the court has restricted the trust for other purposes. The worker must verify at application and redetermination if funds have been withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it can be documented the funds were used for the child(ren)'s educational purposes;

(8) any accounts, stocks, bonds, or other resources held under the control of a third party if the funds are designated for educational purposes for a child(ren) eligible for TANF, even if the child(ren)'s name is on the account and the third party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V are disregarded. Both Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000;

(10) unearned income received by a child(ren) eligible for TANF, such as needs based payments, cash assistance, compensation in lieu of wages, or allowances from programs funded by the Workforce Investment Act (WIA), including Job Corps income. This includes WIA earned income received as wages when the child(ren) is a full-time student;

(11) 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 Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and any other programs pursuant to the National and Community Service Trust Act of 1993 (NCSTA);

(12) payments to volunteers under the NCSTA, unless the gross amount of AmeriCorps*VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

(13) 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;

(14) 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;

(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) advance payments of EITC or refunds of EITC, as a result of filing a federal income tax return, in the month received and the following month;
(17) refunds of the state EITC, as a result of filing a state income tax return, in the month received and the following month;
(18) payments 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.);
(19) 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;
(20) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.), and comparable disaster assistance provided by state, local governments, and disaster assistance organizations;
(21) interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or restricted lands are considered as income;
(22) a migratory farm worker's out-of-state homestead if the farm worker's intent is to return to the homestead after the temporary absence;
(23) a non-recurring lump sum Supplemental Security Income (SSI) retroactive payment, made to a TANF recipient, in the month paid and the next following month. The amount remaining in the second month after the month of receipt is a countable resource;
(24) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;
(25) payments made to persons because of their status as victims of Nazi persecution;
(26) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the U.S.C.;
(27) reimbursements made to a foster care parent(s);
(28) payments as described in Section 1823(c) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans; and
(29) funds in education accounts established under Section 529 and 530 of the Internal Revenue Code or exempted by Section 4000 of Title 56 of the Oklahoma State Statues.

340:10-3-6. Trust accounts

Monies held in trust for an individual applying for or receiving Temporary Assistance for Needy Families (TANF) must have the availability of the funds determined. Funds held in trust are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. In this circumstance, a decision regarding availability is made by the ~~social services specialist~~worker. Funds may also be held in trust and under the control of someone other than the TANF parent or caretaker relative, such as the courts, agencies, other individuals, or the Bureau of Indian Affairs (BIA). The availability of these funds is determined by using the procedures described in (1) and (2) of this Section.

(1) **Funds held in trust by courts, agencies, or other individuals.** Certain information must be obtained at the time of application or at the time it is learned a trust is in existence. This information must include a copy of the trust instrument, when applicable, a copy of all relevant court documents including Journal Entry, Order, Settlement Agreement, and documentation as to date, amount, and purpose reflecting any prior disbursements.

(A) **Release of trust by written petition or written request.** The availability of the trust can only be determined after a written petition to the court for the release of the total funds has been made or a written request is made to the trustee if the trust is not a court supervised account. The individual is instructed in writing to petition the court in writing or submit a written request to the trustee for release of the total amount of the funds in the trust account.

(i) The written notice to the TANF caretaker relative informs him or her the petition or request must be filed with the court or submitted to the trustee within 30 calendar days from the date of the notice and that failure to do so results in case denial or closure due to the county not being able to determine eligibility. A copy of the petition or request must be submitted by the caretaker relative to the ~~social services specialist~~worker. Upon receipt of a copy of the petition or request, the trust account at issue is considered unavailable. The caretaker relative is instructed to provide the ~~social services specialist~~worker with a copy of the court or trustee's response.

(ii) When the TANF caretaker relative complies timely with the petition or request but cannot get a response from the court or trustee, the ~~social services specialist~~worker offers assistance, such as writing a letter, with his or her written permission, to the court or trustee.

(iii) When the trustee's response to the petition or request is explicit as to the availability of funds, the ~~social services specialist~~worker takes appropriate action. Otherwise, the information is submitted under cover memo to Family Support Services Division (FSSD) TANF Section. If necessary, a decision is obtained from the Legal Division about the availability of the funds held in trust.

(iv) A decision regarding trust availability is rendered in one of two ways.

(I) **Trust is not available.** The trust monies are considered unavailable to the child(ren) and further review is not needed unless the trust instrument is amended.

(II) **Trust is available.** The trust monies are considered available as a resource in determining eligibility.

(B) **Periodic review.** If the funds are determined to be unavailable to the individual, they are excluded as a resource at that time. However, at the next redetermination or reapplication the ~~county~~worker obtains information from the court or trustee regarding any modification to the trust instrument and any disbursements. Any disbursements are considered as income the month received. If modification or disbursements have not occurred, the funds continue to be considered as unavailable.

(2) **Funds held in trust by BIA.** Interests of individual Indians in trust or restricted lands are not considered a resource in determining eligibility for assistance under the Social Security Act or any other federal or federally assisted program.

PART 3. INCOME

340:10-3-31. Earned income

(a) 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.

(b) ~~Income~~Earned income received as a one-time nonrecurring payment is considered as a lump sum payment.

(c) 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, for example, barter, is considered as an in-kind benefit. Such benefits received in-kind are considered as earned income only when the employee and employer relationship has been established.

(1) The cash value of the in-kind benefits must be verified by the employer.

(2) 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.

(3) Medical insurance secured through the employer, whether purchased or as a benefit, is not considered in-kind income.

(~~1~~d) Gross earned income is used to determine eligibility for assistance. Gross earned income is defined as the "true wage" prior to payroll deductions and withholdings. 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.

(~~2~~e) Countable earned income excludes income from:

(~~A~~1) capital investments with respect to which the individual is not actively engaged. Dividends and interest on rental properties in the hands of a rental agent with the check forwarded to the recipient is excluded from "earned income;" and

(~~B~~2) benefits not in the nature of wages, salary, or profit accruing as compensation or reward for services, or as compensation for lack of employment.

(~~3~~f) ~~Income is verified~~The worker verifies income by the best available information such as pay stubs presented by the individual or an interview with the employer. The ~~social services specialist~~ worker verifies medical insurance which may be available to the employed Temporary Assistance for Needy Families (TANF) recipient and any dependents at the same time that income is verified.

(1) Pay stubs may only be used for verification if they have the individual's name or social security number indicating that the pay stubs are in fact the individual's wages. The stubs must 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.

(2) With new employment, it is necessary to verify the beginning date.

(~~4~~3) When a member of the assistance unit accepts employment and has not received any wages, verification of the amount of income to be considered and the anticipated date of receipt must be obtained from the employer.

(4) Verified income which is expected to be received during a future month is considered available to the assistance unit and is counted in determining eligibility for that month.

340:10-3-33. Individual earned income exemptions

Exemptions from each individual's earned income include a monthly standard work related expense and one-half of the remaining earned income. Exemptions are also allowed for child and adult dependent care expenses the individual is responsible for paying if expenses are not paid through other state and federal funds and the dependent care is in a licensed facility or home. Exempt income is income which by law is not considered in determining need for financial assistance in the Temporary Assistance for Needy Families (TANF) category. Income exempt for one individual is not taken into consideration in determining the need of any other individual for assistance in the State Supplemental Payment (SSP) for the aged, blind, and disabled and TANF.

(1) **Work related expenses.** The standard deduction for work related expenses such as income tax payment, Social Security taxes, and transportation to and from work, is automatically determined monthly for each full-time or part-time employed member of the assistance unit.

~~(A)~~ The standard deduction for work related expenses is:

(~~i~~A) $240 for ~~a~~an applicant or recipient employed a minimum of 30 hours per week;

(~~ii~~B) $120 for ~~a~~an applicant or recipient employed less than 30 hours per week; and

(~~iii~~C) $120 for an individual whose income is considered in determining the amount of the TANF cash assistance.

~~(B) The standard deduction for work related expenses is not applied to earnings of participants in the Work Supplementation Program (WSP).~~

(2) **One-half remainder.** For all countable income earned by each member included in the assistance unit, as well as a stepparent who is not included in the assistance unit, one-half of the remaining earned income is exempted~~. [~~per OAC 340:10-3-57(f)(1)~~].~~ The one-half remainder exemption is not applied to earnings received by participants while in ~~WSP~~ Subsidized Employment Program (SEP). An applicant is only eligible for one-half of the remainder exemption when:

(A) an individual in the TANF assistance unit was included in a TANF benefit in any of the 50 states in addition to the Virgin Islands, Puerto Rico, and Guam, during one of the four months preceding the application; or

(B) the total income of all members minus work related expenses and dependent care expenses is less than the TANF need standard found on Oklahoma Department of Human Services (OKDHS) Appendix C-1, Maximum Income, Resource, and Payment Standards, for the appropriate number of individuals.

(3) **Dependent care expenses.** Dependent care expenses are applied after all other earned income exemptions.

(A) Dependent care expenses are not deducted from earnings of participants while in ~~WSP~~SEP. Dependent care expenses may be deducted when:

(i) suitable care for a child or incapacitated adult included in the TANF assistance unit is not available from responsible individuals living in the home or through other sources;

(ii) the employed TANF assistance unit member whose income is considered in computing the amount of the benefit must purchase care;

(iii) the gross earned income equals or exceeds the work related and dependent care expenses combined;

(iv) the child or incapacitated adult receives care in a properly licensed facility or from an approved in-home provider as required by Oklahoma law; and

(v) the stepparent of the child(ren) for whom TANF is requested is living in the home and has dependents not included in the assistance unit who are also living in the home~~. [~~per OAC 340:10-3-57(f)(1)~~].~~

(B) Dependent care expenses must be verified. The actual amount paid per month is deducted up to a maximum of $200 for a dependent under the age of two or $175 for a dependent age two or older or for an incapacitated adult. In considering the dependent care expense, only actual work hours and travel time between work and the care facility is allowed. Payment for dependent care is the individual's responsibility. The individual must immediately report any changes in the plan of care.

(C) Dependent care provided by another individual in the household who is not a member of the assistance unit may be considered as an expense as long as the caregiver meets applicable state, local, or tribal law.

PART 5. ASSISTANCE PAYMENTS

340:10-3-56. Structure of the assistance unit

(a) The structure of the assistance unit is defined in this Section.

(1) Persons whose needs **must** be included in the assistance unit, unless otherwise excluded in accordance with paragraph (3) of this subsection, are:

(A) at least one Temporary Assistance for Needy Families (TANF) eligible child;

(B) the natural or adoptive parent(s); and

(C) all blood-related minor siblings living in the home with the TANF eligible child(ren), including half brothers and half sisters unless eligibility for the half brothers and half sisters does not exist. This does not apply to siblings of a minor parent when the minor parent is the adult in the assistance unit.

(2) Persons whose needs **may** be included are:

(A) the caretaker relative-payee other than the natural or adoptive parent(s) with whom the child(ren) resides, if this person meets the definition of needy and is of the specified degree of relationship. A caretaker other than stepparent may be included in the assistance unit only when the natural or adoptive parent(s) is absent from the home. A stepparent may be included in the assistance unit when the natural or adoptive parent(s) is incapacitated or absent;

(B) the caretaker relative or the natural or adoptive parent when the only dependent child(ren) residing in the home:

(i) receives Supplemental Security Income (SSI); or

(ii) has been removed from the home by a child protection action and the plan for the child(ren) is impending reunification;

(C) the caretaker relative when the only child(ren) in the home receives federal or state foster care maintenance payments;

~~(D) the natural parent(s) when the only child(ren) in the home received benefits in the form of a voucher and has been removed from the cash benefit as a result of attaining 36 months of age;~~

(~~E~~D) the adoptive parent(s) when the only dependent child(ren) receives a Title IV-E or state adoption subsidy;

(~~F~~E) a family that includes any head of household or a spouse of the head of household who has received TANF benefits for a total of 60 cumulative months nationwide, whether or not consecutive, and a hardship extension is approved. All other conditions of TANF eligibility must be met. The hardship extensions are:

(i) under-employment. The participant is regularly working 30 hours or more per week and earning at least minimum wage or its equivalent, but the net income of the assistance unit is insufficient to close the TANF cash assistance;

(ii) chronically under-employed. The participant is under-employed over an extended period of time as a result of documented barriers;

(iii) pending SSI or Social Security Administration (SSA) disability application. This extension is granted only if the Oklahoma Department of Human Services (OKDHS) determines the disability application has merit and the participant pursues all appeals through a decision by the SSA Appeals Council. If an unfavorable decision is received from the SSA Appeals Council during the time period the participant is approved for a hardship extension, Family Support Services Division (FSSD), TANF Section, is notified and the TANF benefit is closed the next effective date;

(iv) care of a disabled child(ren) or spouse. The participant is responsible for the care of a disabled child(ren) or spouse. This extension is granted only whenverification has been provided to show the participant is needed in the home to care for this disabled person and there is no alternative care available;

(v) a clinical diagnosis of mental illness. The participant must be diagnosed with and receivingtreatment for a mental disorder listed at Part 404, Subpart P, Appendix 1 of Title 20 of the Code of Federal Regulations. This illness must interfere with the participant maintaining or obtaining gainful employment. If appropriate, the participant must participate in other work activities in conjunction with receiving treatment;

(vi) a substance abuse treatment plan. The participant has a treatment plan level of care which requires intensive aftercare treatment of nine hours or more per week in conjunction with other appropriate work activities, or outpatient treatment of nine hours or more per week in conjunction with other appropriate work activities, or is in full-time inpatient treatment; or

(vii) a continuing training or educational activity. The participant, during the 60th month, is regularly attending an approved training or educational activity which will be completed in less than 12 months; or

(~~G~~F) a child of a minor in foster care if the minor's child is not included in a foster care payment.

(3) Persons whose needs **may not** be included are:

(A) a person who has received a State Supplemental Payment (SSP) for the same month;

(B) a person who has received or is included in an SSI payment for the same month;

(C) the spouse of the payee if the payee is not the natural or adoptive parent;

(D) a child(ren) who is receiving foster care;

(E) an adopted child(ren) receiving an adoption subsidy;

(F) an alien who is not legally admitted to the United States (US) for permanent residence or does not meet alienage requirements;

(G) a caretaker other than a stepparent when the natural or adoptive parent is in the home;

(H) a person whose period of ineligibility due to receipt of a lump sum payment has not expired;

(I) a stepparent when the natural or adoptive parent is in the home and not incapacitated;

(J) a person in a household that is eligible to receive benefits under a tribal TANF program;

~~(K) a child(ren) born to a recipient after ten months from the date of application.~~

~~(i) Any such child(ren) is not eligible for the parent to receive cash benefits but is eligible for the parent to receive a non-cash voucher in the incremental amount the cash benefits would have been increased had the child(ren) been eligible for cash benefits. This voucher is issued for items of necessity for newborns until the age of 36 months.~~

~~(ii) If a recipient gives birth to an additional child(ren) during the period in which the family is eligible for benefits or during a temporary penalty period of ineligibility, the increase in the amount of benefits is issued as a voucher. A child(ren) born within ten months of application is not considered an additional child(ren) for this provision.~~

~~(iii) The first child(ren) born after ten months from the date of application to a minor child(ren) of an applicant or a recipient family is not considered an additional child(ren) for this provision and is added to the cash payment. Any subsequent child(ren) born to a minor child(ren) is added for voucher benefits;~~

(~~L~~K) a fugitive felon;

(~~M~~L) a probation and/or parole violator;

(~~N~~M) a person convicted of having fraudulently misrepresented residence in order to obtain assistance in more than one state. The person is ineligible for a ten year period that begins on the date of conviction;

(~~O~~N) a family that includes any head of household or a spouse of the head of household who has received TANF benefits for a total of 60 cumulative months, whether or not consecutive, and a hardship extension is not approved; or

(~~P~~O) a minor unmarried payee who has a dependent child(ren) in the minor's care and does not reside with a parent(s), legal guardian, or other adult relative age 18 or older. For the minor payee to be eligible for TANF benefits, the minor must live with the minor's natural or adoptive parent(s) or a stepparent, legal guardian, or other adult relative age 18 or older, or live in a foster home, maternity home, or other supportive living arrangement supervised by an adult. A supportive living arrangement is where a private family setting is maintained and an adult assumes the responsibility for the care and control of the minor and the minor's dependent child(ren) or provides supportive services such as counseling and guidance. The minor payee can reside elsewhere and be eligible for TANF if good cause is established because the:

(i) minor has no living parent or legal guardian whose whereabouts are known;

(ii) parent(s), legal guardian, or other adult relative does not allow the minor to live in the home;

(iii) physical or emotional health or safety of the minor or the minor's dependent child(ren) is jeopardized if the minor or the minor's dependent child(ren) lives in the home with the parent(s), legal guardian, or other adult relative age 18 or older;

(iv) minor parent has lived apart from the minor's parent(s), legal guardian, or other adult relative age 18 or older, for at least one year before the birth of any dependent child(ren), or before the minor applied for benefits; or

(v) minor parent is legally emancipated pursuant to Chapter 4, Title 10 of the Oklahoma Statutes. A minor is legally emancipated when the district court must have granted the minor the authority to act on the minor's own behalf.

(b) In general, when a person whose needs are included in a TANF assistance unit is temporarily absent from the home for the purpose of receiving training or education for employment, or certain medical services, he or she is considered part of the family and the budgetary requirements are not changed unless needs change by reason of circumstances unrelated to the temporary absence. Persons temporarily absent from the home but included in the assistance unit are:

(1) a person receiving training or education for employment during the period of time the training or educational activities are taking place;

(2) a child(ren) attending boarding school during the school term;

(3) a child(ren) absent from the home on visitation to the absent parent up to a maximum of three months. This consideration applies only to visitation and does not apply if the absent parent has physical and legal custody of the child(ren) during these three months;

(4) a child(ren) absent in order to attend school, other than boarding school. Factors considered in making this determination include the maintenance of normal ties between home and the child(ren) during the period of absence; whether the child(ren) continues under the control and guidance of the payee during the absence; and assumption of responsibility by the relative-payee for meeting the child(ren)'s expenses during the school term. A child(ren) who attends the School for the Blind or the School for the Deaf is considered temporarily absent from the home in determining TANF eligibility;

(5) a person absent from the home because of entrance into a private facility for counseling, rehabilitation, behavioral problems, or special training. If an assessment indicates care is projected for a period exceeding four months, the absence is not considered temporary. At any time an absence is determined as not temporary or no longer temporary, the needs of the person cannot be included in the assistance unit;

(6) a person absent from the home for medical services, other than institutionalization for treatment of mental illness, mental retardation, or tuberculosis, for up to six months. Six-month extensions may be allowed when verification indicates the person may return to the home within the next six months;

(7) a person absent from the home to receive substance abuse treatment for up to four months. A four-month extension may be allowed when verification indicates the person will return to the home within the next four months; or

(8) a person absent from the home to receive nursing care approved by the Oklahoma Health Care Authority, Level of Care Evaluation Unit. If it appears that the person is disabled, an application for State Supplemental Payment is taken and a referral made to the SSA district office for an SSI application.

(c) A change in benefit is not made during a temporary absence from Oklahoma for three months or less, unless a change is necessary by reason of some change in circumstances not relating to such absence from Oklahoma.

340:10-3-58. Income determination procedures

(a) The Temporary Assistance for Needy Families (TANF) is determined based on the best estimate of the amount of income anticipated to be received.

(1) Income received in varying amounts is averaged to establish the amount to be anticipated and considered in determining eligibility. The past ~~two-month's~~30 days of income is averaged to indicate what income can be anticipated. ~~Less than two-month's income is used only when~~The available paystubs which accurately reflect the amount the individual earns on an ongoing basis are used unless:

(A) the individual has new employment ~~of less than two months. The available paystubs which accurately reflect the amount the individual earns on an ongoing basis are used. If~~and paystubs are not available~~,~~.In this instance, the employer's statement is obtained and must include hourly wage, number of hours worked, and frequency of pay;

(B) there has been a change in hourly wage. The new hourly wage is verified by a paystub(s) which includes the new hourly wage. If a paystub reflecting

the hourly wage change is not available, the employer is contacted for verification;

(C) there has been a change in number of hours worked. When paystubs are not available, the increase or decrease in hours is verified with the employer and then multiplied by the hourly wage to arrive at the pay for the period;

(D) the individual obtains a second job. The monthly earnings from each job is computed separately and then added together for the total month's gross; or

(E) paystubs are not representative of the normal circumstances. The case record is documented to show why the current pay stubs are not representative of the normal work week and, therefore, not used in the computation. In this instance, income is anticipated by using only the paystubs that are representative.

(2) Income received more often than monthly must be converted to a monthly amount as described in (A) - (D) of this paragraph. The ~~social services specialist~~worker must exercise extreme caution when determining whether income is received twice a month or biweekly, every two weeks.

(A) Income received on a daily basis is converted to a weekly amount, then multiplied by 4.3.

(B) Income received weekly is multiplied by 4.3.

(C) Income received twice a month is multiplied by 2.

(D) Income received every two weeks is multiplied by 2.15.

(b) In the process of determining the amount of income, it is important to define time frames for verification. The individual is advised in writing concerning the agreed upon verification to be provided within the time frame. If a certification is for a past month, then the actual income, if known, is used when determining the amount to be considered in the past month. Once acceptable verification is provided, no further information is required unless a change occurs. If an individual reports new employment and representative pay periods have not been completed, the best estimate is determined from the information provided by the individual and the employer.

(c) Some case closures may be based on anticipated income. If the individual reports within 30 days of the effective termination date that the anticipated income was not received or was in a lesser amount which does not cause ineligibility, the case is recertified by the administrative error process.

(d) An individual is responsible for reporting changes within 10 days of when the change took place. Action taken by the ~~social services specialist~~worker is timely if taken within 10 days of the reporting of the change. All client notices must include the timely reporting requirement.

SUBCHAPTER 9. CONDITIONS OF ELIGIBILITY - RELATIONSHIP OF PAYEE TO CHILD

340:10-9-1. Relationship of payee to child

(a) **Specified degree of relationship.** To be eligible to receive Temporary Assistance for Needy Families (TANF), in addition to other qualifications, a child must be living with a person having a specified degree of relationship in a place of residence maintained by one or more of such relatives as his or her own home. An otherwise eligible person is not denied assistance solely because the home is not a fixed address or does not have a mailing address. An individual is recognized as meeting the specified degree of relationship if the individual is related within the fifth degree of kinship. It is only when the child is living with a person of one of these degrees of relationship that there is an eligible payee for the TANF benefit.

(1) **Related by blood.** Blood lines remain intact and are not changed by decisions of legal responsibility. Blood relatives, including half blood, are:

(A) parent(s) including a natural parent even if the child is legally adopted and deprivation is based on the absence of the adoptive parent(s);

(B) siblings;

(C) grandparent(s) including those denoted by prefixes of great, great-great, and great-great-great;

(D) aunt(s) and uncle(s) including those denoted by the prefixes of great and great-great;

(E) niece(s) and nephew(s) including those denoted by prefixes of grand and great-grand; and

(F) first cousin(s) and first cousin(s) once removed.

(2) **Related by marriage.** Use kinship as denoted under (1) of this Section, whether the marriage is common-law or ceremonial. Included are step-relations. Kinship by marriage is included even after the marriage is terminated by death or divorce.

(3) **Related by adoption.** Use kinship as denoted under (1) and (2) of this subsection.

(b) **Verification of relationship.** If the individual making the application for TANF is the child's ~~own parent~~mother, no further verification is required unless the information is inconsistent with known facts or observations. If the individual making the application claims to be the natural father, no further verification is required unless information provided is inconsistent with known facts or observations. If the child's mother has alleged this person to be the natural father, relationship is not questionable. If the natural father's name is not on the birth certificate, the natural father is requested to sign a statement acknowledging paternity or provide medical evidence that substantiates the relationship. If the individual who claims to be the natural father refuses, relationship cannot be determined. If the individual making the application is someone other than the parent, the relationship to the child's parent must also be established as outlined in (a) of this Section. The individual's statement as to the relationship to the child's parent is accepted unless the information is inconsistent with known facts or observations. ~~If the individual making the application claims to be the natural father, no further verification is required unless information provided is inconsistent with known facts or observations. When questions exist, the natural father is requested to sign a statement acknowledging paternity or provide medical evidence that substantiates the~~

~~relationship. If the individual who claims to be the natural father refuses, relationship cannot be determined.~~

SUBCHAPTER 10. CONDITIONS OF ELIGIBILITY - DEPRIVATION

340:10-10-1. Deprivation of parental support or care by a natural or adoptive parent

(a) A child is eligible for Temporary Assistance for Needy Families (TANF) if, in addition to meeting other conditions of eligibility, he or she is deprived of parental support or care of at least one natural or adoptive parent(s) ~~due to:~~.

(1) When there is one parent in the home, deprivation of parental support is based on the:

(A) death of the other parent; or

(B) continued absence from the home and failure to provide maintenance, physical care, or guidance of the other parent.

(2) When both parents are in the home, deprivation of parental support is based on the:

(A) physical or mental incapacity of at least one of the parents; or

(~~3~~B) unemployment of the principal wage earner~~;~~. ~~or~~

~~(4) continued absence from the home and failure to provide maintenance, physical care, or guidance.~~

(b) For the purpose of TANF eligibility a parent is defined as the:

(1) legal father or mother;

(2) legal adoptive father or mother; or

(3) natural father of a child born out of wedlock who acknowledges paternity or, whose paternity has been determined by court action, or established by documentation, or who is alleged by the mother to be the father of the children.

340:10-10-3. Unemployed parent

(a) **Applicability.** Deprivation for the child(ren) may be established when both the natural or adoptive parents are residing with the child(ren) and the parent determined to be the principal wage earner (PWE) meets the conditions to qualify as unemployed. If one of the parents is an ineligible alien, unemployment as the reason for deprivation is not ~~precluded~~ruled out.

(b) **PWE.** The PWE is defined as the parent who earned the greater amount of gross income during the 24-month period ending with the month prior to the Temporary Assistance for Needy Families (TANF) application. This determination is made regardless of when the parent's relationship began or when the parent(s) began residing with the child(ren). The employment or receipt of unemployment insurance benefits of the parent not determined to be the PWE is not a factor in determining deprivation. The amount, dates, and sources of earnings used in determining which parent is the PWE must be documented. It is the assistance unit's responsibility to provide the documentation to the best of the assistance unit's ability. Acceptable documentation includes Oklahoma Department of Human Services (OKDHS) case records, employer(s) contact, wage stubs for the 24-month period, Income Eligibility Verification System (IEVS), Oklahoma Wage Link (OWL), Oklahoma Wage (OWG) and, if ~~self-employed~~self-employed, gross and net earnings from tax returns or business records. The assistance unit must be involved in determining which parent is the PWE.

(1) If both parents earned an identical amount of income in the 24-month period, the PWE is the parent who earned the greater amount of income in the last six months of the 24-month period.

(2) If the income in the six-month period is identical, either parent may be designated the PWE. The designation must be the one most advantageous to the assistance unit.

(3) The designation of the PWE is permanent and remains effective as long as the deprivation remains unemployment and the assistance unit remains eligible for and continues to receive TANF benefits. If the TANF case is closed and a new application is filed at a later date, the PWE must be redetermined.

(c) **Conditions the PWE must meet prior to certification.** The PWE must meet the conditions described in (1) - (3) of this subsection for deprivation to be established.

(1) **TANF Work requirements.** The PWE's activities and responsibilities must allow the PWE to be available for TANF Work activities and the PWE must comply with these requirements. If the PWE is determined to be unavailable or if the PWE does not comply with TANF Work requirements, the application is denied.

(2) **Qualifications as unemployed.** For the PWE to be considered unemployed, the PWE must not be employed, or if the PWE is employed, the countable net earnings plus any other countable income must be less than the payment standard for the family size. The PWE must meet the definition of unemployed during the application process and prior to the date of certification.

(A) **Specific period of unemployment.** To qualify as not employed, the PWE must be unemployed for 30 days prior to the receipt of TANF benefits. The assistance unit is eligible for assistance beginning the 31st day if all other eligibility requirements are met.

(B) **Refusal of employment.** The PWE cannot have refused a bona fide offer of employment or terminated employment, without good cause, within the 30 days prior to the receipt of TANF benefits. Before it is determined that the PWE has refused a bona fide offer without good cause, a determination is made that such an offer was actually made. For the offers made through public employment agencies, the determination is made by that agency. The PWE is given the opportunity to explain why the offer was not accepted. A bona fide offer is an offer of employment made directly by an employer to the PWE. An offer of employment by the employer must be substantiated in a written or oral statement to OKDHS that on a specified time and date, the PWE was offered a job of a specified nature and at a specified wage. Acceptable reasons for good cause are:

(i) wages were less than minimum wage requirement or less than customary for the community;

(ii) employment was available because of a strike, lockout, or other labor dispute;

(iii) the PWE was unqualified or physically unable to perform such work;

(iv) the work involved risk to health or safety; or

(v) lack of worker's compensation protection.

(3) **Work history requirement.** The PWE must have a verified work history. Undocumented employment cannot be used to establish quarters of work. The work history exists when the PWE meets one of the conditions in (A) through (C) of this paragraph.

(A) The PWE was employed for six or more calendar-quarters within a 13 consecutive calendar-quarter period. The 13 consecutive calendar-quarter period must end within 12 months prior to the TANF application date. Calendar-quarter means a period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31. To be considered employed, the PWE must have received gross earnings of at least $50 in a calendar-quarter or earned the minimum amount required for a covered quarter as defined by the Social Security Administration (SSA). The SSA states an individual qualifies for a quarter of coverage for any quarter that the individual earns a designated amount for that calendar year. An individual can have earnings in one quarter to qualify for a full year's coverage.

(B) The PWE is receiving or has received Unemployment Insurance Benefits (UIB) within the 12 calendar months prior to the TANF application date. If the PWE has a pending UIB application, the work history determination is delayed until the UIB determination is made.

(C) The PWE would have qualified for UIB for one week or more during the 12 calendar month period prior to the TANF application date had the PWE made application for UIB based on earned wages, both covered and uncovered. Covered employment generally includes employment in construction, plants, stores, restaurants, offices, or other places of business which employ one or more persons. Uncovered employment generally includes employment from farm labor, odd jobs, and non-profit organizations.

(i) A PWE who had sufficient earnings to meet the UIB earnings requirement is deemed eligible for UIB even though all or a portion of the PWE's earnings were from uncovered employment. To be eligible or deemed eligible for UIB, the PWE must have earned at least the qualifying wages during the base period. The base period consists of the first four of the last five completed quarters immediately preceding the quarter of the UIB application.

(ii) The earnings must be in more than one quarter. The quarter with the highest earnings is the high quarter. The total gross earnings of the remaining three quarters must equal at least one-half of the high quarter earnings. If the earnings do not meet this test, the PWE is ineligible for UIB.

(iii) If the PWE earned an amount equal to the total taxable wage base in one quarter of the base period, the PWE is deemed eligible for UIB based on that quarter alone.

(d) **UIB eligibility.** The PWE is required to apply for and accept UIB which the PWE is eligible or potentially eligible to receive. Thirty days are allowed for verification of a UIB application to be furnished. Ineligible aliens are not required to apply for UIB.

(e) **Ineligible alien status.** If the PWE is an ineligible alien, the PWE's needs are not included in the assistance unit. The PWE is not required to participate in TANF Work activities but the PWE's spouse or other parent included in the assistance unit is required to participate in TANF Work activities unless otherwise exempt. <u>If both parents are ineligible aliens, the family does not qualify as a two-parent family as the work requirement cannot be met.</u>

(f) **Striker status.** The assistance unit is not eligible for TANF for any month in which the natural or adoptive parent is participating in a strike on the last day of the month.

(g) **Changes after certification.** After initial eligibility the two-parent family must meet the conditions listed in (1) and (2) of this subsection.

(1) Both parents must participate in TANF Work related activities. Failure of either parent to participate without good cause for the required number of hours will result in closure of the case. <u>If the PWE becomes unavailable for TANF Work due to illness or injury, good cause may be granted if the condition is expected to last less than 30 calendar days. If the condition is expected to last more than 30 calendar days, incapacity must be established.</u>

(2) If the household's countable earned income plus any other income exceeds the payment standard for the family size, the case is closed. Continued medical benefits are authorized for the assistance unit if all other factors of eligibility are met.

SUBCHAPTER 20. DIVERSION ASSISTANCE

340:10-20-1. Diversion Assistance (DA)

(a) **Scope.** <u>Diversion Assistance (DA)</u> for families with a minor child(ren) provides for financial assistance in lieu of Temporary Assistance for Needy Families (TANF) when there is an immediate need to retain or obtain employment.

<u>(1)</u> DA is not used to pay fines, including traffic fines, or any cost related to a criminal offense, such as legal fees or court costs.

<u>(2)</u> DA is not to be used for reimbursement of expenses already paid by client or others.

(3) DA is limited to once in the lifetime of the applicant(s); therefore, it is vital that financial planning be initiated to determine if the provision of DA will allow the family to be self-sufficient for the next 12 months.

(4) Families approved for this benefit are not included in the count of persons reported for federal participation rates and these payments do not count against the person's 60-month lifetime limit of receipt of TANF. For this reason, an adult must be included in the DA benefit.

(b) **Need.** The criteria for the eligibility for DA are described in (1) through (4).

(1) The person is employed or has a bona fide offer of employment.

(2) There is a financial need which, if not met, can cause the loss of employment or the offer of employment for the person.

(3) The family monthly gross income cannot exceed the gross income maximum as shown on the Oklahoma Department of Human Services (OKDHS) Appendix ~~08AX001E~~C-1, Maximum Income, Resource, and Payments Standards, Schedule XVI, for the appropriate family size.

(4) Family resources cannot exceed limits as shown on OKDHS Appendix ~~08AX001E~~C-1, Schedule XVI.

(c) **Requirements.** The applicant completes Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E, Responsibilities and Signature for Benefits, to apply for DA. When the applicant signs Form 08MP003E, he or she agrees to not apply for TANF for one year from the date of application for DA. In two-parent families both parents must sign the application form. A stepparent may be included in the benefit if the couple is legally married.

(1) Refer to OAC 340:65-3-4 for Social Security number (SSN) requirement. The application is not delayed waiting for a SSN.

(2) Refer to OAC 340:10-15 and OAC 340:65-3-1(g) for requirements for citizenship and alienage.

(3) The application is processed within seven working days.

(d) **Benefits.** Benefits can equal up to three months of the payment standard as shown on OKDHS Appendix ~~08AX001E~~C-1, Schedule XVI for the appropriate family size. Benefits can be approved in more than one authorization as long as the request for additional funds is made before the end of the 90 calendar day period which begins with the initial date of application, and does not exceed three times the monthly payment standard for the family size. Payment is issued through an authorization to purchase.

SUBCHAPTER 22. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) SUPPORTED PERMANENCY PROGRAM

340:10-22-1. Temporary Assistance for Needy Families (TANF) Supported Permanency Program

(a) **Scope.** In an effort to promote permanency for a child(ren) who is in the custody of the Oklahoma Department of Human Services (OKDHS) and placed with a relative(s) residing in Oklahoma who is a paid kinship relative foster home, the Supported Permanency Program has been developed. Supported permanency is considered appropriate when the:

(1) child ~~is age 12 or older~~meets age requirements described on Schedule XVII of Appendix C-1, Maximum Income, Resource, and Payment Standards, or has a sibling ~~age 12 or older~~ who meets age requirements described on Schedule XVII of Appendix C-1, and resides in the same relative foster home;

(2) relative(s) meets the specified degree of relationship as defined in OAC 340:10-9-1;

(3) court has made a finding that reasonable efforts to reunite the child(ren) with his or her parent(s) are not required or have been made and failed, and the permanency plan of reunification has been ruled out;

(4) child(ren) currently resides with the relative(s) in Oklahoma and has resided with the relative(s) four of the last six months;

(5) relative(s) has completed all requirements to be an approved OKDHS foster care home;

(6) relative(s) is willing to assume legal responsibility; and

(7) court and, if appropriate, the child(ren), are in agreement with the plan for the relative(s) to obtain legal responsibility.

(b) **Eligibility.** Once the Supported Permanency Program is determined appropriate by the Child Welfare (CW) worker and the transfer of legal responsibility has been approved by the court, the CW worker makes a referral for Temporary Assistance for Needy Families (TANF) to the ~~Field Operations Division~~appropriate Family Support Services worker in the human services center. When the child(ren) is approved for TANF supported permanency, he or she is eligible for Sooner-Care (Medicaid) and child care benefits, if appropriate.

(1) Income of this child(ren) is considered the same as for any other TANF eligible child.

(2) Food benefit eligibility is dependent on the eligibility of the household.

(3) Benefit reduction as a result of program violation is applicable for school attendance and immunization.

(4) If the child(ren) leaves the home to reside elsewhere, the Supported Permanency Program benefit is terminated for the child(ren).

(5) If the child(ren) returns to this home, he or she may be eligible for cash assistance but not the Supported Permanency Program benefit.

[OAR Docket #10-640; filed ??-??-??]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

[OAR Docket #10-641]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Low Income Home Energy Assistance Program
340:20-1-1 [AMENDED]
340:20-1-3 [AMENDED]
340:20-1-10 through 340:20-1-12 [AMENDED]
340:20-1-17 [AMENDED]
340:20-1-19 through 340:20-1-20 [NEW]
(Reference APA WF09-27)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Sections 96.80 through 96.89 of Title 45 of the Code of Federal Regulations; and Public Law 109-58, as amended.
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SUPERSEDED EMERGENCY ACTIONS:
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n/a
ANALYSIS:
The proposed revisions to Subchapter 1 of Chapter 20 amend the rules to: (1) update language to current terminology; (2) clarify the different programs within the Low Income Home Energy Assistance Program (LIHEAP); (3) move specific information about the summer cooling and winter heating programs to their own new Sections for greater clarity; (4) remove outdated language regarding the uncertainty of running a summer cooling or Energy Crisis Assistance Program (ECAP) as funds for these programs are now budgeted each year; (5) clarify that the benefit level for the different LIHEAP programs is based on the availability of funding; (6) explain how income is calculated to determine eligibility; (7) add clarifying information about how to consider educational assistance; (8) remove work related expenses and the Medicare Buy-In as income disregards as these are deductions; (9) add income deductions to follow Supplemental Nutrition Assistance Program (SNAP) rules; (10) add language regarding how to compute self-employment income to follow SNAP rules; (11) clarify which application form is used for LIHEAP depending on whether the household currently receives certain other benefits or those who do not for the various programs under LIHEAP; (12) clarify how pre-authorized households are handled; (13) give time frames for when applications are automatically mailed to certain households; (14) remove outdated language; (15) clarify when the ECAP program is available; (16) clarify that households may receive up to the maximum benefit allowed for ECAP rather than a one time payment; (17) add information about which households are preauthorized for winter heating; and (18) add information about households who can now be pre-authorized for summer cooling.

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 1, 2010:

SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

340:20-1-1. Purpose

The purpose of this Chapter is to outline the rules governing the ~~Department'shome energy assistance program~~Oklahoma Department of Human Services (OKDHS) Low Income Home Energy Assistance Program (LIHEAP). The intent of the program is to provide assistance to eligible households to meet the costs of home energy that are excessive in relation to household income. As administered by ~~the Department~~OKDHS, those households most affected by these costs are the elderly, ~~handicapped~~disabled, homebound, young children, low-income families, migrants, and those who are isolated from service programs by geographical conditions or language barriers.

340:20-1-3. Scope

(a) The operation of the Low Income Home Energy Assistance Program (LIHEAP) is contingent upon the receipt of federal funds. Delay in federal funding can cause changes in planned time frames for the program.

(b) ~~Selected households already approved for other benefits administered by the Family Support Services Division (FSSD) are normally pre-authorized during October. All other households must complete an application.~~

~~(1) The heating assistance part of LIHEAP normally begins the first working day in December, and applications are taken for a month or less.~~

~~(2) After certification, one payment is made directly to the designated supplier of the primary source of home heating on behalf of approved households responsible for their own utilities unless a situation arises which may necessitate two or more payments. Examples of situations that may necessitate two or more payments include a delay in federal funding, release of contingency funds by the President, and similar situations.~~

~~(3) Payments are made weekly for the duration of the program.~~

~~(c) The same payment schedule in (b) of this Section is used for unsubsidized renters and roomers with utilities included in their rent and for households whose energy source is wood, coal, heating oil, or kerosene, except that payments are made directly to approved households.~~

~~(d) Primary sources of home energy include natural gas, electricity, propane, firewood, kerosene, coal, or butane.~~

~~(1) LIHEAP payments are made for utility expenses, deposits, and reconnect charges applicable to the household's primary source of home energy. If both the client and OKDHS paid reconnect charges or deposits, the utility supplier must reimburse the client for those charges.~~

~~(2) When other utilities are included with the fuel bill and the amount for the primary source of home energy cannot be identified, or when the fuel vendor only accepts payment for the combined amount, the combined amount may be paid through LIHEAP.~~

~~(e) Payments are not made for blankets, emergency repair on the home, new or additional heating equipment, or heating appliances. Propane tank rental and delivery charges are not covered, if they are identifiable.~~ LIHEAP consists of four components:

(1) heating assistance, which is the benefits paid to vendors and clients beginning in December each year as approved;

(2) Energy Crisis Assistance Program (ECAP) beginning in March each year and any time there is a medical crisis;

(3) summer cooling assistance beginning in July each year; and

(4) weatherization assistance, which is administered year round by the Oklahoma Department of Commerce with LIHEAP funds allocated to them by OKDHS. Various local Community Action Agencies provide actual weatherization services.

340:20-1-10. Program factors

(a) **Home energy.** Home energy refers to a household's source of energy used for heating or cooling in a residential dwelling.

(b) **Primary energy source.**

(1) The primary energy source during winter months is the fuel used by the household for heating.

(2) ~~If a cooling program is implemented~~The primary energy source during the summer months~~, the fuel type used for cooling~~ is the ~~primary energy source~~fuel used by the household for cooling.

~~(3) In the event funds are available to assist with cooling through the Energy Crisis Assistance Program (ECAP), the primary energy source becomes the fuel used by the household for cooling.~~

(~~4~~3) ~~If an interim period is implemented between heating and cooling programs or as part of ECAP, the client~~The household may choose the primary energy source during the Energy Crisis Assistance Program (ECAP) application period between heating and cooling programs.

(c) **Household.** The term household refers to any person or group of persons who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent. There is one authorization for heating or cooling assistance per household.

(d) **Subsidized household.** A subsidized household is a household that receives assistance through a utility allowance to cover all or part of their energy cost, and/or which receives assistance in paying their rent or house payment on a regular basis. The assistance can be from a government agency, such as a local housing authority, or a private person, usually a relative, who helps a person or family pay their utility bills, ~~or~~ the rent or house payment, or allows them to live rent free. Eligible subsidized households with out-of-pocket utility expenses receive the same heating assistance benefit as unsubsidized households.

(e) **Vulnerability.** A household is vulnerable if it is responsible, either totally or partially, for the cost of home energy. A vulnerable household includes a household whose source of home energy has been temporarily discontinued.

(1) **Apartment rental rates.** If apartment rental rates in college or university-owned apartment complexes are deliberately set lower than other apartments in the community in order to help the student, the household is considered a subsidized household.

(2) **Non-vulnerability.** Non-vulnerable households are those that do not bear any of the expense of home energy.

(A) Examples of non-vulnerable living arrangements include:

(i) congregate or domiciliary facilities, such as nursing facilities and college or university dormitory, fraternity, or sorority housing;

(ii) households whose primary energy source is totally paid by someone other than a household member; and

(iii) subsidized households whose heating costs are included in their rent.

(B) Some subsidized households may be assessed an energy surcharge during the operation of the Low Income Home Energy Assistance Program (LIHEAP). These households might be eligible for heating assistance if they can document assessment of the surcharge.

(f) **Eligible households.** All households must:

(1) be vulnerable by being totally or partially responsible for the cost of home energy;

(2) not exceed the income and resource standards as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size; and

(3) include at least one citizen or legal alien as defined in OAC 340:20-1-8 and may include an illegal alien.

(g) **Benefit amount.** The household benefit amount is based upon the household's size, income, and type of fuel. The benefit amount is not changed during the program year due to changes in household composition, income, or fuel type. It is adjusted after the end of the heating application period if the total number of households finally approved for heating assistance in relation to the total federal funding available for heating assistance payments requires an adjustment. There is no difference in the benefit levels between subsidized and unsubsidized households. The benefit level for heating, cooling, and ECAP is determined based on the availability of funding.

Workers are notified of the benefit level for each program at the start of the application period for that program.

340:20-1-11. Income and liquid resources

(a) **Income.** All gross earned and unearned income received by the household is considered in determining financial eligibility except for those income sources shown ~~at~~in (b) of this Section. Eligible households must meet the income standard less the earned income deduction as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size.

(1) Income that is received on an annual basis is prorated over 12 months to arrive at the average monthly income.

(2) If the income is not received on a regular monthly basis, refer to OAC 340:10-3-31.

(3) Total income is rounded to the nearest dollar.

(4) When a person's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is considered.

(5) Countable income is computed as outlined in (A) through (D) of this paragraph.

(A) For each employed household member, subtract the earned income deduction as shown on OKDHS Appendix C-7. If the employed household member is self-employed, business expenses are allowed as described at (a)(6) of this Section.

(B) Add the unearned income of all household members.

(C) Subtract all applicable deductions as shown in (c) of this Section.

(D) The remaining amount is the amount considered available to the household members eligible for the Low Income Home Energy Assistance Program (LIHEAP).

(6) When a household member is self-employed, the net income as shown on the tax return is used as the income for this person.

(A) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) to determine the net monthly self-employment income.

(i) The gross self-employment income, including capital gains, is computed using the client's self-employment business records.

(ii) If the client declares they incurred business expenses, the worker then subtracts 50% of the gross self-employment income as business expenses. If the household did not incur business expenses, a business expense deduction is not given.

(iii) The worker then divides the net self-employment income by the number of months to be averaged as described in OAC 340:50-7-30.

(B) The monthly net self-employment income is added to all other earned income received by the household.

(~~5~~7) When an ~~illegal~~undocumented alien is part of an eligible household, the countable portion of his or her income is computed as outlined in (A) through (E) of this ~~subsection~~ paragraph.

(A) For each employed household member, subtract the earned income deduction as shown on OKDHS Appendix C-7.

(B) Add the unearned income of the ~~illegal~~undocumented alien.

(C) Subtract the need standard on OKDHS Appendix C-1, Schedule of Maximum Income, Resource, and Payment Standards Schedule IX, for the appropriate number of persons. Persons counted for the need standard are the ~~illegal~~undocumented alien and his or her ~~illegal~~undocumented alien dependents who:

(i) are claimable for federal personal income taxes;

(ii) live in the same household; and

(iii) are not included in determining the ~~Low Income Home Energy Assistance Program (~~LIHEAP~~)~~ benefit level because they are ~~illegal~~ undocumented aliens.

(D) Subtract ~~the actual amounts paid by the illegal alien to dependents not living in the household as well as actual child support and alimony payments to non-household members~~all applicable deductions as shown in (c) of this Section.

(E) The remaining amount is the amount considered available to the household members eligible for LIHEAP.

(b) **Income disregards.** In determining income, disregard:

(1) the food benefit amount under the Food and Nutrition Act of 2008;

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

(3) educational assistance including grants, ~~including~~ work study, ~~or~~ scholarships, ~~that are~~ fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement and is a gain to the client, it is considered income. The student's classification, whether graduate or undergraduate, is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan is from a person or financial institution in the loan business.

(B) If the loan is 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;

(5) Indian payments including judgment funds or funds held in trust and distributed per capita by the Secretary of the Interior Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, disregard any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any per capita payments, for example, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, are disregarded as long as they meet the distribution requirements as stated in this paragraph. 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 [Title III]. Income from the Older American Community Service Employment Act [Title V], including American Association of Retired Persons (AARP) and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income;

(8) unearned income received by a child receiving Temporary Assistance for Needy Families (TANF), such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance, from a program funded by the Workforce Investment Act (WIA) including Job Corps income, and WIA 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 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 Service Act of 1973, Volunteers in Service to America (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) 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;

(14) earnings of a minor dependent child who is a full-time student;

(15) rental or housing subsidies by governmental agencies, for example, United States Department of Housing and Urban Development (HUD), received in-kind or in cash for rent, mortgage payments, or utilities;

(16) 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. Uniform allowances are disregarded if the uniform is uniquely identified with company name or logo;

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

(18) refunds of state EITC as a result of filing a state income tax return;

(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.) are not considered as income or as a resource in determining eligibility for or the amount of the benefit;

(20) payments received for Emergency Assistance to Needy Families with Children;

~~(21) Medicare buy-in premium;~~

~~(22) work related expenses that are applicable under the TANF Program;~~

(~~23~~21) payments made by others on the household's behalf;

(~~24~~22) in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages;

(~~25~~23) payments made under the Radiation Exposure Compensation Act (P.L. 101-426) enacted October 15, 1990;

(~~26~~24) 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;

(~~27~~25) interests of individual Native Americans in trust or restricted lands;

(~~28~~26) income up to $2,000 per year received by individual Native Americans, which is derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as income;

(~~29~~27) payments made to persons because of their status as victims of Nazi persecution; and

(~~30~~28) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (USC) provided to certain persons who are children of Vietnam War veterans.

(c) **Income deductions.** Certain deductible expenses from income may be applied when applicable, such as:

(1) out-of-pocket non-reimbursed medical expenses paid by persons age 60 and older or persons considered disabled per OAC 340:50-5-4 and OAC 340:50-7-31(b)(3);

(2) legally binding child support paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member; and

(3) the earned income deduction as shown on OKDHS Appendix C-7 for each employed household member. In addition, if a household member is self-employed, see (a)(6) of this Section for self-employment deductions.

(~~c~~d) **Resources.** Liquid resources, such as cash on hand, checking or savings accounts, certificates of deposits, stocks or bonds, cannot exceed the allowable resource level as shown on OKDHS Appendix C-7. The applicant's statement is accepted as verification unless the information received is inconsistent or questionable.

340:20-1-12. Applications

~~Computer-generated Form LIHEAP-1-A,~~Households apply for the Low Income Home Energy Assistance Program (LIHEAP) using computer-generated Application for Low Income Home Energy Assistance ~~(Heating),~~ or Form ~~LIHEAP-1-B~~08LH002E, Application for Low Income Home Energy Assistance - Walk-In Application, ~~is completed for every request for home energy assistance,~~ with the exception of ~~A, B, C, D, and S cases~~households that have been pre-authorized.

(1) ~~Form LIHEAP-1-A~~The computer-generated application is automatically mailed in November of each year for winter heating and June of each year for summer cooling to ~~payees in selected active A, B, C, D, or S cases certified prior to December~~households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, Temporary Assistance for Needy Families (TANF), and State Supplemental Payment (SSP) at the time of the mailing. ~~The application shows the case number and case name and continues with the same case number regardless of A, B, C, D, or S case status after the energy case has been certified. The computer-generated Form LIHEAP-1-A is returned to the county office when completed by the applicant to be processed for application~~The household must complete, sign, and return the application prior to approval or denial.

(2) Households making an initial application for ~~Low Income Home Energy Assistance Program (~~LIHEAP~~) and not containing a payee recipient or applicant of an A, B, C, D, or S case~~who are not receiving another benefit, require an "N" number. Households requiring an "N" number must apply for LIHEAP through their ~~county office~~local human services center (HSC) using Form ~~LIHEAP-1-B~~08LH002E.

(3) Households applying for the Energy Crisis Assistance Program (ECAP), must complete, sign, and return Form 08LH002E regardless of whether the household is receiving other benefits.

(4) Certain households may be pre-authorized for the LIHEAP winter heating or summer cooling programs without filing an application. Prior to pre-authorizing benefits, the system checks the household's eligibility using pre-authorization guidelines at OAC 340:20-1-19 and OAC 340:20-1-20.

(~~3~~5) A new application is not necessary when a worker is notified of a change of "service" address. The worker updates the address and vendor information on the case.

(~~4~~6) In order to ensure that payments are made to the correct energy supplier for gas and electricity, ~~it is necessary to know~~ the household must provide the account name and ~~the account~~ number ~~of the client~~for the appropriate utility bill. ~~Therefore, for~~For households using gas or electricity, it is necessary to see the household's most recent paid or unpaid bill or to obtain verification from the utility supplier.

340:20-1-17. Energy crisis assistance

(a) **Energy crisis assistance.** Energy crisis situations are handled ~~during the regular heating assistance program, and through the Energy Crisis Assistance Program (ECAP) in March~~year round on a case-by-case basis for households with a 72-hour cut-off notice and a verified life-threatening medical situation. Clients in a crisis situation must make application by contacting the local human services center (HSC). Family Support Services Division (FSSD) Low Income Home Energy Assistance (LIHEAP) Section staff approves applications for life threatening situations outside the normal application period for Energy Crisis Assistance Program (ECAP) and when the heating or cooling program cannot be used to pay the bill.

(1) If a household is approved for assistance to resolve the crisis situation, the application is processed within 48 hours from the time the HSC receives the application.

(2) When the crisis situation is verified by a designated authority as life-threatening and the household qualifies for assistance, the application must be processed so that assistance is provided to resolve the crisis situation within 18 hours following receipt of the application. Authority for designating a crisis situation as life-threatening is limited to a:

(A) physician;
(B) public health official;
(C) licensed practitioner of the healing arts; or
(D) HSC county director.

(b) **Energy Crisis Assistance Program (ECAP).** Based upon previous years' program experience, reasonable funds are reserved until March 15 of each year for ECAP. All ECAP applications must be made on Form 08LH002E, ~~Application for~~ Low Income Home Energy Assistance - Walk-In Application.

(1) **Eligibility criteria.**

(A) Households with an energy crisis must not exceed the income and liquid resource standards on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size. Income and resource criteria for ECAP are the same as for heating and cooling assistance found in OAC 340:20-1-11 ~~with the exception of garnishment or recoupment of an overpayment. For ECAP, the garnishment or recoupment amount of income, other than OKDHS benefits, is subtracted to arrive at net income.~~

(B) The household must have had service discontinued or terminated by the seasonal primary energy supplier, or received:

(i) notice of a scheduled cut-off within 72 hours;

(ii) notice of a refusal to provide additional energy needs by the supplier when supply of fuel will be depleted within 72 hours or less; or

(iii) information regarding fee for a new connection.

(C) For a household to be eligible for ECAP, some precipitating factor must exist which caused the household's inability to pay their energy bill. The worker must ascertain why the energy bill has not been paid. Factors preventing payment of the energy bill include, but are not limited to, situations causing the household to make a choice between paying the energy bill and:

(i) purchasing sufficient food for the household;

(ii) paying for emergency situations such as medical expenses or disaster recovery; or

(iii) providing clothing for children in the household.

(D) The worker must verify that the energy crisis need cannot be met by available income and liquid resources, even if income and liquid resources are equal to or below the standard.

(E) If the energy supplier refuses to establish or restore service for the amount of the ECAP payment, combined with whatever other resource is available or can be developed, the ECAP payment cannot be authorized.

(F) In instances where the maximum amount of ECAP and other available emergency programs do not meet the crisis, the case must be documented as having a feasible plan for maintaining or restoring service before an ECAP payment can be authorized.

(2) **Administrative procedures.**

(A) The authorized benefit for ECAP is limited to ~~a one-time-only payment for~~ the amount necessary to connect, restore, or maintain energy service to the household up to the established maximum for the program year.

(B) OKDHS makes payments for crisis assistance directly to energy suppliers with rare exceptions.

(C) The authorized benefit cannot include the cost of propane or butane tank delivery.

(D) Payment may only be authorized for the seasonal primary source of energy, although it is possible for the primary energy source to change in some situations. If an interim period of ECAP assistance is implemented, the client may choose the primary energy source.

~~(E) If a cooling program is implemented, payment is only authorized for the primary energy source for cooling. [OAC 340:20-1-10(b)]~~

340:20-1-19. Winter heating

(a) Selected households already approved for other benefits administered by the Family Support Services Division (FSSD) are normally pre-authorized during October of each year. Households pre-approved for the Low Income Home Energy Assistance Program (LIHEAP) are those who received a State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), or Supplemental Nutrition Assistance Program (SNAP) benefits all 12 months of the previous year and met all the criteria shown in (1) through (3).

(1) The household received LIHEAP the previous year.

(2) The address remained the same.

(3) The income did not exceed eligibility guidelines for household size during the year.

(b) Households who do not meet preauthorization criteria must complete an application.

(c) The heating assistance part of the LIHEAP normally begins the first working day in December, and applications are taken until allocated funds are expended.

(d) The same payment schedule is used for unsubsidized renters and roomers with utilities included in their rent and for households whose energy source is wood, coal, heating oil, or kerosene, except that payments are made directly to approved households.

(e) Primary sources of home energy include natural gas, electricity, propane, firewood, kerosene, coal, or butane.

(1) LIHEAP payments are made for utility expenses, deposits, and reconnect charges applicable to the household's primary source of home energy. If both the client and Oklahoma Department of Human Services (OKDHS) paid reconnect charges or deposits, the utility supplier must reimburse the client for those charges.

(2) When other utilities are included with the fuel bill and the amount for the primary source of home energy cannot be identified, or when the fuel vendor only accepts payment for the combined amount, the combined amount may be paid through LIHEAP.

(f) Payments are not made for blankets, emergency repair on the home, new or additional heating equipment, or heating appliances. Propane tank rental and delivery charges are not covered, if they are identifiable.

340:20-1-20. Summer cooling

(a) Selected households already approved for other benefits administered by the Family Support Services Division (FSSD) are normally pre-authorized during June of each year. Households pre-approved for the Low Income Home Energy Assistance Program (LIHEAP) are those who received a State Supplemental Payment (SSP), Temporary Assistance for Needy Families (TANF), or Supplemental Nutrition Assistance Program (SNAP) benefits all 12 months of the previous year and met all the criteria shown in (1) through (3).

(1) The household received LIHEAP the previous year.

(2) The address remained the same.

(3) The household size remained the same.

(b) All other households must complete an application.

(c) The cooling assistance part of the Low Income Home Energy Assistance Program (LIHEAP) normally begins mid-July, and applications are taken until allocated funds are expended.

(d) The same payment schedule is used for unsubsidized renters and roomers with utilities included in their rent except that payments are made directly to approved households.

[OAR Docket #10-641; filed ??-??-??]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 25. OKLAHOMA CHILD SUPPORT SERVICES

[OAR Docket #10-645]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Scope and Applicability
340:25-1-1.1 [AMENDED]
340:25-1-2 [AMENDED]
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340:25-5-66 through 340:25-5-67 [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-110.1 [AMENDED]
340:25-5-133 [AMENDED]
Part 17. Past Support
340:25-5-140 [AMENDED]
Part 19. Locate Services
340:25-5-155 [AMENDED]
Part 20. Medical Support
340:25-5-168 through 340:25-5-171 [AMENDED]
Part 21. Establishment
340:25-5-176 [AMENDED]
340:25-5-178 [AMENDED]
Part 22. Review and Modification
340:25-5-198.1 through 340:25-5-198.2 [AMENDED]
Part 23. Enforcement
340:25-5-211.1 through 340:25-5-212 [AMENDED]
Part 37. Recovery
340:25-5-305 [AMENDED]
Part 38. IV-D and Non-IV-D Central Registry Information
340:25-5-340 through 340:25-5-340.1 [AMENDED]
Part 39. Accounting and Distribution
340:25-5-351 [AMENDED]
(Reference APA WFs 09-09, 09-17, 09-25)
AUTHORITY:
Commission for Human Services; Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; Sections 453, 454, 454A, and 454B of the Social Security Act, codified in Sections 653, 654, 654a and 654b of Title 42 of the United States Code (U.S.C.); Section 1738B of Title 28 of the U.S.C.; United States House Resolution 3130, Public Law 105-200; Sections 302.31, 302.32, 302.33, 302.38, 303.6, 307.11, 307.13, and Part 310 of Title 45 of the Code of Federal Regulations; Sections 652 and 666 of Title 42 of the U.S.C. (federal Deficit Reduction Act of 2005); Section 1171.2 of Title 12 of the Oklahoma Statutes (federal Deficit Reduction Act of 2005); Section 139.1 of Title 43 of the Oklahoma Statutes (Oklahoma Senate Bill 1126); Sections 118 through 118l of Title 43 of the Oklahoma Statutes (Oklahoma Senate Bill 2194); Section 240.10 of Title 56 of the Oklahoma Statutes (Oklahoma Senate Bill 2194); Section 1-4-702 of Title 10A of the Oklahoma Statutes (Oklahoma House Bill 2028).
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. Scope and Applicability
340:25-1-1.1 [AMENDED]
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340:25-5-67 [AMENDED]
Part 20. Medical Support
340:25-5-168 [AMENDED]
340:25-5-169 [AMENDED]
340:25-5-170 [AMENDED]
340:25-5-171 [AMENDED]
Part 22. Review and Modification
340:25-5-198.1 [AMENDED]
Part 39. Accounting and Distribution
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09-1298
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapters 1 and 5 of Chapter 25 amend the rules to: (1) establish Oklahoma Child Support Services (OCSS) locate only application process; (2) outlines genetic test cost responsibilities; (3) add OCSS also establishes a medical support order on an incarcerated noncustodial parent; (4) change the percentage of change required for OCSS to modify an order; (5) place a threshold of when a financial institute remits funds to OCSS; (6) amend the revocation, suspension, nonissuance or renewal of license for noncompliance with a support order; (7) provide process when a custodial parent designates an attorney's address as her address of record; and (8) continue incremental change of division name from Child Support Enforcement Division (CSED) to Oklahoma Child Support Services (OCSS).
CONTACT PERSON:
Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, 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, 2010:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1.1. Definitions

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

"Address of record" means an address for a party or a custodial person in the Central Case Registry of Oklahoma Child Support Services (OCSS) that is used for service of process in support, custody, and visitation actions. An address of record may be different from the party's or custodial person's physical address.

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined*. [10 O.S. § 7700-102]

"Alternative health coverage" means health care services other than health insurance, including, but not limited to, Indian Health Services (IHS) or Defense Eligibility Enrollment Reporting System (DEERS), which is available to either parent under which medical services could be provided to the dependent child(ren).

"Annual notice" means the yearly notice provided for in Section 237A of Title 56 of the Oklahoma Statutes to notify the noncustodial parent and custodial person of the amount due, actions that may be taken to enforce the child support obligation, actions required of the noncustodial parent and custodial person, and other related information and instructions.

"Arrears,""arrearage," or **"past-due support"** means the total amount of unpaid support obligations that has accrued under a support order. See also the definition for "delinquency" in this Section.

"Assignment" means any transfer of rights to support to the State of Oklahoma under Sections 608 and 671 of Title 42 of the United States Code or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations.

"Authorized representative" means a person designated by a custodial person, noncustodial parent, or biological parent according to OAC 340:25-1-3.1.

"Biological parent" means the natural parent of a child.

"Case" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who is receiving or has received child support services and all of the records and actions associated with the group.

"Cash medical support" *means an amount ordered to be paid toward the cost of health coverage provided by a public entity or by a person other than the parents through employment or otherwise*.

"Central Case Registry" means Oklahoma's repository for Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code (IV-D) cases and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the Federal Case Registry under Section 654a of Title 42 of the United States Code. OCSS maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes.

"Centralized Support Registry" means a repository maintained by ~~CSED~~OCSS to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments under Section 413 of Title 43 of the Oklahoma Statutes. It serves as Oklahoma's State Disbursement Unit under Section 654b of Title 42 of the United States Code. The Centralized Support Registry processes payments:

(A) *inall casesin whichchild support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes* until all monies owed for child support are no longer owed;

(B) *inall other cases in which support is being paid by income withholding*; and

(C) when a court orders payments to be made through the Centralized Support Registry. [43 O.S. § 413]

"Child support order" means an obligation addressing monetary support, cash medical support, medical support for the child(ren), and support arrearage and arrearage payments, if any.

"CSED" means the Child Support Enforcement Division of the Oklahoma Department of Human Services and is also known as Oklahoma Child Support Services (OCSS). ~~CSED~~OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. ~~CSED~~OCSS includes all of these offices and their employees and agents.

"Current child support" means the base child support obligation and the proportional share of health insurance costs, fixed medical costs, transportation expenses, and annualized child care costs. Current child support does not include cash medical support.

"Custodial person" or **"custodian"** means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid*. [12 O.S. §1170 and 56 O.S. § 237.7]

"District office" means a child support services office operated by OKDHS or through contract or agreement with OKDHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"Fixed medical" means fixed periodic payments for ongoing medical costs not paid or reimbursed by insurance, or included in a cash medical support order.

"Full-service case" means a child support case for which OCSS provides all appropriate IV-D services as described in OAC 340:25-1-1.2.

"Health insurance" means insurance coverage that provides routine and major medical expenses, including but not limited to: preventive care, office visits, hospitalization, and medication coverage, that may be provided through a fee for service, health maintenance organization, or preferred provider

organization, or other private or public organization, other than Medicaid.

"High-volume administrative enforcement cases in interstate actions" means, on request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes. [42 U.S.C. § 666]

"Income assignment" means an assignment, by operation of law or by court or administrative order, of a portion of the monies, income, or periodic earnings due and owing by the noncustodial parent to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both. The terms "income assignment" and "income withholding" may be used interchangeably. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Interstate case" means a case in which at least one party resides in another state or country, or a support order was entered in another state or country.

"Intrastate case" means a case existing or occurring within the boundaries of a single state.

"IV-A" means Title IV, Part A, of the Social Security Act, codified in Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act, codified in Part B of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code, generally relating to child support.

"IV-D case" means a child support case receiving IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"IV-E" means Title IV, Part E, of the Social Security Act, codified in Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering foster care.

"IV-E foster care" means federal and state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for IV-E foster care.

"Medicaid"~~**"SoonerCare (Medicaid),"**~~ or **"Title XIX"** means medical assistance provided under a state plan approved under Title XIX of the Social Security Act, codified in Subchapter XIX of Chapter 7 of Title 42 of the United States Code including SoonerCare, State Children's Health Insurance Program (S-CHIP), and Insure Oklahoma.

"Medical enforcement only case" or **"MEO case"** means a child support case for which OCSS provides only IV-D services related to securing and enforcing medical support to non-TANF SoonerCare (Medicaid) recipients.

"Medical support" means health ~~or dental~~ insurance,~~coverage or health benefits ordered to be paid by a parent(s)~~alternative health coverage, cash medical support, or a combination of these for the benefit of a minor child(ren).

"Member of military service" or **"servicemember"** means any member of the uniformed service on active duty, including the Army, Navy, Air Force, Marine Corps, and Coast Guard. Also included are members of the National Guard called to active service, certain members of the Public Health Service, and the National Oceanic and Atmospheric Administration, members of the Reserves when ordered to report for active military duty, and United States citizens serving with the military of other countries if their service is similar to military service. [50A U.S.C. §§ 511, 514, and 516] A servicemember may be a noncustodial parent or a custodial person.

"Noncustodial parent" means a parent who does not have primary physical custody of the child(ren).

"Non-IV-D case" means a private child support case not receiving IV-D services.

"Non-IV-E foster care" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal IV-E participation requirements.

"Notice of Income Assignment" means the tool used to effect the income withholding process. This document is used to notify employers and other withholders to deduct child support payments from noncustodial parents' income and to send the payments to Oklahoma's Centralized Support Registry for distribution. The terms "income withholding" and "income assignment" may be used interchangeably.

"OAH" means the OKDHS Office of Administrative Hearings: Child Support, which conducts child support administrative hearings.

"Obligee" or **"person entitled"** means:

(A) *a person to whom a support debt or support obligation is owed*;

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services*; *or*

(C) *a person designated in a support order or as otherwise specified by the court.* [56 O.S. § 237.7]

"Obligor" means the person who is required to make payments under an order for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"OCSS" means Oklahoma Child Support Services. OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. OCSS includes all of these offices and their employees and agents. OCSS is formerly known as the Child Support Enforcement Division of the Oklahoma Department of Human Services.

"Offset" means an amount of money intercepted from a noncustodial parent's state or federal tax refund, or from an administrative payment such as federal retirement benefits, to satisfy a child support debt.

"OKDHS" means the Oklahoma Department of Human Services. OKDHS is the state agency designated to administer the child support program for the State of Oklahoma.

"Overpayment" means a payment to a custodial person, noncustodial parent, or other entity by OCSS to which the entity or person is not entitled.

"Participant in a case" means a child, parent or alleged father, or custodial person associated with a child support services case.

"Past support" means past-due support or support for a prior period. See the definition for "arrears" in this Section.

"Payment plan"includes, but is not limited to, a plan approved by the court or the support enforcement entity that provides sufficient security to ensure compliance with a support order or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of past-due support and, if applicable, current and future support. [43 O.S. § 139.1 and 56 O.S. § 237.7] A payment plan is intended to incrementally reduce arrears.

"Payor"means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"Presumed father" means *a man who, by operation of law* under Section 7700-204 of Title 10 of the Oklahoma Statutes, *is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding*. [10 O.S. § 7700-102]

"Social Security Act" means Public Law 74-271, approved August 14, 1935, as currently in effect.

"State's attorney" means a lawyer employed in the child support program to represent the state in rendering services pursuant to the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"Support" means all payments or other obligations due and owing to the custodial person or person entitled by the noncustodial parent under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations as specified in Section ~~118~~118A through 119 of Title 43 of the Oklahoma Statutes. [56 O.S. § 237.7]

"Support for a prior period" means the amount of child support ordered under the child support guidelines in Sections 118 ~~and~~through 119 of Title 43 of the Oklahoma Statutes in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" means a *judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.* [43 O.S. § 601-101]

"TANF" means Temporary Assistance for Needy Families. TANF replaces Aid to Families with Dependent Children (AFDC).

"Tribunal"meansa court or administrative agency authorized to establish, enforce, or modify support orders, or determine parentage. [43 O.S. § 601-101]

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes.

"Unreimbursed public assistance" means money paid as cash assistance from IV-A and IV-E programs that has not yet been recovered.

"UPA" means the Uniform Parentage Act. In Oklahoma, the UPA is codified in Sections 7700-101 through 7700-902 of Title 10 of the Oklahoma Statutes.

340:25-1-2. Legal base

(a) **Federal law.** Sections 651 through 669b of Title 42 of the United States Code is the primary basis in federal law for Oklahoma's ~~Child Support Enforcement Program~~child support program. The program is also governed by Chapter III of Title 45 of the Code of Federal Regulations. The Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code, applies to servicemembers. Other federal laws and regulations are followed to the extent they apply to Oklahoma's ~~Child Support Enforcement Program~~child support program.

(b) **State law.** Oklahoma Statutes covering child support ~~enforcement~~ issues include, but are not limited to:

(1) Sections 80, 83, ~~84,~~ 90.4, 90.5, 7005-1.4, and 7700-101 through 7700-902 of Title 10;

(2) Sections 1170 and 1171.2 through 1171.4 of Title 12;

(3) Sections 566, 567, and 852 of Title 21;

(4) Sections 109.2 through 110, 112, 112A, 114 through 120, 135 through 139.1, 410 through 413, and 601-100 through 601-901 of Title 43;

(5) Sections 166.1, 183, 230.60, and 231 through 240.23 of Title 56;

(6) Sections 1-311.2 and 1-311.3 of Title 63; and

(7) Sections 205.2 and 205.3 of Title 68.

(c) **Applicability.** ~~The~~Oklahoma Child Support ~~Enforcement Division~~Services (~~CSED~~OCSS) uses federal or state statutes, as appropriate, in specific situations to establish and enforce child support orders. ~~CSED~~OCSS follows applicable state and federal laws ~~to which it is subject~~ in carrying out its responsibilities and providing services regardless of whether a statute, regulation, final order, or other legal obligation is specifically referenced in this Chapter.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 9. DISCLOSURE OF INFORMATION

340:25-5-66. Legal basis for release of information

Federal and state laws and the rules adopted by the Oklahoma Commission for Human Services restrict the use and disclosure of information. Release of information from ~~Child Support Program~~child support program records is based on applicable provisions of:

(1) Sections OAC 340:2-21-12 through 340:2-21-16, and OAC 340:75-1-44;

(2) ~~Chapter 70 of Title 10,~~ Section 413 of Title 43, Sections 24A.1 through 24A.26 of Title 51, and Sections 183 and 231 through 240.23 of Title 56 of the Oklahoma Statutes;

(3) Sections 303.15, 303.70, and 307.13 of Title 45 of the Code of Federal Regulations; and

(4) Sections 653, 654, 654a, and 663 of Title 42 of the United States Code.

340:25-5-67. Information disclosure

(a) **Confidentiality.** *All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of Human Services or any other public or private entity shall be confidential.* [56 O.S. § 183]

(1) All files and records concerning the assistance or services provided under the ~~Child Support Enforcement Program~~child support program or concerning an alleged father of a child born out of wedlock are confidential except as otherwise authorized by law. [56 O.S. § 237]

(2) Any information ~~the~~Oklahoma Child Support ~~Enforcement Division~~ Services (~~CSED~~ OCSS) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. ~~CSED~~OCSS does not disclose or use the contents of any child support records, files, papers, or communications for purposes other than those directly connected to the administration of the ~~Child Support Enforcement Program~~child support program.

(3) Nothing in this Section authorizes disclosure of the location of a case participant with a family violence indicator set under OAC 340:25-5-67.1.

(b) **Authorized disclosure.** Information, when requested per OAC 340:25-5-68, may be shared with:

(1) persons duly authorized by the United States in connection with the performance of their official duties, [56 O.S. § 183] including, but not limited to:

(A) exchange of information to the extent necessary to carry out the state agency IV-D program responsibilities directly and through statewide automated data processing and information retrieval networks within the Oklahoma Department of Human Services (OKDHS), with authorized representatives of OKDHS divisions and other agencies of the State of Oklahoma and other states, and with federal and tribal agencies and other countries;

(B) exchange of information directly and through statewide automated data processing and information retrieval networks with representatives of OKDHS and other state agencies administering programs under Titles IV-A, IV-E, and XIX of Subchapter IV of Chapter 7 of Title 42 of the United States Code, to the extent necessary to carry out state agency Titles IV-A, IV-E, and XIX responsibilities;

(C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person under Section 663 of Title 42 of the United States Code representing:

(i) agencies administering or enforcing programs under Titles IV-B and IV-E of Subchapter IV of Chapter 7 of Title 42 of the United States Code to the extent necessary to carry out state agency Titles IV-B and IV-E responsibilities; and

(ii) the United States or the State of Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such court having jurisdiction to make or enforce a child custody or visitation determination; and

(D) release of Social Security numbers for child support ~~enforcement~~ purposes, such as locating the parents, submitting cases for federal administrative and income tax refund offset, state income tax refund offset, financial institution data match, enrolling children as beneficiaries of health insurance coverage, and processing interstate child support ~~enforcement~~ services;

(2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:

(A) pay records and payment calculations;

(B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the order, such as guideline worksheets and financial affidavits;

(C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;

(D) information required by Titles 43 or 56 of the Oklahoma Statutes to be disclosed for the purpose of reviewing, establishing, or modifying a support order; and

(E) information necessary to enroll children as beneficiaries of court-ordered health insurance coverage;

(F) address of record for service of process under Section 112A of Title 43 of the Oklahoma Statutes. The address of record must only be released in accordance with OAC 340:25-5-340.1;

(3) ~~parents or custodial persons requesting disclosure of address of record under Section 112A of Title 43 of the Oklahoma Statutes and OAC 340:25-5-340.1; and~~employers and plan administrators, who may only access information necessary to enroll children as beneficiaries of court ordered health insurance coverage; and

(4) persons as directed by court order or by a subpoena that has been approved by a child support attorney.

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-110.1. Applications

(a) To apply for child support ~~enforcement~~ services, a person must submit a completed and signed application form to the address on the form. A one cent application fee is paid by ~~the~~Oklahoma Child Support ~~Enforcement Division~~Services (~~CSED~~OCSS) for each application received. ~~Form 03EN001E,~~ An application for child support services ~~Application for Child Support Services,~~ is submitted in every circumstance, including applications received by:

(1) former Temporary Assistance for Needy Families (TANF), Aid to Families with Dependent Children (AFDC), or non-TANF Medicaid recipients with the Oklahoma Department of Human Services (OKDHS);

(2) former participants in IV-D cases;

(3) noncustodial parents listed on an existing medical enforcement only case, if the noncustodial parent is requesting a review and adjustment or to open a new case per OAC 340:25-5-198.1; or

(4) persons receiving child support payments from the Centralized Support Registry and not currently receiving child support services through ~~CSED~~OCSS.

(b) Application forms are obtained at any child support or other OKDHS office or by writing or telephoning ~~the Child Support Enforcement Division~~OCSS at the address and telephone numbers provided in OAC 340:25-1-2.1. Printable application forms are available from the ~~CSED~~OCSS Internet at http://www.okdhs.org/childsupport/.

(c) ~~CSED sends outreach letters to noncustodial parents who have filed Form 03PA309E, Acknowledgment of Paternity, with the Oklahoma State Department of Health, Division of Vital Records. Outreach letters provide information about OKDHS services and invite noncustodial parents to participate in these services. These noncustodial parents may apply for child support services through this outreach process.~~

~~(d)~~ An applicant who is a custodial person must give OKDHS authority to endorse and negotiate payments related to child support and to spousal support on behalf of the custodial person and child(ren).

(~~e~~d) ~~CSED~~OCSS accepts an application and opens a case when:

(1) the child is a minor or the application is to enforce a child support order for an adult with disabilities under Section 112.1A of Title 43 of the Oklahoma Statutes;

(2) paternity must be established for a minor child against a deceased noncustodial parent consistent with OAC 340:25-5-176; and

(3) the former custodial person's parental rights have been terminated, then the child was adopted, and the application to collect past-due support owed to the former custodial person was received before the adoption.

(~~f~~e) ~~CSED~~OCSS does not accept applications for collection of past-due support when:

(1) all children on the application have reached the age of majority and none is an adult with disabilities with an established child support order;

(2) the child is deceased; or

(3) the child is a minor but no longer resides with the custodial person.

(f) OCSS accepts applications for locate only services pursuant to OAC 340:25-5-155.

340:25-5-133. Current child support follows the child when physical custody changes

(a) When the legal custodian relinquishes physical custody of a child(ren) to another custodial person, ~~the~~Oklahoma Child Support ~~Enforcement Division~~Services (~~CSED~~OCSS) of the Oklahoma Department of Human Services (OKDHS) redirects current child support payments to the new custodian under Sections ~~7202.3~~109.5 of Title ~~10~~43 and 237 of Title 56 of the Oklahoma Statutes.

(1) A custodial person who relinquishes physical custody of a child(ren) to another custodian must notify ~~CSED~~OCSS of the change. The new custodial person must submit an application for child support services if an application is required ~~under~~per OAC 340:25-5-117.

(2) ~~CSED~~OCSS remits current child support payments to the new custodial person. Transfer of child support payments occurs with the first payment received in the month after a change in physical custody takes place.

(b) When the legal custodian of a child(ren) dies and another custodial person, who is not the obligor, assumes custody of the child(ren), ~~CSED~~OCSS establishes a new support order with the new custodian as the obligee.

(1) The new custodial person must submit an application for child support services if an application is required ~~under~~per OAC 340:25-5-117.

(2) ~~CSED~~OCSS redirects current child support payments to the new custodial person pending receipt of an application if required and establishment of the new support order. ~~CSED~~OCSS distributes any past support payments already collected prior to the custodial person's death ~~according to~~per OAC 340:25-5-140.

(c) When a new custodial person assumes custody of a child(ren), ~~CSED~~OCSS directs past-due support payments as described ~~under~~per OAC 340:25-5-140.

PART 17. PAST SUPPORT

340:25-5-140. Past support

(a) **Authority.** Oklahoma Child Support Services (OCSS) takes appropriate action to collect support and secure compliance with support orders.

(1) When a support order does not specify an effective date, a payment is due on the first day of the month following the entry of the child support order, and on the first day of each month thereafter except when another state's law governs the due date.

(2) OCSS bases its determination of past-due support and support for a prior period on information in available records from courts, IV-D and other public and private agencies, custodial persons, noncustodial parents, and others.

(3) OCSS may require sworn written statements and supporting documents from custodial persons, noncustodial parents, and others pertaining to support payments.

The primary legal foundations for determination and collection of past-due support and support for a prior period are applicable provisions of:

(A) Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code;

(B) Section 1738B of Title 28 of the United States Code;

(C) Chapters 302 and 303 of Title 45 of the Code of Federal Regulations; and

(D) Sections 83, ~~84,~~ and 7700-636 of Title 10, Chapters 3 and 21 of Title 12, Title 43, and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) **Enforcement.**

(1) OCSS takes action to enforce past-due support and support for a prior period under OAC 340:25-5, Part 23.

(2) When a case new to OCSS ~~under~~per OAC 340:25-5-117 has an existing order, OCSS does not calculate a past-due support balance or take action to enforce past-due support until 30 days from the date of mailing of the notice of case letter and affidavit of payments document to the noncustodial parent. This does not preclude the initiation of an income assignment to collect current support.

(3) Past-due child support remains due to the custodial person with whom a child resided during the month the past support was due.

(4) When OCSS takes action to enforce past-due support and support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(c) **Settlement of past support.**

(1) Settlements of past support may include:

(A) a noncustodial parent's lump sum partial payment or a series of payments made toward the total amount of past support;

(B) an agreement for the noncustodial parent to pay a specified number of current child support payments in the future; and

(C) acceptance of in-kind goods or services in exchange for waiving a certain amount of past child support.

(2) Settlements of past support must be memorialized in a court order and the custodial person must sign the court order when the past support is owed to the custodial person.

(3) In accordance with Section 112 of Title 43 of the Oklahoma Statutes, OCSS:

(A) acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the past child support due to the custodial person; or

(B) may negotiate the right to collect all or part of past support owed to the State of Oklahoma.

(d) **Annual notice.** OCSS uses the annual notice to the noncustodial parent ~~under~~per Section 237A of Title 56 of the Oklahoma Statutes to confirm the amount of past-due support and remaining balances on previously confirmed judgments. Past-due support and remaining balances on judgments for support for a prior period may also be confirmed during other enforcement actions as provided in OAC 340:25-5, Part 23.

(e) **Death of custodial person.** If the custodial person dies and no past support is owed to any state, OCSS refunds child support payments to the decedent's estate when notified in writing by the administrator of the estate. OCSS does not file a forced probate court action to determine heirs and distribute past support to heirs. When:

(1) OCSS does not receive notice from the administrator of the estate within six months of the custodial person's death, OCSS refunds child support payments to the payor.

(2) the payor's address is unknown, or payments are returned due to the inability to distribute, support payments are returned to the noncustodial parent.

(3) past support is owed to any state, OCSS distributes the payments ~~according to~~per OAC 340:25-5-351.

(f) **Jurisdiction.** When an Oklahoma tribunal has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, OCSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce the child support orders.

PART 19. LOCATE SERVICES

340:25-5-155. Locate services

(a) **Scope of Services.** ~~The~~ Oklahoma ~~Department of Human Services~~ Child Support ~~Enforcement Division~~Services (~~CSED~~OCSS) follows the provisions of Sections 653, 654, 654a, 663, and 666 of Title 42 of the United States Code and Sections 302.35, 303.3, 303.7, and 303.15 of Title 45 of the Code of Federal Regulations in locating parents and their assets for the purpose of:

(1) establishing paternity;

(2) establishing, setting the amount of, modifying, or enforcing child support obligations;

(3) making or enforcing a child custody determination; and

(4) assisting in cases of parental kidnapping.

(b) **Locate only services.** When authorized persons apply for locate only services, Oklahoma Department of Human Services Form 03EN007E, Locate Only Rights and Responsibilities, must be completed and submitted with an application for child support services.

PART 20. MEDICAL SUPPORT

340:25-5-168. Establishment of medical support

(a) **Scope and applicability.** Oklahoma Child Support Services (OCSS) refers to federal and state law for establishment of a medical support order pursuant to:

(1) Section 666 of Title 42 of the United States Code;

(2) Sections 302.33, 302.56, 303.7, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; and

(3) Section 6058A of Title 36, Sections 112, 118 through 118I, 118.2, and 119 of Title 43, and Section 237 of Title 56 of the Oklahoma Statutes.

(b) **Medical support provision of child support order.** A child support order established by OCSS must contain a medical support provision ~~for medical support~~. ~~The medical support provision must include one of the provisions in (1) through (4) of this subsection.~~

~~(1) Either or both parents must secure health insurance for the minor child(ren) when it is available through an employer or other group health insurance plan.~~

~~(2) Neither parent is required to secure health insurance for the minor child(ren). Alternative health coverage includes, but is not limited to, an individual policy for the child(ren), Indian Health Services, and military dependent benefits.~~

~~(3) Either or both parents are required to secure health insurance for the minor child(ren) in addition to Indian Health Services (IHS).~~

~~(4) Either or both parents are required to seek alternative health coverage other than SoonerCare (Medicaid) if an employer or other group plan is not available at reasonable cost and/or is not accessible. Any alternative health coverage must comply with (1) and (2) of subsection (c) of this Section.~~

(c) **Calculating the cost of medical support.** To calculate the actual premium cost of health insurance, OCSS:

(1) deducts from the total insurance premium, the cost of coverage for the parent;

(2) deducts from the total insurance premium, the cost of coverage for any other adults in the household, when that cost information is available;

(3) divides the remainder by the number of dependent children covered; and

(4) multiplies the amount per child by the number of children in the child support case under consideration.

(~~c~~d) **Standards for ~~health coverage~~medical support provision.** When ~~OCSS seeks an order for health coverage, OCSS applies the~~choosing a medical support provision, OCSS requests the court to apply the standards in (1) ~~and (2)~~through (3) of this subsection~~:~~.

(1) Health insurance ~~is~~must be reasonable in cost, ~~which means~~meaning that the actual out-of-pocket premium cost paid ~~by the insured~~ does not exceed five percent of the gross income of the parent who is ordered to provide health insurance. ~~To calculate the actual premium cost of the health insurance, OCSS:~~

~~(A) deducts from the total insurance premium the cost of coverage for the parent;~~

~~(B) deducts from the total insurance premium the cost of coverage for any other adults in the household, when that cost information is available;~~

~~(C) divides the remainder by the number of dependent children covered; and~~

~~(D) multiplies the amount per child by the number of children in the child support case under consideration.~~

(2) Health insurance ~~is~~must be accessible, ~~which means~~meaning that there are available the health care providers ~~appropriate~~must be available to meet the child(ren)'s individual health care needs, and must be located no more than 60 miles one-way from the primary residence of the child(ren).

(3) Health insurance must provide coverage for both routine and major medical expenses, including but not limited to: preventive care, office visits, hospitalization, and medication coverage. Annual deductibles must be reasonable and relate to the medical circumstances of the child(ren).

(~~d~~e) **Exceptions to standards for medical support provision.** ~~If the parents agree or the court otherwise orders, the cost of health insurance may exceed five percent of the gross income of the parent ordered to provide health insurance and/or accessibility may exceed 60 miles one-way from the primary residence of the child(ren).~~When the parents agree or it is otherwise appropriate OCSS requests the court make an exception to the standards for health coverage based on:

(1) the reasonable cost of health insurance exceeds five percent of the gross income of the parent ordered to provide health insurance; or

(2) the closest insurance provider exceeds 60 miles one-way from the primary residence of the child(ren).

(f) **Hierarchy of medical support provisions.** The provision for medical support must be consistent with one of the priorities listed in (1) through (4) of this subsection.

(1) Health insurance is provided through a parent's employer or other available group health insurance plan.

(2) No coverage is available under paragraph (1) of this subsection, and a private insurance policy or group health insurance is available to the child(ren) through another source, such as a third party custodian or spouse of a parent, OCSS:

(A) seeks an order for the parent to provide health insurance when insurance is provided through the spouse of a parent; or

(B) seeks an order for the third party custodian to provide health insurance when insurance is provided through a third party custodian and the third party custodian has requested an order to provide the coverage.

(3) No health coverage is available under paragraphs (1) or (2) of this subsection, and alternative health coverage including, but not limited to, Indian Health Services (IHS) and Defense Eligibility Enrollment Reporting System (DEERS) is available to the child(ren).

(4) If none of the provisions in paragraphs (1) through (3) of this subsection are available at reasonable cost or are not accessible, the custodial person is required to make application for the child(ren) for health coverage through a government medical assistance program, such as SoonerCare (Medicaid).

(g) **Health coverage preference.** When health coverage meeting standards in subsection (d) of this Section is available

to both parents, OCSS requests the court give priority to the preference of the custodial person.

(h) **Exceptions to hierarchy.** OCSS requests a cash medical order instead of an order for health coverage by the noncustodial parent under paragraphs (1) or (2) of subsection (f) of this Section when:

(1) the court determines an order for health insurance is inappropriate due to family violence concerns; or

(2) the obligor is an applicant for a governmental medical assistance program, such as Insure Oklahoma, State Children's Health Insurance Program (S-CHIP), or SoonerCare (Medicaid).

(i) **Cash medical support.**

(1) When paragraph (4) of subsection (f) of this Section is chosen as the provision for medical support, OCSS requests the court order cash medical support to be paid by the noncustodial parent(s) until insurance is provided under paragraphs (1) through (3) of subsection (f) of this Section.

(2) OCSS refers to the Cash Medical Income Guidelines Table as found in the child support computation form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network site under Section 120 of Title 43 of the Oklahoma Statutes to determine the cash medical support amount.

(3) OCSS computes a cash medical order by applying the Cash Medical Income Guidelines Table, using the combined gross income for the parents of the child in the case under consideration and the number of children in the instant case.

(A) When the combined gross income is at or below the income amount for the number of children in the case, OCSS requests the court order a cash medical order at $0.00 per month;

(B) When the combined gross income exceeds the income amount for the number of children in the case, OCSS computes the requested cash medical order by:

(i) multiplying the amount of $115.00, representing the average monthly cost of health care for an uninsured child(ren), by the number of children in the case that are not covered by insurance; and

(ii) pro rating the result by the percentage of income for each parent;

(C) The noncustodial parent's share of the cash medical amount is added to the child support obligation.

(D) When neither parent is the obligor or noncustodial parent due to equally shared physical custody and the application of the parenting time adjustment, OCSS requests the court set cash medical support as follows:

(i) if the child(ren) receives SoonerCare or other governmental medical assistance, the parent who is not the applicant for governmental medical assistance is ordered to pay the cash medical support;

(ii) if the child(ren) does not receive SoonerCare or other governmental medical assistance, the cash medical amount is calculated for each parent and the amounts are offset. The parent owing the larger amount is ordered to pay the net cash medical support.

(4) Unless the parties agree or the court orders a greater amount, the prorated cash medical support amount must not exceed five percent of the gross income of the parent who is ordered to pay cash medical support.

(5) OCSS seeks cash medical support only as part of a prospective order for child support. OCSS does not include a cash medical support amount in a judgment for support for a prior period pursuant to OAC 340:25-5-179.1.

(j) **Termination of cash medical support.**

(1) When OCSS receives notice that the parent ordered to pay cash medical support has enrolled the child(ren) in health insurance, OCSS sends a Notice of Proposed Termination of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is not actually covered by health insurance, a party may request a review of the termination of cash medical support within 10 days from the date of mailing of the notice.

(2) When a party requests a review to contest the Notice of Proposed Termination of Cash Medical Support, OCSS reviews the case within 10 days of receipt of the request and determines if termination of cash medical support is proper based on information provided by the contesting party. OCSS notifies the parties of the review decision.

(3) When the parties disagree with the review decision the parties have 15 days from the date of mailing the review decision to request a hearing on the termination of cash medical support.

(4) OCSS files a Notice of Termination of Cash Medical Support with the proper court when:

(A) no party requests a review within the 10 day time period; or

(B) no party requests a hearing after OCSS notifies them of the review decision.

(k) **Fixed medical costs.** If the parties agree or the court orders, OCSS includes the total monthly fixed medical costs in the child support guidelines computation. If the obligor's share of fixed medical costs exceeds five percent of the obligor's gross income and the parties do not agree to exceed the five percent standard, OCSS requests the court determine the monthly amount of fixed medical costs included in the current child support order.

(~~e~~l) **Indian Health Services (IHS).**

(1) A child support order that provides for the enrollment of a child(ren) in Indian Health Services may ~~be considered sufficient to satisfy the requirement of~~comply with the standards in subsection (~~b~~d) of this Section. OCSS seeks an order for either or both parents to secure health insurance for the minor child(ren) when:

(A) IHS does not meet the standards in subsection (d) of this Section; or

(B) ~~it~~ health insurance is available through an employer or other group plan~~, in addition to IHS, upon~~

~~request of the custodial person or noncustodial parent~~and the custodial person requests it.

(2) OCSS does not request cash medical support when IHS is the chosen provider.

(~~f~~m) **Notification requirements.** The noncustodial parent and the custodial person must notify OCSS in writing within 30 days after:

(1) health insurance becomes available;

(2) the cost of existing health insurance changes; or

(3) other provisions of existing health insurance change.

(~~g~~n) **Modification request.** When a child support order exists, OCSS considers a request to establish a medical support order as a request for modification of the order under Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.

340:25-5-169. Establishment of medical ~~support~~enforcement only cases

(a) **Medical enforcement only (MEO) status.** When a person receiving non-TANF (Temporary Assistance for Needy Families) Medicaid notifies ~~the~~Oklahoma Child Support Services ~~Enforcement Division (CSED)~~(OCSS) that only IV-D services related to securing medical support are requested, OCSS updates the case as an MEO case and does not provide full child support services per OAC 340:25-1-1.2. ~~CSED~~OCSS follows Sections 302.33, 302.56, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations~~,~~; Section 6058A of Title 36, Sections 112, 118F, 118.2, and 119 of Title 43~~,~~; and Section 237 of Title 56 of the Oklahoma Statutes.

(b) **Services provided on MEO cases.**

(1) ~~CSED~~OCSS establishes paternity, if necessary, and a child support order. The child support order must include:

(~~1~~A) a provision for current child support ~~as described in~~per OAC 340:25-5-178;

(~~2~~B) a provision for support for a prior period ~~under~~per OAC 340:25-5-179.1~~,if~~ when appropriate; and

(~~3~~C) a provision for medical support ~~as described in~~per OAC 340:25-5-168.

(2) OCSS conducts a review of the order under OAC 340:25-5-198.1 and seeks a modified order that includes a provision for medical support when:

(A) the existing child support order does not include a medical support provision;

(B) no insurance is available for the child(ren); or

(C) a parent or custodial person claims that the available health insurance is not accessible or is not reasonable in cost.

(~~b~~c) **Exception to MEO status.** ~~CSED~~ OCSS opens a full-service case when ~~CSED~~OCSS receives a non-TANF Medicaid referral from the Family Support Services worker ~~in which~~:

(1) assigned court-ordered child support is owed under OAC 340:25-5-117;

(2) the child(ren) is in a deprived or delinquent juvenile court action; ~~or~~

(3) assigned cash medical support is owed under OAC 340:25-5-117; or

(~~3~~4) the custodial person is a child care subsidy recipient.

340:25-5-170. Enforcement of medical ~~support~~enforcement only cases

When a person receiving non-TANF Medicaid requests medical enforcement only services, Oklahoma~~the~~ Child Support ~~Enforcement Division~~Services ~~(CSED~~OCSS) enforces only the ~~medical support~~health insurance portion of the child support order through the use of the National Medical Support Notice ~~as described in~~per OAC 340:25-5-171. ~~CSED~~OCSS does not enforce the payment of child support or fixed medical support through the Order/Notice to Withhold Income for Child Support or any other enforcement remedy in a medical enforcement only case.

340:25-5-171. Enforcement of a medical support order

(a) When a parent has been ordered to provide health insurance for the child(ren) and has failed to voluntarily enroll the child(ren), Oklahoma Child Support Services (OCSS), uses the National Medical Support Notice (NMSN) to aid in enrolling the child(ren) in the group health plans for which a parent is eligible. OCSS sends the NMSN to the ~~noncustodial~~ parent's employer as required by Section 666 of Title 42 of the United States Code, Section 609 of the Employee Retirement Income Security Act of 1974, Section 303.32 of Title 45 of the Code of Federal Regulations, and Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(b) In addition to issuing a NMSN, when a parent is ordered to provide medical support for the minor child(ren) and is not complying with the order, OCSS may either:

(1) enforce the medical support order by a license revocation action under Section 139.1 of Title 43 of the Oklahoma Statutes, or by an indirect contempt of court action under Section 566.1 of Title 21 of the Oklahoma Statutes; or

(2) seek a modification of the order under OAC 340:25-5-198.2.

(~~b~~c) When a child is eligible for enrollment in the United States Department of Defense's managed health care program, TRICARE, (a) of this Section does not apply. OCSS notifies the custodial person to contact the Defense Manpower Data Center Support Office at 1-800-538-9552 to enroll the child, using the Defense Enrollment Eligibility Reporting System registration process.

(~~c~~d) If the employer response to the NMSN indicates that enrollment cannot be completed because ~~of~~ the cost of coverage exceeds the limits of earnings subject to income assignment under Section 1171.2 of Title 12 of the Oklahoma Statutes, OCSS applies OAC 340:25-5-168 to determine if other coverage is available at reasonable cost or if a cash medical order is appropriate. OCSS conducts a review of the order under OAC 340:25-5-198.1 and seeks a modified order if the review indicates that modification would result in an enforceable medical support order or that the child support order should be adjusted.

(~~d~~e) OCSS issues a non-compliance letter to the employer when the employer:

(1) has not returned the NMSN within 20 business days after the date of the NMSN notifying OCSS that:

(A) the employer does not offer group dependent health coverage;

(B) the employee is among a class of employees that is not eligible for family coverage under the employer's plans;

(C) the employee is not employed by the employer; or

(D) state or federal withholding limitations or prioritization of withholding prevent the required employee contribution to obtain coverage;

(2) has not forwarded the NMSN to the insurer within 20 business days after the date of the NMSN; or

(3) is the insurer and has not returned the NMSN within 20 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

(~~e~~f) OCSS issues a non-compliance letter to the insurer when the insurer has not returned the NMSN within 40 business days after the date of the NMSN indicating that either the child(ren) has been enrolled in the plan and the effective date of coverage or there is more than one option available and one must be selected.

(~~f~~g) OCSS may initiate legal proceedings to request the court ~~to~~ fine employers and insurers when there is no response indicating full compliance with the requirements of the NMSN within ~~ten~~10 business days after the date of the non-compliance letter. Fines may be imposed by the court for up to $200 a month per child for each failure to comply with the requirements of the NMSN under Section 6058A of Title 36 and Section 118.2 of Title 43 of the Oklahoma Statutes.

(~~g~~h) If the employer or insurer complies with the requirements of the NMSN, OCSS may dismiss the case against the employer or insurer.

(~~h~~i) Employers and insurers must send any fine(s) imposed by the court, under Section 235 of Title 56 of the Oklahoma Statutes, by check or money order to OCSS, Attn: Finance, P.O. Box 53552, Oklahoma City, Oklahoma 73125-3552.

~~(i) In addition to issuing a NMSN, when the custodial person is ordered to provide medical support for the minor child(ren) and is not complying with the order, OCSS may either:~~

~~(1) enforce the medical support order by a license revocation action under Section 139.1 of Title 43 of the Oklahoma Statutes, or by an indirect contempt of court action under Section 566.1 of Title 21 of the Oklahoma Statutes; or~~

~~(2) seek a modification of the order under OAC 340:25-5-198.2.~~

(j) When a parent has been ordered to provide health insurance for the child(ren) and the other parent or custodial person has failed or refused to provide information necessary to enroll the child(ren) in the health insurance plan, OCSS:

(1) releases the information as appropriate per OAC 340:25-5-67 when family violence is not an issue;

(2) determines noncooperation and begins the case closure process per OAC 340:25-5-114, 340:25-5-118, and 340:25-5-123 when the parent refusing to provide the information is the applicant for services;

(3) obtains the necessary information from the parent by a license revocation action per Section 139.1 of Title 43 of the Oklahoma Statutes, or by an indirect contempt of court action per Section 566.1 of Title 21 of the Oklahoma Statutes; or

(4) seeks a modification of the order per OAC 340:25-5-198.2.

PART 21. ESTABLISHMENT

340:25-5-176. Establishment of paternity

(a) In cases where paternity has not been legally established, Oklahoma Child Support Services (OCSS) establishes paternity and provides genetic testing~~and recovers costs advanced for genetic testing under~~per:

(1) Sections 653, 654, and 666 of Title 42 of the United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Sections 83, 84, 90.4, and 7700-101 through 7700-902 of Title 10, Sections 601-201, 601-401, and 601-701 of Title 43, Sections 230.60 and 231 through 240.23 of Title 56, and Sections 1-311 and 1-321 of Title 63 of the Oklahoma Statutes.

(b) OCSS only initiates a paternity action when the child has no legal father. A child has a legal father when:

(1) paternity has been voluntarily acknowledged in Oklahoma or another state and not rescinded within 60 days; [10 O.S. §§ 7700-301 through 7700-314]

(2) the child has a presumed father and a party initiates a challenge more than two years after the child's birth; or [10 O.S. §§ 7700-204 and 7700-607]

(3) paternity has been established by a district or administrative court order. [10 O.S. § 7700-636]

(c) OCSS provides Form 03PA209E, Acknowledgment of Paternity, for voluntary acknowledgment of paternity under Section 7700-312 of Title 10 and Sections 1-311 and 1-311.3 of Title 63 of the Oklahoma Statutes. OCSS also provides several companion forms described in (1) through (4) of this subsection. The forms include instructions for completion. Signed and witnessed forms must be filed with the Oklahoma State Department of Health (OSDH), Division of Vital Records.

(1) When parents of an adult child, age 18 years or older, complete Form 03PA209E, the adult child must give consent to add the natural father's name to the birth certificate. The child indicates consent by signing Form 03PA212E, Adult Child's (18 Years or Older) Consent.

(2) Form 03PA210E, Denial of Paternity, must accompany Form 03PA209E if the mother of a child is married to someone other than the natural father and the child is born

within 300 days after the marriage is terminated under Section 7700-204 of Title 10 of the Oklahoma Statutes.

(3) Under Sections 7700-307 and 7700-312 of Title 10 of the Oklahoma Statutes, OCSS provides Form 03PA211E, Rescission of Acknowledgment of Paternity, for a person to use to cancel the legal finding of paternity created by having previously signed Form 03PA209E. This form must be completed, signed, and filed with the OSDH Division of Vital Records within 60 days after the date of the last signature on Form 03PA209E.

(A) When a person submits Form 03PA211E within 60 days after the date of the last signature on Form 03PA209E, OCSS sends notice of the rescission to all other signatories on Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last-known address of the signatories, if different.

(B) When rescissions are submitted to OCSS past the 60-day time period, OCSS sends a letter to the person who submitted Form 03PA211E informing the person that the rescission is invalid because it was not timely submitted.

(4) Under Sections 7700-307 and 7700-312 of Title 10 of the Oklahoma Statutes, OCSS provides Form 03PA213E, Rescission of Denial of Paternity, for a person to use to cancel the legal finding of paternity created by having previously signed Form 03PA210E. Form 03PA213E must be completed, signed, and filed with the OSDH Division of Vital Records within 60 days after the date of the last signature on Forms 03PA209E and 03PA210E.

(A) When a person submits Form 03PA213E to OCSS within 60 days after the date of the last signatures on Forms 03PA209E and 03PA210E, OCSS sends notice of the rescission to all other signatories of Forms 03PA209E and 03PA210E. Notice is given by mailing a copy of the rescission to the address of the signatories as shown on Forms 03PA209E and 03PA210E and to the last known addresses of the signatories, if different.

(B) When a rescission of denial is submitted to OCSS past the 60-day time period, OCSS sends a letter to the person who submitted Form 03PA213E informing the person that the rescission of denial is invalid because it was not timely submitted.

(d) When OCSS establishes paternity against an alleged father or with a custodial person, either of whom is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(e) When OCSS has the cooperation of a deceased alleged father's relatives, OCSS establishes paternity of the child(ren) through genetic testing of the relatives as necessary according to the standards and provisions of the Uniform Parentage Act, Sections 7700-501 through 7700-511 of Title 10 of the Oklahoma Statutes.

(f) OCSS establishes paternity against an alleged father who is disabled and receiving monthly Supplemental Security Income before reviewing the case for possible closure ~~under~~per OAC 340:25-5-123.

(g) When a default paternity order has been entered and either party contacts OCSS in writing within 30 days of entry of the default order, OCSS treats the request as a motion to vacate or modify the default order. After the request is filed with the district court or Office of Administrative Hearings: Child Support, OCSS pursues genetic testing and vacates or amends the default order as necessary based on findings.

(h) Genetic testing costs incurred in paternity establishment cases are paid as follows:

(1) OCSS advances the costs for genetic testing and recovers the genetic test costs from the noncustodial parent or as ordered by the court.

(2) When OCSS paternity results are contested, OCSS requests payment in advance of a second genetic test by the requesting party.

(3) When a court orders OCSS to provide genetic testing and OCSS does not have a case open for services, OCSS requires a party to complete an application for services prior to advancing the costs of genetic testing.

(4) In interstate cases, OCSS follows OAC 340:25-5-270.

340:25-5-178. Establishment of current child support

(a) Oklahoma Child Support Services (OCSS) establishes current child support under:

(1) Sections 654, 656, and 666 of Title 42 of the United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Section 83 of Title 10; Title 43; and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) OCSS uses the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes to:

(1) establish the amount of current support; and

(2) prepare a child support computation form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site under Section 120 of Title 43 of the Oklahoma Statutes.

(c) Under Section 118 of Title 43 of the Oklahoma Statutes, OCSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting orders that are fair and equitable.

(d) To establish the amount of current support, OCSS considers "actual" child care expenses to be the amount paid to the child care provider by the custodial person except when subsection (e) applies. OCSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the noncustodial parent becomes part of the fixed monthly child support obligation.

(e) When the custodial person is participating in the OKDHS Child Care Subsidy Program under Section 230.50 of Title 56 of the Oklahoma Statutes, OCSS uses OKDHS Appendix C-4, Page 1, Child Care Eligibility/Rates Schedule to determine the family share co-payment amount to be considered as actual child—care costs on the child support computation form. [43 O.S. § 118]

(1) OCSS considers the noncustodial parent's share of the base monthly obligation for child support and the custodial person's gross monthly income as the custodial person's monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, Page 1, OCSS uses the corresponding family share co-payment amount based on the number of children in OKDHS subsidized child care. OCSS allocates the family share co-payment amount indicated on Appendix C-4, Page 1, in the same proportion as base child support. Child support staff perform a separate child support guidelines calculation for each noncustodial parent.

(2) If the custodial person has a child(ren) in OKDHS subsidized child care other than a child(ren) included in the child support case being established, OCSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(f) OCSS establishes child support orders in deprived court actions under Section ~~7003-8.8~~1-4-702 of Title 10 of the Oklahoma Statutes and prepares the child support order on the standard child support order form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site.

(g) OCSS establishes child support orders for a child(ren) for whom child support is imposable under applicable law.

(h) When the noncustodial parent is a minor, OCSS establishes paternity ~~under~~ per OAC 340:25-5-176 if necessary and establishes a child support order. If a minor noncustodial parent or a custodial person is under 16 years of age, OCSS does not impute gross income for the minor parent in the child support computation and only uses actual income. If a minor noncustodial parent or custodial person is between 16 and 18 years of age and regularly and continuously attending high school, OCSS does impute gross income for the minor parent(s) based on minimum wage at 20 hours per week, unless:

(1) there is evidence of actual income; or

(2) it is otherwise inappropriate.

(i) OCSS enforces child support orders for adults with disabilities under Section 112.1A of Title 43 of the Oklahoma Statutes.

(j) OCSS establishes or modifies child support orders to continue after the child reaches the age of majority under Section 112.1A of Title 43 of the Oklahoma Statutes if the application or referral for IV-D services is received during the period when child support is due under Section 112 of Title 43 of the Oklahoma Statutes.

(k) OCSS establishes a child support and medical support order on an incarcerated noncustodial parent and requests the court to enter the effective date of the child support obligation as the first day of the second month following release from incarceration.

(l) When OCSS establishes a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(m) OCSS does not impute gross income to a person who has been determined disabled by the Social Security Administration.

(n) When a default order for child support has been ordered and either party contacts OCSS in writing within 30 days of entry of the default order and provides information to calculate an accurate child support obligation, OCSS treats the request as a motion to vacate or modify and requests the court enter a new order consistent with the evidence presented.

PART 22. REVIEW AND MODIFICATION

340:25-5-198.1. Review of a child support order

(a) **Purpose.** The purpose of the review process is to determine whether a child support order should be modified to ensure substantial compliance with the child support guidelines in Section 118 through 119 of Title 43 of the Oklahoma Statutes and OAC 340:25-5-178.

(b) **Notification requirements.** At least once every three years after a child support order is established, reviewed, or modified, ~~the~~Oklahoma Child Support ~~Enforcement Division (CSED)~~ Services (OCSS) notifies all parties in a full-service case of the right to request a review of the child support order and the process for requesting a review.

(c) **~~Initiation of~~Authority for review.** ~~CSED reviews an order upon written request in a full-service case.CSED~~OCSS conducts a review every three years in cases with a Temporary Assistance for Needy Families (TANF) assignment. ~~CSED~~OCSS determines the tribunal with jurisdiction under subsection (e) of the Full Faith and Credit for Child Support Orders Act (FCCSOA), codified in Section 1738B(e) of Title 28 of the United State Code and the Uniform Interstate Family Support Act (UIFSA) in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes to modify the order. If another tribunal has jurisdiction to modify the child support order, ~~CSED~~OCSS follows the provisions ~~of~~in (~~g~~j) of this Section. If Oklahoma has jurisdiction to modify the child support order, ~~CSED~~OCSS follows the provisions of this subsection. ~~CSED~~OCSS completes the review and modification process within 180 days after a request is received or the non-requesting party is located, whichever is later.

~~(1) CSED reviews a support order on the written request of any party in a full-service case when the criteria described in (A) through (C) of this paragraph are met.~~

~~(A) It has been more than 12 months since the support order was established, reviewed, or modified. CSED uses the date the order was entered to compute time periods. If an order is not entered after the review or modification process, CSED uses the completion date of the review to compute time periods. The 12-month time period does not apply when a military reservist custodial person or noncustodial parent~~

~~is called to active duty, per the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.~~

~~(B) The non-requesting party is located.~~

~~(C) There has been a material change in circumstancespursuant to Section 118 of Title 43 of the Oklahoma Statutes.~~

~~(2) Within 15 days after receiving a request for a review, CSED determines if the criteria described in paragraph (1) of this subsection are met. CSED notifies the requesting person if the criteria for review are not met. If the criteria are met, CSED sends notice to all parties with instructions for submitting financial and other information needed for the review.~~

~~(3) CSED may initiate reviews of orders in full-service cases on its own initiative for any reason, at any time, without a request, under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED notifies the parties of the review with instructions for submitting financial and other information required for the review.~~

~~(4) When medical insurance becomes available or the cost of existing medical insurance changes, a party in a currently active non-TANF Medicaid case where CSED is providing medical enforcement only services may request a review of the support order.~~

(d) **Initiation of review.**

(1) OCSS reviews an order upon written request by a customer or on its own initiative when the non-initiating party is located and there has been a material change in circumstances pursuant to Section 118I of Title 43 of the Oklahoma Statutes. OCSS notifies the parties of the review with instructions for submitting financial and other information required for the review. OCSS does not initiate a review upon customer request when:

(A) it has been less than 12 months since the child support order was established, reviewed, or modified; and

(B) the preliminary information indicates the change of circumstances will not significantly impact the child support amount or the change of circumstances will be temporary.

(2) When OCSS determines the customer review request does not meet the provisions in paragraph (1) of this subsection, OCSS provides available pro se self-help modification forms to the customer.

(e) **Medical enforcement only (MEO) cases.**

(~~A~~1) ~~If~~When either the custodial person or the noncustodial parent requests a review, ~~CSED~~OCSS~~conducts the review~~ changes the services offered from an MEO~~as~~to a full-service case. ~~CSED~~OCSS notifies the parties of the ~~intended actionbefore changing the case from a medical enforcement only case to a full-service case~~change in services provided.

(~~B~~2) ~~If~~When the noncustodial parent requests the review, the noncustodial parent must complete Form 03EN001E, Application for Child Support Services, described in OAC 340:25-5-110.1.

~~(5) Each party must submit any requested financial and other information as instructed within 20 days after the date the notice is sent under paragraphs (2) or (3) of this subsection.~~

(f) **Initial review.** Within 15 days after receiving a request for a review, OCSS determines if the criteria described in paragraph (1) of subsection (d) of this Section are met. OCSS notifies the requesting person if the criteria for review are not met. If the criteria are met, OCSS may:

(1) request further information as necessary from the parties; or

(2) proceed with the review process when OCSS considers it has information sufficient to complete the process.

(~~d~~g) ~~**Review**~~**Final review.** Within 30 days after the deadline for the parties to submit requested financial and other information to ~~CSED~~OCSS under ~~(c)(5)~~(d)(1) of this Section, ~~CSED~~OCSS completes the review process and notifies parties of its determination as to whether or not the support order should be modified.

(~~e~~h) **Modification after review.** ~~When CSED finds the existing child support order deviates in excess of ten percent from the child support order guidelines, CSED seeks a modification.~~OCSS staff follow OAC 340:25-5-198.2 to determine if the child support order should be modified after the review process is complete.

(~~f~~i) **Termination of the review process.**

(1) The person requesting a review may withdraw the request after the review process begins, upon approval by ~~CSED~~OCSS. ~~CSED~~OCSS does not accept requests to withdraw the review after making a determination that the child support order should be modified.

(2) If the requesting person fails to supply information requested by ~~CSED~~OCSS as instructed, ~~CSED~~OCSS may terminate the review process, unless ~~CSED~~OCSS or the non-requesting party requests the process continue.

(3) When the review is initiated by ~~CSED~~OCSS, failure of the parties to return requested information does not stop the review process. ~~CSED~~OCSS proceeds, using the best information available.

(~~g~~j) **Interstate cases.**

(1) When a tribunal other than an Oklahoma district or administrative court has jurisdiction under UIFSA to modify an order, ~~CSED~~OCSS obtains the information necessary for the review.

(A) ~~CSED~~OCSS transmits the documents to the IV-D agency in the other state within 20 days after receipt of the request to modify the order and of the completed documents from the person requesting the modification.

(B) ~~CSED~~OCSS issues and enforces a subpoena to compel compliance with the request for documents if the non-requesting party fails to return the required documents or ~~CSED~~OCSS is unable to obtain the necessary information to proceed and an Oklahoma tribunal has personal jurisdiction over the non-requesting party.

(C) ~~CSED~~OCSS may terminate the review process in an interstate case as provided in subsection (g)

under Sections 601-611 and 601-613 of Title 43 of the Oklahoma Statutes.

(2) If Oklahoma has jurisdiction to modify the order of another state, Native American tribe, territory, or foreign country as defined by subsection (b) of FCCSOA, codified in Section 1738B(b) of Title 28 of the United States Code, the order is registered in Oklahoma for modification under Section 1738B(i) and Sections 601-609 through 601-613 of Title 43 of the Oklahoma Statutes.

340:25-5-198.2. Modification

(a) **Authority for modification.** ~~The~~Oklahoma Child Support Services ~~Enforcement Division (CSED)~~(OCSS) may initiate modification of a child support order under Sections 112, 118, 118.1, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes in the appropriate tribunal when facts indicate modification is warranted under applicable state or federal law or regulation.

~~(1) If there is no existing order for either parent to provide dependent health care coverage, CSED initiates a modification of a support order to require either or both parents to provide dependent health care coverage when CSED obtains information that the child(ren) is not covered under an existing health care plan other than Medicaid, regardless of whether the coverage is currently available to either parent.~~

~~(2) When CSED participates in the modification of a child support order, CSED requests that the court order contain a provision for medical support consistent with OAC 340:25-5-168.~~

~~(3) OAC 340:25-5-201.1 describes when modification of a child support order is appropriate after a noncustodial parent obtains physical or legal custody of the child(ren).~~

~~(4) CSED initiates a modification of the child support order when there is:~~

~~(A) no existing order for either parent to provide a portion of child care expenses;~~

~~(B) a change in how child care is being provided;~~

~~(C) a change in whether the Oklahoma Department of Human Services provides child care subsidy to a child(ren) in the order; or~~

~~(D) an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate pursuant to Section 139.1 of Title 43 or Section 566 of Title 21 of the Oklahoma Statutes.~~

(b) ~~When a child support order exists, CSED (OCSS) considers a request to establish a medical support order as a request for modification of the order under Section 118.1 of Title 43 of the Oklahoma Statutes. CSED (OCSS) seeks a medical support order in a tribunal that has jurisdiction to modify the child support order and follows procedures in OAC 340:25-5-198.1.~~**Modification of child support order.** OCSS seeks a modification when the existing support order is not in compliance with the child support guidelines because:

(1) a component of or the new current child support amount will be 20 percent higher or lower than the existing order;

(2) there has been a change in physical custody verified pursuant to OAC 340:25-5-201.1;

(3) the original order failed to set child support according to the guidelines; or

(4) one of the parents has been determined disabled by the Social Security Administration and the parent is receiving Supplemental Security Income or Social Security Disability Income.

(c) **Modification of medical support order.**

(1) OCSS seeks a modification of an order for medical support when:

(A) there is no existing order for either parent to provide dependent health care coverage. OCSS initiates a modification of a support order to require either or both parents to provide dependent health care coverage when OCSS obtains information that the child(ren) is not covered under an existing health care plan other than Medicaid, regardless of whether the coverage is currently available to either parent;

(B) the availability of medical insurance changes;

(C) there is an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate pursuant to Section 139.1 of Title 43 or Section 566 of Title 21 of the Oklahoma Statutes;

(D) an order for the noncustodial parent to provide medical insurance and the release of information necessary for enrollment of the child would be inappropriate due to family violence and a cash medical order would be appropriate pursuant to OAC 340:25-5-198; or

(E) there is an order for a parent to provide medical insurance, the applicant for child support services has not requested services against that parent, and the ordered parent is not actually providing medical insurance for the child.

(2) When OCSS participates in the modification of a child support order filed by a party, OCSS requests that the court order contain a provision for medical support consistent with OAC 340:25-5-168.

(3) When a child support order exists, OCSS considers a request to establish a medical support order as a request for modification of the order under Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order and follows procedures in OAC 340:25-5-198.1.

PART 23. ENFORCEMENT

340:25-5-211.1. License revocation and reinstatement for failure to comply with child support order

(a) **Legal base.** ~~The Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED)~~

~~may apply this Section in considering noncustodial parents' requests to reinstate occupational and recreational licenses. Otherwise, this Section only applies to noncustodial parents' requests to reinstate an Oklahoma driver license for a noncustodial parent who is not in compliance with an order for child support.~~

~~(b)~~ ~~CSED~~ Oklahoma Child Support Services (OCSS) follows Sections 139 and 139.1 of Title 43 of the Oklahoma Statutes, Sections 1-153, 6-201, 6-201.1, and 6-211 of Title 47 of the Oklahoma Statutes, and Sections 237.1, 240.15 through 240.17, and 240.19 through 240.21A of Title 56 of the Oklahoma Statutes in processing enforcement actions to order the revocation, suspension, nonissuance, nonrenewal, or probation of ~~an Oklahoma driver~~a license for a noncustodial parent who is not in compliance with an order for child support.

(b) **License Reinstatement Process.**

(1) **Request for license reinstatement; desk review.** When OCSS receives a written request to reinstate a license, OCSS conducts a desk review of the case file within 15 days after receipt of a written request for reinstatement.

(~~c~~2) **Compliance with payment plan.**

(A) When OCSS determines that a noncustodial parent is complying with a court-ordered payment plan and other terms of a support order, and the reinstatement provisions of Section 139.1 of Title 43 or~~under~~ Section 240.17 of Title 56 of the Oklahoma Statutes, ~~CSED conducts a desk review of the case file within 15 days after receipt of a written request for reinstatement~~OCSS requests a reinstatement of the license from the tribunal that revoked the license.

(B) OCSS may request a reinstatement of the license when the noncustodial parent is participating in a problem-solving court program under Section 140 of Title 43 or Section 240.10 of Title 56 of the Oklahoma Statutes.

(3) **Noncompliance with payment plan.**

(A) ~~If CSED~~When OCSS determines a noncustodial parent is not complying with a court-ordered payment plan, other terms of a support order, or the reinstatement provisions of Section 139.1 of Title 43 of the Oklahoma Statutes, ~~CSED~~OCSS sends a notice to the noncustodial parent that the request for reinstatement of a ~~driver~~ license is denied. The notice advises the noncustodial parent that the noncustodial parent has 15 days to request ~~in writing an administrative~~a reinstatement hearing in writing. ~~(d)~~ Upon timely receipt of a written request for a hearing, ~~CSED~~OCSS schedules the matter for a hearing before the tribunal that ordered the license revocation~~OKDHSOffice of Administrative Hearings: Child Support~~.

(B) OCSS provides notice of the hearing to the custodial person pursuant to Section 2005 of Title 12 or Section 112A of Title 43 of the Oklahoma Statutes.

(C) If a license has been reinstated pursuant to subsection (b) of this section and the noncustodial parent subsequently is in noncompliance with a payment plan, OCSS requests the court to immediately revoke the license(s) of the noncustodial parent.

340:25-5-212. Financial institution data match reporting system

(a) **Legal basis.** Oklahoma Child Support Services (OCSS) maintains a financial institution data match reporting system to identify noncustodial parents' assets and issue levies on accounts of noncustodial parents who are in noncompliance with an order for support. In maintaining the system, OCSS follows Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, associated federal regulations, and state statutes. This Section establishes provisions necessary to implement Sections 666(a)(17) and 669A of Title 42 of the United States Code and Sections 240.22 through 240.22G of Title 56 of the Oklahoma Statutes. The definitions in Section 240.22A of Title 56 of the Oklahoma Statutes apply to the terms used in this Section.

(b) **Financial institutions.**

(1) All data supplied to OCSS by financial institutions doing business in Oklahoma must be in accordance with the Financial Institution Data Match Specifications Handbook published by the federal Office of Child Support Enforcement.

(2) A financial institution may charge an account levied on by OCSS a fee of $20, under Section 240.22E(E) of Title 56 of the Oklahoma Statutes, which is deducted from the account before the financial institution remits funds to OCSS. If the levied funds are subsequently refunded by OCSS because of an OCSS error described in (d)(4)(A) or (d)(4)(B) of this Section, OCSS refunds any fee charged to the appropriate account holder.

(c) **Levies.** Levies are for the total amount of past-due support as defined in Section 237.7 of Title 56 of the Oklahoma Statutes. Under Section 240.22G of Title 56 of the Oklahoma Statutes, OCSS automatically issues a levy for each matched account unless the noncustodial parent is in full and timely compliance with a court-ordered payment plan. OCSS considers a noncustodial parent in full and timely compliance with a court-ordered payment plan when the noncustodial parent has made voluntary payments of at least 92 percent of the court-ordered payment plan payments due over the last six full calendar months prior to the date of the levy. OCSS considers a manual levy appropriate if there is evidence that the noncustodial parent has funds subject to levy not previously considered by OCSS in establishing the monthly court-ordered payment plan. OCSS requests the financial institution not remit funds in an amount less than $50.

(d) **Notice of levy and administrative review.**

(1) OCSS sends a notice of levy to a noncustodial parent within three days after sending the levy to the financial institution. [56 O.S. § 240.22G] The notice of levy includes:

(A) instructions for the noncustodial parent or a non-obligated joint account holder to request an administrative review in writing;

(B) a description of the grounds for requesting an administrative review;

(C) a description of the review process; and

(D) notice that failure to submit a timely request for review in writing means the levy is final.

(2) It is the responsibility of the noncustodial parent to notify any joint account holder(s) of the levy.

(3) Either the noncustodial parent or a non-obligated joint account holder may request an administrative review of the levy in writing after the date on the notice of levy under Section 240.22G of Title 56 of the Oklahoma Statutes.

(4) A non-obligated joint account holder may request an administrative review in writing when the levied funds are not owned by the noncustodial parent.

(5) Upon receipt of a request for an administrative review OCSS:

(A) contacts the requesting party within three business days to:

(i) notify the party that the review has begun; and

(ii) request further information as necessary;

(B) completes the review as soon as possible, not to exceed three business days from receiving all necessary information; and

(C) completes the review using the best information available when the party requesting a review does not provide the information requested by OCSS within five business days of the request.

(6) The purpose of the administrative review is to quickly resolve any obvious factual errors.

(7) After the administrative review, OCSS issues a notice of administrative review decision and information about requesting an administrative hearing.

(e) **Administrative hearing.** Either the noncustodial parent or a non-obligated joint account holder may request a hearing before the Oklahoma Department of Human Services Office of Administrative Hearings: Child Support (OAH), by the date specified in the notice of administrative review decision. A request for an OAH hearing must be submitted in writing to the district office.

(f) **Release of funds from levy.**

(1) OCSS releases funds from levy when the noncustodial parent submits sufficient and credible evidence at the administrative review that the source of the funds is:

(A) Supplemental Security Income (SSI) benefits;

(B) State Supplemental Payments (SSP) for Aged, Blind and the Disabled;

(C) Temporary Assistance for Needy Families (TANF) benefits; or

(D) child support payments, if the obligor is the custodial person of a minor child(ren) and is receiving the payments as required by a court order.

(2) Funds from a levy may be released, in full or in part, at the discretion of the state's attorney when it is determined the levy negatively impacts a reliable source of child support, or is not in the best interest of the child(ren). When the funds are not assigned to the state, OCSS considers the input of the custodial person in reviewing the case for release.

PART 37. RECOVERY

340:25-5-305. General overpayment and recovery policies

(a) **Purpose.** The purposes of the rules in this Part are to:

(1) establish policies and procedures used by the Oklahoma Department of Human Services (OKDHS) Oklahoma Child Support ~~Enforcement Division~~Services (~~CSED~~OCSS) to recover overpayments made by ~~CSED~~OCSS to custodial persons, noncustodial parents, and other entities; and

(2) resolve payment disputes arising from overpayments.

(b) **Overpayment categories.**

(1) Retained support occurs when the custodial person has kept support payment(s) in violation of the assignment of support rights.

(2) Erroneous payment occurs when ~~CSED~~OCSS has incorrectly paid money to a custodial person, noncustodial parent, or other entity, or failed to retain money assigned to the State of Oklahoma because of an administrative error.

(3) Bad debt occurs when:

(A) the funding for a payment made by ~~CSED~~OCSS to a custodial person or noncustodial parent is subsequently withdrawn when a tax intercept or other collection is revoked;

(B) a check or other payment instrument received by ~~CSED~~OCSS from a noncustodial parent or other payor on behalf of the noncustodial parent is dishonored after a payment has been made to the custodial person; or

(C) ~~CSED~~OCSS issues a payment to a custodial person based on an incorrect arrearage balance or an incorrect allocation of a payment.

(c) **Authority.** When recovering overpayments under this Part, ~~CSED~~OCSS is governed by Title IV, Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code; Section ~~7202.3~~109.5 of Title ~~10~~43 of the Oklahoma Statues; and Sections 171, 185, and 231 through 244 of Title 56 of the Oklahoma Statutes.

(d) **Recovery.** ~~CSED~~OCSS may use any legal remedy to recover overpayments, including, but not limited to, state tax offsets under OAC 340:25-5, Part 27.

(1) ~~CSED~~OCSS is not responsible for creating or recovering overpayments for non-IV-D time periods when non-IV-D cases convert to IV-D cases.

(2) ~~CSED~~OCSS does not charge, collect, or pay interest on overpayments.

PART 38. IV-D AND NON-IV-D CENTRAL CASE REGISTRY INFORMATION

340:25-5-340. Collection and maintenance of addresses of record

(a) **Scope and Authority.** Section 112A of Title 43 of the Oklahoma Statutes provides the basis for ~~the~~ Oklahoma ~~Department of Human (OKDHS)~~ Child Support ~~Enforcement~~

~~Division~~Services (~~CSED~~OCSS) to collect and maintain addresses of record for:

(1) parties and custodial persons subject to paternity orders or child support orders entered in Oklahoma;

(2) noncustodial parents under Section 237A of Title 56 of the Oklahoma Statutes and OAC 340:25-5-213;

(3) parties and custodial persons subject to paternity orders or child support orders entered in other jurisdictions; and

(4) parties and custodial persons when they voluntarily submit them.

(b) **Establishment of address of record.** Custodial persons and noncustodial parents establish the initial address of record through:

(1) completion of Form 03EN008E, Family Violence - Address of Record Statement;

(2) a court order; or

(3) a support order summary form when services are not being provided under the OKDHS state IV-D plan pursuant to Section 237 of Title 56 of the Oklahoma Statutes.

(c) ~~Custodial persons and noncustodial parents may also use Form 03EN008E to designate a family violence indicator under OAC 340:25-5-67.1.~~

~~(d) Addresses of record are subject to release for the purpose of service of process in support, visitation, and custody actions under Section 112A of Title 43 of the Oklahoma Statutes.~~

~~(e)~~ **Updating an address of record.**

(1) A person who is responsible for maintaining an address of record on file with ~~CSED~~ OCSS under Section 112A of Title 43 or Section 237A of Title 56 of the Oklahoma Statutes must notify ~~CSED~~OCSS of any change in the address within 30 calendar days. The person may send changes to ~~CSED~~OCSS, Central Case Registry, P.O. Box 528805, Oklahoma City, OK 73152-8805 or to a district child support office. ~~CSED~~OCSS may require proof of a person's identity before establishing or changing a person's name or address of record and may attempt to verify or confirm the correctness of addresses of record.

(~~f~~2) A custodial person updates an address of record:

(~~1~~A) by completing and signing a change of records letter;

(~~2~~B) by telephoning ~~CSED~~OCSS customer service at 405-522-2273 in the Oklahoma City calling area, 918-295-3500 in the Tulsa calling area, or toll-free at 1-800-522-2922 and entering an OKDHS customer identification number and personal identification number. This provides restricted access to the custodial person's case information for ~~CSED~~OCSS to update the address of record by telephone; or

(~~3~~C) through a court order.

(3) A custodial person who is represented by an attorney may designate the attorney's address as the address of record pursuant to Sections 112A and 413(F) of Title 43 of the Oklahoma Statutes. The designation must include the signature of the custodial person and the attorney. When a custodial person has designated an attorney's address as the address of record, the address of record can only be updated with the written permission of the custodial person and the attorney. In accepting designation as the custodial person's address of record, the attorney becomes responsible for receiving the custodial person's legal documents and other official papers by regular mail, and may receive the custodial person's payments.

~~(g) A noncustodial parent updates an address of record:~~

~~(1) by completing a change of records letter; or~~

~~(2) through a court order.~~

~~(h) CSED records the custodial person's address of record as the address of a custodial person's attorney only if the custodial person designates the attorney's address as the address of record pursuant to Sections 112A and 413(F) of Title 43 of the Oklahoma Statutes. In accepting designation as the custodial person's address of record, the attorney becomes responsible for receiving the custodial person's payments, legal documents, and other official papers by regular mail.~~

(~~i~~4) ~~CSED~~OCSS does not change a custodial person's address of record to that of a collection agency to send support payments to the collection agency's address. ~~CSED~~OCSS denies any such request unless there has been an assignment of child support to an attorney pursuant to Section 118.4 of Title 43 of the Oklahoma Statutes.

(5) A noncustodial parent updates an address of record:

(A) by completing a change of records letter; or

(B) through a court order.

340:25-5-340.1. Disclosure of address of record

(a) A party or custodial person seeking disclosure of the address of record of another party or custodial person from the Central Case Registry (CCR) of ~~the~~ Oklahoma ~~Department of Human~~ Child Support Services ~~Child Support Enforcement Division~~ (~~CSED~~OCSS) must submit Form 03EN009E, Request for Address of Record, ~~which~~that:

(1) elicits information about the requester and the reasons for the request; and

(2) includes information about statutory limitations on the release of addresses of record.

(b) ~~CSED~~OCSS may:

(1) refuse to release an address under Sections 112A and 413 of Title 43 of the Oklahoma Statutes, OAC 340:25-5-67.1, or other applicable law; and

(2) release addresses of record under OAC 340:25-5, Part 9.

(c) The address of record of a party or custodial person may be released by CCR staff or an OCSS state's attorney after verifying that the sole purpose of providing the address is for service of process in support, visitation, and custody actions. The release of the address of record by a state's attorney is at the discretion of the state's attorney pursuant to OAC 340:25-5-67.1 and Section 112A of Title 43 of the Oklahoma Statutes.

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-351. Allocation and distribution of collections

(a) **Basis for allocation and distribution of collections.** The Oklahoma Department of Human Services (OKDHS) distributes support collections received by the Centralized

Support Registry for IV-D and non-IV-D cases. The collections are allocated and distributed according to Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and associated federal regulations and Oklahoma Statutes. This Section establishes allocation of collections across support orders involving multiple families and different types of support obligations. It also establishes high-level distribution policies. Actual distribution of money occurs under Section 657 of Title 42 of the United States Code after collections are allocated according to this Section. Oklahoma Child Support Services (OCSS) is also governed by Section 654 of Title 42 of the United States Code, Section 302.33 of Title 45 of the Code of Federal Regulations, and Section 237 of Title 56 of the Oklahoma Statutes in the collection of the annual fee.

(b) **Annual fee.** OCSS automatically collects an annual $25.00 fee once $500.00 support has been collected and issued to the custodial person. A case is exempt from this annual fee when the family is currently receiving or formerly received assistance under state or tribal Temporary Assistance for Needy Families (TANF) or Aid to Families with Dependent Children program. When there is more than one IV-D child support program involved, OCSS collects the annual fee on cases when Oklahoma is the initiating state.

(c) **Overall priority of allocation and distribution.** This subsection has priority over (~~c~~d) through (~~h~~i) of this Section.

(1) ~~The OKDHS~~Oklahoma Child Support ~~Enforcement Division~~ (~~CSED~~OCSS) allocates payments from a collection action to satisfy amounts due under obligations included in the action. Income assignment orders, liens, administrative offsets, contempt actions, and license revocations are examples of collection actions. If ~~CSED~~OCSS receives a voluntary payment, ~~CSED~~OCSS honors designated payments from noncustodial parents who have multiple family obligations if payments are reasonably consistent with this Section. Otherwise, ~~CSED~~OCSS allocates voluntary payments to cases with court-ordered obligations before cases without court-ordered obligations.

(2) In a non-IV-D case, ~~CSED~~OCSS allocates and distributes payments through the Centralized Support Registry directly to the obligee, without otherwise allocating or distributing payments under this Section, unless money was previously assigned to the State of Oklahoma.

(3) Except as provided for in (~~e~~f) of this Section, ~~CSED~~OCSS applies ~~arrearages~~arrearage collections owed to the custodial parent before paying ~~temporarily~~conditionally or permanently assigned arrears owed to a state.

(4) ~~Temporarily assigned arrears are paid before permanently assigned arrears. If the support amount ordered for a prior period is less than the cumulative amount of cash assistance from the IV-A and IV-E programs, the support is permanently assigned. In cases involving unreimbursed assistance, CSED retains current monthly support collections in excess of the current assistance payment under Temporary Assistance for Needy Families (TANF) to reimburse the State of Oklahoma for past assistance.~~

~~(5)~~ ~~CSED~~OCSS applies payments to interest owed to a particular custodial person after current child support and the principal arrears balance is paid in full. All interest debt is referred and distributed for ~~IRS~~Internal Revenue Service (IRS) offset as arrears owed to the custodial person and not as a state debt or as assigned cash medical support. ~~CSED does not apply interest collections from an IRS offset to state debt unless CSED~~When OCSS has been unable to locate the custodial person after reasonable efforts; OCSS applies interest collections from an IRS offset to state debt.

(~~c~~d) **Initial allocation to monthly current support obligations.** Except as provided in (~~e~~f) of this Section, ~~CSED~~OCSS initially allocates collections to current support obligations due each month.

(1) If collections are less than the amount of all current support due, ~~CSED~~OCSS allocates collections ~~to~~between the current child support ~~due~~and the cash medical support specified in the order in proportionate shares.

(2) After the current child support and cash medical support obligation is met, ~~CSED~~OCSS allocates collections to current spousal support due.

(~~d~~e) **Allocation to monthly past-due support obligations under payment plans.** Except as provided in (~~e~~f) of this Section, after all current support obligations are met, ~~CSED~~OCSS allocates collections under payment plans to fixed monthly past-due support obligations. Payment plans are defined in Section 237.7 of Title 56 of the Oklahoma Statutes.

(1) If collections are less than the amount due under the payment plan, ~~CSED~~OCSS first allocates collections to past-due ~~monthly~~current child support.

(2) After the past-due monthly child support obligation is met, ~~CSED~~OCSS allocates collections to monthly past-due spousal support.

(3) ~~CSED~~OCSS allocates collections to the total amount in arrears after fixed monthly past-due support obligations in the payment plan are met.

(~~e~~f) **Allocation and distribution to total amount in arrears.**

(1) ~~CSED~~OCSS allocates federal income tax refund offset collections to the total amount in arrears.

(2) Except for collections under a payment plan, ~~CSED~~OCSS allocates collections above the current support obligation to total arrears.

(3) After all child support arrearages are satisfied, ~~CSED~~OCSS allocates remaining collections to spousal support arrearages.

(~~f~~g) **Allocation and distribution of arrears to assigned cash medical support.** After the past-due current child support, cash medical support, and spousal support are met, OCSS allocates collections to assigned cash medical support.

(~~g~~h) **Multiple family support orders.** This subsection explains the allocation of collections when a noncustodial parent has multiple family obligations. For purposes of this Section, a family is a mother and a father and the child(ren) of

that relationship, and any custodial person(s) of the child(ren) who is not the mother or the father.

(1) **Current support.** ~~CSED~~OCSS prorates and applies support collections to each family based on the ~~fixed~~ current ~~monthly~~child support obligation due each family. The collections are allocated within each family obligation under subsection (d) of this Section.

~~(A) If collections for current support are less than the amount of current child support due for all families, CSED prorates and allocates collections to each family based on each family's current child support due.~~

~~(B) After current child support obligations are met, CSED prorates and allocates collections to current spousal support obligations based on the amount of current spousal support due each family.~~

(2) **Past-due support under a payment plan.** ~~CSED~~OCSS prorates and allocates collections to payment plans for multiple families based on each family's fixed monthly payment plan obligations due.

(3) **Total arrears, including principal and interest balances.** ~~CSED~~OCSS prorates and allocates collections to arrears, including principal and interest balances, for multiple families based on each family's total arrears due.

(~~h~~i) **Past-due support in interstate cases.** In cases where ~~CSED~~OCSS is collecting support for a custodial person who is receiving services from another state's child support agency, ~~CSED~~OCSS allocates ~~arrearages~~arrearage payments based on information provided by the initiating state. After all current support obligations are met, ~~CSED~~OCSS allocates collections to past-due support for payment plans, total arrears, and interest as follows:

(1) **Non-public assistance balance.** If any portion of the past-due balance is owed to the custodial person or will be passed through to the custodial person under federal distribution regulations, ~~CSED~~OCSS allocates collections to that portion of the past-due balance and pays that amount to the other state's State Disbursement Unit.

(2) **Public assistance balances.** If no portion of the past-due balance is owed to the custodial person, ~~CSED~~OCSS allocates collections first to balances owed to Oklahoma and then pro rates between balances owed to the other state(s).

(~~i~~j) **Interest.** ~~CSED~~OCSS distributes interest last in single family, multiple family, and interstate cases.

[OAR Docket #10-645; filed ??-??-??]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM

[OAR Docket #10-642]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
Subchapter 7. Eligibility
340:40-7-1 [AMENDED]
340:40-7-6 [AMENDED]
340:40-7-8 through 340:40-7-9 [AMENDED]
340:40-7-11 through 340:40-7-13 [AMENDED]
Subchapter 9. Procedures Relating to Case Changes
340:40-9-1 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-2 [AMENDED]
340:40-13-5 [AMENDED]
Subchapter 15. Overpayments
340:40-15-1 [AMENDED]
(Reference APA WF 09-11, 09-16, and 09-28)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law (P.L.) 104-193; the Balanced Budget Act of 1997, P.L. 105-33; 45 Code of Federal Regulations (CFR) Parts 98 and 99; Section 230.65 of Title 56 of the Oklahoma Statutes; and the American Recovery and Reinvestment Act of 2009 which established the Emergency Contingency Fund for state TANF Programs as Section 403(c) of the Social Security Act.

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n/a

ANALYSIS:
The revisions to Subchapter 3 of Chapter 40 amend the rules to add two circumstances to when a new application is required.

The revisions to Subchapter 7 of Chapter 40 amend the rules to: (1) remove language regarding non-cash Temporary Assistance for Needy Families (TANF) vouchers; (2) remove adoptions subsidy payments as countable income and add as an excluded source of income; (3) add language to exempt household income for certain children adopted through the Oklahoma Department of Human Services (OKDHS); (4) clarify that the number of household members is used to determine which scale on the OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart is used; (5) clarify that caretakers who are legally and financially responsible for the child and parents must earn at least minimum wage to be eligible with the exception of certain adoptive families; (6) add that child care may be approved for a client to participate in activities required to maintain a scholarship when proof is provided; (7) clarify an Oklahoma Child Support Services referral is not required for the child of an adult non-relative opposite sex individual (ANROSI) living in the home; (8) explain the amount of the minor child's Social Security benefit used to meet the minor child's needs is considered as unearned income when that child no longer lives with the payee of the minor child's Social Security benefit is considered as unearned income; (9) remove non-recurring lump sum payments as a source of considered income; (10) clarify what types of educational assistance are excluded or considered; (11) clarify types of excluded Workforce Investment Act (WIA) income; (12) clarify income computation procedures; (13) remove outdated language regarding TANF families in the Work Supplementation Program (WSP), change the program name to the Subsidized Employment Program and change participation requirements; (14) update language to current terminology; (15) and add clarifying language.

The revisions to Subchapter 9 of Chapter 40 amend the rules to update language to show differences between benefit reporting procedures for semi-annual and annual benefit reporters.

The revisions to Subchapter 13 of Chapter 40 amend the rules to: (1) clarify that a parent may choose an in-home provider even if an out-of-home provider is available; (2) change who is responsible for completing contract renewal procedures and monitoring the in-home provider's training hours; (3) allow child care center and home providers to sign a contract if they hold an appropriate star status within 30 calendar days; (4) add the term authorized signor to follow contract language; (5) remove requirement for directors to view the training compact disc (CD) and take and pass the proficiency test when the owner lives out-of-state; (6) remove the requirement for the owner to provide proof of ownership; (7) add collaborations and agreements and legal name change as changes that must be reported; (8) add legal name change to changes that do not require a new contract; (9) add language that when care is provided at an alternate site the provider must have adequate licensed capacity at that site; (10) add an additional contract violation when a provider charges a client for a fee not charged to a private pay family; (11) clarify that Child Welfare (CW) authorizations cannot be closed by Family Support Services (FSS) staff when a contract is cancelled; and (12) added clarifying language.

The revisions to Subchapter 15 of Chapter 40 amend the rules to: (1) replace outdated language; and (2) clarify what information is sent to the client when an overpayment claim is established.

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 1, 2010:

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for an application form and ends with determining the household's eligibility and entering that determination into the computer system. Subsidized child care benefits must be synchronized with the client's food benefits or SoonerCare (Medicaid) benefits in accordance with OAC 340:40-9-1(c). The Child Welfare or Family Support Services worker processes the application.

(1) **When an application is required.** A new application is required when:

(A) an applicant initially applies for subsidized child care benefits;

(B) the client's subsidized child care benefits have been closed for more than 30 calendar days. This includes when expedited eligibility processing was used or when the client was approved for 30 calendar days of child care to search for a job in accordance with OAC 340:40-7-8(a)(6); ~~or~~

(C) the payee for the subsidized child care benefits changes~~.~~; or

(D) family income has not been considered because policy at OAC 340:40-7-12(6) applied and one or more of the affected adopted children turns six unless there is already a separate open income eligible case and the child can be added to that case in accordance with OAC 340:40-9-2(c).

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. If an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving this person permission to act on behalf of the applicant or the applicant must have designated this person as his or her authorized representative on the signed application.

(A) If the natural or adoptive parent or stepparent of the child is in the home, he or she is considered the applicant and eligibility is based on that parent's situation regardless of whether he or she has custody of the child.

(B) If both the natural and adoptive parent of the child are living in the same household and the adoption has been finalized, the adoptive parent is considered the applicant and eligibility is based on that parent's situation.

(C) If the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.

(D) If the parent is a minor, either the minor parent or the responsible adult the minor is living with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) If the natural or adoptive parent is living in the home but is too incapacitated to apply, someone else living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply.

(3) **Application form.** An applicant or the applicant's authorized representative completes and signs Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E,

Responsibilities and Signature for Benefits, to apply for subsidized child care benefits. When child care is needed for a child with disabilities, the worker and applicant also complete Form 08AD006E, Certification for Special Needs Child Care Rate.

(4) **Date of request.** The date of request is the date the applicant requests subsidized child care benefits verbally or in writing.

(5) **Date of application.** The date of application is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the human services center. This includes providing the name of the child care provider the client wishes to use.

(A) The provider must already have a valid Oklahoma Department of Human Services (OKDHS) child care provider contract.

(B) See OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.

(C) For applicants choosing an in-home provider, see OAC 340:40-13-1 and 340:40-13-2.

(6) **Child care interview.** Child care interviews are typically completed face-to-face with the applicant or authorized representative. A face-to-face interview is required for protective or preventive child care requests and strongly recommended for special needs requests.

(7) **Explanation of eligibility factors.** At the time of the initial interview, the worker advises the applicant or authorized representative of:

(A) his or her rights and responsibilities;

(B) all factors of eligibility including which child care providers are eligible to receive subsidy payment;

(C) the plan of service and reason child care may be approved based on the applicant's statements at interview;

(D) the applicant's electronic benefit transfer (EBT) responsibilities that includes viewing the client training video;

(E) the earliest date child care can be approved;

(F) the requirement to cooperate with the OKDHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and

(G) the requirement to report within ten calendar days any changes in his or her circumstances.

(8) **Timeliness.** Near real-time (NRT) benefit processing time frames are used for all child care applications. To be considered timely, the worker must determine eligibility within two working days of receiving all necessary verification to certify or deny the application. If the applicant does not provide requested verification, the worker denies the request within 30 calendar days of the date of request. The worker sends Form 08MP037E, Notice Regarding Social Services, explaining the reason for delay to any applicant whose application is over 30 calendar days old.

(9) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility per OAC 340:2-5.

(b) **Expedited eligibility processing.** The worker must process an application immediately when required verification is beyond the applicant's control to provide, the applicant does not have the money to pay toward the cost of child care, and without child care the applicant:

(1) is in danger of losing a job; or

(2) cannot start a new job.

(c) **Eligibility determination.** The worker uses OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine whether the household meets income guidelines. See OAC 340:40-5-1(8) for more information about income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant provides all necessary verification to determine eligibility. The applicant is responsible for any child care used before the certification date or which is not part of the approved child care plan of service.

(A) The client swipes attendance with his or her EBT card through a point-of-service (POS) machine at the child care facility.

(B) OKDHS does not pay for care for any day the child attends child care if the client fails to swipe attendance unless extenuating circumstances exist beyond the control of the client and/or provider.

(C) If the client fails to swipe attendance, he or she is responsible for any care given for that day and may be responsible for any absent day payment OKDHS pays if all days the child attended were recorded.

(2) **Applicant determined ineligible.** The request or application is denied if the applicant is ineligible, does not provide needed verification, or requests cancellation of the application. A new application form is not needed when the applicant completes the application process and provides necessary verification within 60 calendar days of the original request date.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-1. Categories of eligibility

A person may be predetermined eligible for a child care benefit, determined income eligible based on the gross income of the household, or have dual eligibility with his or her tribe.

(1) **Predetermined eligible.** A person is predetermined eligible for a child care benefit with a zero co-payment when he or she is a recipient of public assistance or Supplemental Security Income (SSI). Public assistance is defined as a State Supplemental Payment, Temporary Assistance for Needy Families (TANF) that includes Supported Permanency ~~and non-cash vouchers a child receives from the TANF program,~~ or Refugee ~~Cash Assistance~~Resettlement Program (RRP) cash assistance.

(A) All TANF recipients who work and are eligible for a child care benefit can choose to receive a

child care benefit through the Oklahoma Department of Human Services (OKDHS) while they work or choose to pay for the child care themselves. If they choose to pay for the child care cost themselves, it can be considered as an earned income exemption for the TANF benefit.

(B) Exceptions to a person being eligible with a zero co-payment when he or she receives public assistance or SSI include when:

(i) the recipient is a child and the parent or guardian requesting the benefit for the child is not the payee on the public assistance or SSI payment; or

(ii) it makes a difference in whether other children in the household are income eligible for child care.

(2) **Income eligible.** Households who are not predetermined eligible for a child care benefit must meet income eligibility guidelines shown on OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart, for their household size, to receive assistance with child care costs.

(3) **Transitional child care.** Per Section 230.61 of Title 56 of the Oklahoma Statutes, a TANF recipient who becomes employed is eligible for transitional child care benefits for 24 months following the date of employment as long as he or she meets income eligibility guidelines on OKDHS Appendix C-4 for his or her household size unless the:

(A) employer provides child care benefits; or

(B) monthly salary received from the employer exceeds the monthly allowance of assistance pursuant to the TANF program plus the cost of child care and medical insurance to which the recipient would be entitled.

~~(4) **TANF families in the Work Supplementation Program.** TANF families in the Work Supplementation Program are considered income eligible families and must meet income eligibility guidelines shown on OKDHS Appendix C-4 for their household size, to receive assistance with child care costs.~~

(~~5~~4) **Dual eligibility.** A person may have dual eligibility for both the Child Care Subsidy Program through OKDHS and through his or her tribe. The child care provider may not receive payment for the same service from both programs simultaneously.

340:40-7-6. Household composition and income consideration

(a) **Definition of household composition terms.** The worker determines household composition for income considerations using the definition of terms listed in (1) through (9) of this subsection.

(1) An adult is an emancipated minor or person 18 years of age or older. A child who is also a parent is considered an adult.

(2) A spouse is a person married by ceremony or common-law to another person. They can be living together or separately. If they are living separately, they are considered part of the household if the separation is temporary with no intention of severing the marital relationship or the separation is involuntary.

(3) A stepparent is a person who is a spouse or has been a spouse to the child's parent.

(4) A caretaker is an adult that the child is living with who is acting in the role of a parent. This person may or may not be related to the child by blood, adoption, or marriage and may or may not be legally and financially responsible for the child. The caretaker must pursue child support from the natural or adoptive parent in accordance with OAC 340:40-7-9.

(5) ~~A~~An adult non-relative ~~adult~~ is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.

(6) The term legally and financially responsible adult is defined as a parent or stepparent of the child for whom child care is needed. The term also includes other caretaker adults who are court-ordered to be legally and financially responsible for the child.

(7) A child is any unmarried, unemancipated, non-parental person under 18 years of age.

(8) A child who has married or voluntarily left the parental home for any reason and established independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.

(9) A sibling is a minor child who has at least one parent in common with another child in the same household. This definition of a sibling also includes a step-brother or step-sister.

(b) **Household composition and income consideration.** To establish a child's eligibility for subsidized child care benefits, it is necessary to define who must be considered part of household composition for income consideration. All persons whose income is counted in determining the family share co-payment are included to determine whether to use a family size of five members or less or for six or more members on OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart. Persons whose income must be considered in determining eligibility are:

(1) the natural, adoptive, or stepparent of the child who lives in the home and for whom child care is needed;

(2) the caretaker(s) of the minor child who needs child care if that caretaker is legally and financially responsible for the child;

(3) the child for whom child care is requested and his or her siblings under 18 who live in the home;

(4) any adult non-relative ~~adult of the~~ opposite sex individual (ANROSI) who is living in the home with the natural or adoptive parent; and

(5) any child of the ~~non-relative adult of the opposite sex~~ANROSI who is living in the home with the natural or adoptive parent.

(c) **Periods of absence.**

(1) When a household member is out of the home due to a temporary absence, he or she is still considered a household member as long as he or she plans to return to the home. Examples of temporary absence include:

(A) a hospitalization for physical or mental health reasons;

(B) incarceration;

(C) attending school;

(D) military service;

(E) working or training away from home;

(F) looking for a job away from home. See OAC 340:40-7-8(a)(6); and

(G) vacation time for a child.

(2) If a child lives with each parent for part of the month, see (d) in this Section.

(3) If a child lives with a parent for part of the month and a caretaker for the rest of the month, the child's eligibility is based on whether the parent meets the eligibility factors in accordance with OAC 340:40-7. The caretaker must also meet a need factor in accordance with OAC 340:40-7-7 during the time he or she has physical custody of the child.

(d) **Joint or shared custody.** When parents separate or divorce and share custody of their child, either voluntarily or through a court order, the worker considers each parent's eligibility separately as well as his or her income. If only one parent qualifies for subsidized child care benefits, only the days and hours of care needed while that parent has physical custody of the child is approved. If both parents qualify for subsidized child care benefits, each parent is approved only for the days and hours that parent has physical custody and meets a need factor.

340:40-7-8. Defining the need factor for child care benefits

(a) **Employment.** Employment means the parent or the caretaker earns wages for work performed.

(1) The client must provide proof of his or her work hours. If the client has the flexibility to set his or her own work hours, the client and worker jointly determine if they can reduce the number of hours the child needs care by rearranging the client's work schedule. This is especially important in two-parent or two-caretaker families.

(2) The worker limits approval of child care to the number of days and hours the client is working plus reasonable travel time. In two-parent or two-caretaker working families, the worker limits approval to the days and hours they are both working at the same time plus reasonable travel time. ~~If~~When the child attends school or Head Start during part of the work hours, the worker reduces the number of hours he or she approves child care accordingly.

(3) ~~If~~When the ~~parent or~~ caretaker who is legally and financially responsible for the child or the parent is not making at least minimum wage for the number of hours he or she is working, the worker may limit the number of days and hours of care initially approved with one exception. The exception to a parent not meeting the minimum wage rule is when care is approved for an adopted child who meets criteria at OAC 340:40-7-12(6). ~~The~~When the minimum wage rule applies, the worker counsels with the person regarding increasing his or her income. If counseling is unsuccessful, the worker decides whether to further reduce or terminate the subsidized child care benefits.

(4) A person employed and working from his or her own home may be approved for subsidized child care benefits in an out-of-home child care home or center.

(5) Subsidized child care benefits can be approved for sleep time during the day when a parent or caretaker works night hours and a feasible alternative is used at no cost to the Oklahoma Department of Human Services (OKDHS) during the night working hours. Night working hours is defined as the hours between 11:00 p.m. and 7:00 a.m.

(A) The maximum amount of time the worker approves child care is to allow the client eight hours of sleep plus travel time to and from the child care provider.

(B) In two-parent or two-caretaker families care can only be approved for this reason when both parents have night time jobs or when one parent has a night time job and the other parent or caretaker works during the day while the other parent is sleeping.

(6) Job search meets the definition of employment and child care may be approved only when a recipient who has received subsidized child care benefits for at least 30 calendar days loses employment or successfully completes a formal education or training program and requests child care to look for a job.

(A) Child care may be approved for a maximum of 30 calendar days from the date the client loses employment or successfully completes a formal education or training program as long as the child continues to attend the same child care facility.

(B) Job search may be approved no more than twice per calendar year.

(C) The client must have been employed or going to school for at least 90 calendar days between approval periods.

(b) **Training.** A training program is defined as a course of study that when completed qualifies a person to meet requirements for a job that the client could not have obtained without the certificate of completion, accreditation, or licensure. Child care can be approved for one parent or caretaker to attend a training program. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(1) The training program must qualify to receive federal financial aid from the United States Department of Education (USDE) or other federal or state education funds.

(2) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client will be attending, and when he or she is expected to complete the program.

(3) The program must require classroom attendance on a school campus with an instructor present. Care is only approved for an on-line Internet based course or televised

course if it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. If the program is self-paced and can be completed whenever the client chooses, care is not approved.

(4) The client must provide proof of progress when requested. If the client is not making satisfactory progress, further child care for this reason is not approved.

(5) Once the client completes a training program, further child care is not approved for training or education. The client is expected to look for jobs that require his or her training credentials. The client may be eligible for subsidized child care benefits to job search if he or she meets requirements at (a)(6) of this Section.

(6) In certain circumstances, the worker may approve child care benefits for a client to attend a second training program. The client must first have been employed in a job that required the training credentials he or she already has for at least 12 months. Possible circumstances include when:

(A) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the training program in which the client wants to enroll;

(B) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a Workforce Investment Act (WIA) contracted entity, the Oklahoma Employment Security Commission (OESC), or the Oklahoma Department of Rehabilitation Services (DRS); or

(C) the client can establish receipt of the additional training can increase the person's earning potential. The client must provide proof that the starting salary for a person with the training credentials the client wants to obtain is higher than he or she is currently earning.

(c) **Education program.** An education program can include:

(1) **High school.** Child care can be approved for one or both parents or caretakers to attend high school. It is not approved for a parent or caretaker to receive homebound instruction. Prior to approval the client must provide proof that he or she is enrolled, the days and hours the client is attending, and when he or she is expected to graduate.

(2) **General Educational Development (GED), literacy, or adult basic education (ABE) classes.** The program must require classroom attendance with an instructor present. Child care can be approved for one parent or caretaker to attend GED, literacy, or ABE classes. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care being approved. If the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) Within the first month of classes, the client must provide proof of initial testing showing the client's current educational and/or literacy level.

(C) The worker reviews the client's progress when the class is expected to end prior to approval for further care for this reason. If the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. At review, the client must provide a statement from the school that includes:

(i) whether the client is attending regularly;

(ii) whether the client is making satisfactory progress;

(iii) an estimated length of time it will take to complete the program; and

(iv) what days and hours the client is currently attending classes.

(D) If the client has not been attending regularly or making satisfactory progress, further care for this reason is not approved.

(3) **English as a Second Language (ESL) classes.** The program must require classroom attendance with an instructor present. Child care can be approved for a single parent or caretaker to attend ESL classes when the client lacks proficiency in understanding, speaking, reading, or writing the English language. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care being approved. If the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) The worker reviews the client's progress when the class is expected to end prior to approval for further care for this reason. If the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. The client must provide a statement from the school that includes:

(i) whether the client is attending regularly;

(ii) whether the client is making satisfactory progress;

(iii) an estimated length of time it will take to complete the program; and

(iv) what days and hours the client is currently attending.

(C) If the client has not been attending regularly or making satisfactory progress, further care for this reason is not approved.

(4) **Formal education program.** A formal education program is defined as a course of study that leads to the attainment of an associate's or bachelor's degree. Child care can be approved for one parent or caretaker to attend a formal education program and to participate in activities required to maintain a scholarship. Only required scholarship activities for scholarships disbursed through the school's financial aid office qualify for child care. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.

(B) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client is attending school or participating in activities required to maintain a scholarship, and when he or she is expected to complete the degree.

(C) The degree program must require classroom attendance on the school campus with an instructor present. Care is only approved for an on-line Internet based course or a televised course if it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. If the program is self-paced and can be completed whenever the client chooses, care is not approved.

(D) The client must provide proof of progress when requested. If the client is not making satisfactory progress, further care for this reason is not approved.

(E) Once the client completes a bachelor's degree, further care is not approved for training or education. The client is expected to look for jobs that require a degree. The client may be eligible for subsidized child care benefits to job search if he or she meets requirements at (a)(6) of this Section.

(F) In certain circumstances, the worker may approve subsidized child care benefits for a client to obtain a different bachelor's degree. The client must first have been employed in a job that required the degree he or she already has for at least 12 months. Possible circumstances include when:

(i) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the degree program in which the client wants to enroll;

(ii) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a WIA contracted entity, OESC, or DRS; or

(iii) the client can establish receipt of the second degree can increase the person's earning potential. The client must provide proof that the starting salary for a person with the degree the client wants to obtain is higher than he or she is currently earning.

(d) **Temporary Assistance for Needy Families (TANF) Work activity.** When a client receives a TANF benefit, subsidized child care benefits may be provided for any activity outlined on the client's Form 08TW002E, TANF Work/Personal Responsibility Agreement, in accordance with OAC 340:10-2-1.

(1) Need for child care is also met when the person is waiting to enter an approved TANF Work activity. Approval is limited to a time period not to exceed:

(A) two weeks; or

(B) one month on an exception basis where child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(2) TANF applicants referred for immediate employment may be approved for subsidized child care benefits to job search. TANF applicants are advised:

(A) child care to job search is limited to 20 days which must be used within 30 calendar days from the date of request;

(B) in-home child care arrangements are not available for TANF applicants;

(C) child care may only be used during the times the applicant is actually looking for a job; and

(D) he or she must notify the worker immediately upon securing employment.

(e) **Protective or preventive child care.** Subsidized protective or preventive child care benefits can be used as an early intervention strategy in certain critical situations to help in preventing neglect, abuse, or exploitation of a child. The worker may approve child care in these situations to help stabilize the family situation or to enhance family functioning. In most instances, Child Welfare (CW) staff ~~complete~~completes protective or preventive child care requests when they are working with the family and recommending protective or preventive child care. When CW staff ~~contract~~ contracts with an outside agency to provide protective or preventive services and child care is recommended, Family Support Services (FSS) staff co~~mplete~~completes these child care requests with the help of the contracted agency staff.

(1) Subsidized protective or preventive child care benefits are temporary and planning to reduce or eliminate the need for such child care begins at the initial contact.

(2) The worker must complete a face-to-face interview with the client prior to approving subsidized protective or preventive child care benefits in order to better assess all of the service needs of the family.

(3) The client must provide a statement from a professional working with the family stating:

(A) the reason child care is recommended;

(B) how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and

(C) the length of time this care is expected to be needed.

(4) The family may or may not be expected to help in paying the cost of these subsidized child care benefits depending on the unique circumstances of the family.

(5) In certain circumstances, families who are financially ineligible for subsidized child care benefits may be approved for protective or preventive child care benefits when the child is in danger of neglect, abuse, or exploitation. The client must provide evidence the family is so burdened by debt that the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning. The client must also provide a plan for reducing his or her debt.

(6) The worker may approve subsidized protective or preventive child care benefits for a maximum of 30 calendar days. If determining ongoing eligibility will take time, the worker may approve child care while the parent or caretaker is gathering necessary information during this 30 calendar day period.

(7) If the family requests subsidized protective or preventive child care benefits beyond this initial 30 calendar day period, the worker sends a memo and supporting documentation to the Family Support Services Division (FSSD) Child Care Subsidy Section staff to request an extension. The client must provide all needed eligibility information prior to submission of the extension request.

(f) **Enrichment.** The purpose of subsidized enrichment child care benefits is to assist a child receiving Supplemental Security Income (SSI) to develop socialization skills and to transition into a group setting such as a classroom. If a child is not receiving SSI benefits, the child is not eligible for subsidized enrichment child care benefits.

(1) The need for subsidized enrichment child care benefits is based solely on the needs of the child's condition of delay or disability rather than on the activities of the parent or caretaker.

(2) Child care for enrichment is limited to a maximum of two days per week not to exceed ten full-time or part-time days per month.

(3) The parent or caretaker must provide a written recommendation from a professional who is working directly with the child in some capacity that states how child care would be beneficial to the child. The professional could be the child's doctor, occupational therapist, physical therapist, or special education teacher.

(4) Unless special circumstances exist, subsidized enrichment child care is only approved for children who have not yet started school or Head Start.

(5) When subsidized enrichment child care benefits are approved, care must be provided outside of the child's home and at least one other child must be attending during the same hours.

(6) The worker obtains approval from staff in the FSSD Child Care Subsidy Section prior to authorizing care for this need factor.

340:40-7-9. Mandatory pursuit of child support and other potential income

(a) **Mandatory referral to the Oklahoma Child Support Services (OCSS).** When one or both of the child's parents are absent from the home, the client must agree to pursue child support through OCSS for all children who must be included in the same household in accordance with OAC 340:40-7-6 before subsidized child care benefits are approved.

(1) **When ~~a~~an OCSS referral is required.** The client is required to pursue child support for all children living in the home for which one or both parents are absent unless good cause exists as described at paragraph (2) or (6) of this subsection. This includes when:

(A) the parent or caretaker is not requesting subsidized child care benefits for every child living in the home;

(B) the client is already receiving court-ordered child support;

(C) there is a joint custody agreement and neither parent is ordered to pay support;

(D) parental rights have been terminated except in the case of adoption per Section 7006-1.3 of Title 10 of the Oklahoma Statutes;

(E) an additional child whose parent is absent is added to the household after certification; or

(F) one or both parents leave the home after certification.

(2) **When ~~a~~an OCSS referral is not required.** The client is not required to complete child support forms when:

(A) he or she is a foster parent to the child and the OCSS referral was completed in the child's Sooner-Care (Medicaid) case;

(B) the client is an adoptive parent and provides proof of a single parent adoption;

(C) a parent is temporarily out of the home in accordance with OAC 340:40-7-6(c) and is still considered part of the household;

(D) the child whose parent is absent is not required to be considered part of the household in accordance with OAC 340:40-7-6; ~~or~~

(E) the client is a minor parent and is not living with his or her own parents. The minor parent must pursue child support for his or her own child but not for himself or herself; or

(F) the child is not receiving a subsidized child care benefit and is only included in household composition because his or her parent is considered an adult non-relative of the opposite sex individual (ANROSI) per OAC 340:40-7-6(b).

(3) **Required forms.** The worker makes the referral to OCSS by completing with the client Form 08TA001E, Absent Parent (AP) Information Sheet, for each absent

parent. The client must sign Form 08TA012E, Cooperation Agreement and Request for Good Cause, as described at paragraph (6) of this subsection. The worker gives the Oklahoma Department of Human Services (OKDHS) Appendix C-16, Child Support Services and Responsibilities, to the client. The form explains OCSS services and client expectations. Supplemental information sent to the appropriate OCSS district office by the worker includes:

(A) a signed and completed Form 03EN002E, Affidavit of Child Support Payments Received; and

(B) copies of any legal documents concerning custody or child support.

(4) **Centralized Support Registry (CSR).** After the worker approves the client for subsidized child care benefits, all future child support payments must be made to the CSR. OKDHS Appendix C-16 contains the address for the CSR.

(5) **Establishment of paternity.** If paternity has not yet been established, the worker discusses the voluntary acknowledgment of paternity process with the alleged father when he is located. If the alleged father admits paternity, the worker secures the alleged father's and the mother's signature on Form 03PA209E, Acknowledgment of Paternity, per instructions under the Notice of Rights and Responsibilities on the form.

(6) **Good cause.** Although the client's cooperation in the pursuit of child support through OCSS is required as a condition of eligibility for child care, good cause for refusal to cooperate may be granted when such cooperation is not in the best interest of the child. ~~The Oklahoma Department of Human Services (~~OKDHS~~)~~ may determine that child support activities can be safely conducted without the cooperation of the client.

(A) The client must sign Form 03TA012E, Cooperation Agreement and Request for Good Cause, at the time of the initial application, at the time of an additional child request, or when circumstances result in an applicant or recipient's request for good cause. The worker does not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish evidence or information.

(B) OKDHS determines that the client has good cause for refusing to cooperate only if:

(i) there is possible physical or emotional harm to the child;

(ii) there is possible physical or emotional harm to the parent or caretaker;

(iii) the child was conceived as a result of incest or forcible rape;

(iv) legal proceedings for adoption of the child are pending before a court; or

(v) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(C) It is the responsibility of the applicant or recipient who makes a claim for good cause to supply documentary evidence to establish the claim, or to furnish sufficient information to permit OKDHS to investigate the circumstances of good cause for refusing to cooperate. Uncorroborated statements of the applicant or recipient are not acceptable documentation. The evidence must be of probative value and supported by written statements to the extent possible. Examples of acceptable written statements include:

(i) birth certificate or medical or law enforcement records which indicate that the child was conceived as a result of incest or forcible rape;

(ii) court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction;

(iii) criminal, medical, child protective services, social services, psychological, or law enforcement records indicating that the putative or absent parent might inflict physical or emotional harm on the child or caretaker;

(iv) medical records indicating the emotional health history and present emotional health status of the caretaker or child, or a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker or child;

(v) a written statement from a public or licensed private social agency that the applicant or recipient is being assisted by OKDHS to resolve the issue of whether to keep the child or relinquish the child for adoption; and

(vi) sworn statements from persons other than the client with knowledge of the circumstances which provide the basis for the good cause claim.

(D) Upon request, the worker assists the client in obtaining evidence that is not reasonably obtainable. This requirement is limited to the specific documentary evidence in (C)(i) through (vi) of this subsection. The client must specify the type of document or record needed, as well as provide sufficient identifying information to make it possible to be obtained.

(b) **Failure to cooperate in the pursuit of child support.** Failure to cooperate in pursuit of child support without good cause may be indicated at the time of application or at any time further action by the client is necessary.

(1) Actions indicating failure to cooperate include refusals to:

(A) identify and assist in locating a known parent;

(B) establish paternity; or

(C) establish, modify, or enforce a support order.

(2) When the worker is informed by OCSS that the client is not cooperating, the worker closes or denies the subsidized child care benefits for all children included in the child care benefits effective ten calendar days from the date action is taken.

(c) **Cooperation with OCSS following closure of the subsidized child care benefits.** The client must verify that he

or she is cooperating with OCSS before subsidized child care benefits can be approved again.

(1) If the client cooperates with OCSS within 30 calendar days of the closure of the subsidized child care benefits and the worker is notified of this cooperation within this time frame, the worker can reopen the benefits back to the date they closed without imposing a penalty period.

(2) If the client does not cooperate with OCSS or waits to inform the worker of this cooperation for more than 30 calendar days from the date the subsidized child care benefits closed, the client must complete a new application before care can be approved. The earliest date subsidized child care benefits can be approved is the date the client completes a child care interview and provides all necessary verification in accordance with OAC 340:40-3-1.

(d) **Exploration and development of potential income other than child support.** The worker explores all other potential sources of income such as Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, veterans benefits, and increased wages at the time of application and at each review for all members of the household whose income must be considered in accordance with OAC 340:40-7-6. The client must apply for or continue to pursue all potential sources of income for which it appears likely he or she may be eligible except for SSI. The client is encouraged but not required to apply for SSI when the client indicates that a household member has a disability. The worker gives the client 90 calendar days from the date potential income is identified to pursue such income.

(1) If the client refuses to pursue available income at the time of request, the worker denies the child care request.

(2) If the client agrees to pursue all potential income and then fails to do so, the worker closes subsidized child care benefits effective ten calendar days from the date the worker takes action.

(3) If the client is approved for the potential income or offered a raise in pay and refuses to accept it, the worker closes the subsidized child care benefits effective ten calendar days from the date the worker takes action.

(4) If the client's pay is decreased either in rate of pay or number of hours worked, the worker explores why the decrease occurred. If the client requested the decrease to avoid a family share co-payment increase or to maintain eligibility for the subsidized child care benefits, the worker closes the subsidized child care benefits.

(5) At each review, the worker determines whether the client continues to pursue potential income.

(A) If the client begins receiving previously identified potential income, the worker considers the income for the next negative action deadline after it is reported.

(B) If the client was determined not eligible for the income, the client must verify this. The worker records in the case record the verification provided and stops exploring this potential income with the client.

(C) If the client stops pursuing the income and was not determined ineligible for it, the worker closes the client's child care benefit for failure to cooperate effective ten calendar days from the date the worker takes action.

(6) If the client's subsidized child care benefits were closed because of failure to cooperate, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care can be approved.

(A) If the client verifies cooperation within 30 calendar days of the closure of subsidized child care benefits, the worker can reopen the benefits back to the date they were closed without imposing a penalty.

(B) If the client does not cooperate or waits to verify cooperation for more than 30 calendar days from the date the subsidized child care benefits close, the client must complete a new application before care is approved. The earliest date subsidized child care benefits can be approved is the date the client completes a child care interview and provides all necessary verification in accordance with OAC 340:40-3-1.

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded in OAC 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. Gross income is treated the same for both types of income.

(b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee.

(1) **Wages.** Wages include total money received for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans.

(A) Only the portion of the cafeteria plan the client controls is counted as income.

(B) Reimbursements for expenses such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(C) Payments made for annual leave, sick leave, or severance pay are considered as earned income during the month such income is received whether paid during employment or at termination of employment.

(D) Wages that are garnisheed or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Earnings derived from a business enterprise owned solely or in part by the person are considered as self-employment income. Self-employment income for households declaring business expenses is determined by calculating total gross receipts or sales and subtracting 50% of the gross income to arrive at the net profit. Alternatively, the net business profit for the most

recent tax year can be used as reported on the person's income tax return.

(A) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(B) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(C) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(D) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged over a 12-month period, even if the income is received in a short period of time. If the averaged amount does not accurately reflect the person's actual monthly circumstances because the person has experienced a substantial increase or decrease in income, self-employment income is based on anticipated earnings.

(E) **Income from rental property.** Income from rental property is considered income from self-employment.

(F) **Income from room and board.** Payments from roomers or boarders are considered self-employment if the roomer or boarder is paying a reasonable amount. If the roomer or boarder is ~~a~~an adult non-relative ~~adult of the~~ opposite sex individual (ANROSI), OAC 340:40-7-6(b)(4) applies.

(3) **On-the-job training.** Earned income from regular employment for on-the-job training is considered as any other earned income.

(4) **Workforce Investment Act (WIA).** Income earned in on-the-job training positions provided under Section 134 of WIA is considered earned income for persons who are 19 years of age and older. On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training. See OAC 340:40-7-12(24)(G) for other types of excluded WIA income.

(5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded under OAC 340:40-7-12.

(6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through (~~11~~10) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee ~~Cash Assistance~~Resettlement Program (RRP) cash assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income. When a minor child receiving Social Security benefits no longer lives with the payee receiving the Social Security benefits, only the portion of the child's Social Security benefit that is used to meet the minor child's needs is considered as income. This may include cash given directly to the minor or money paid to a third party for room and board for the minor child.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, that are made directly to the household from non-household members are counted as unearned income.

(A) If a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share co-payment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) If the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's co-payment, it is considered as an additional co-payment that must be met before OKDHS makes a subsidy payment to the provider.

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs that the payment be made

to the household. Payments for medical support are excluded.

(6) **Veterans compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed $30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** ~~Non-recurring lump sum payments from a countable income source are considered income the month they are received. Money not expended within the month of receipt is considered a resource.~~ Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

~~(10) **Title IV-E or State Adoption Subsidy.** Federal or state funded adoption subsidy payments made to adoptive parents are considered as unearned income.~~

(~~11~~10) **Irregular income.** Income received irregularly but in excess of $30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

340:40-7-12. Sources of excluded income

Only the income listed in this Section is excluded in determining a household's eligibility for a child care benefit. No other income is excluded.

(1) **Lump sum payments.** ~~Both one-time and recurring~~One-time lump sum payments are excluded as income. Recurring lump sum payments are excluded as income unless ~~they are~~ specifically mentioned in OAC 340:40-7-11 as a countable source of income.

(2) **In-kind income.** In-kind income is defined as any gain or benefit which is not in the form of money payable directly to the household, including non-monetary or in-kind benefits such as meals, clothing, public housing, or produce from a garden, and is excluded.

(3) **Money received from the sale of property.** Money received from the sale of property such as stocks, bonds, a house, or a car is excluded. This exclusion does not apply if the person is engaged in the business of selling such property.

(4) **Bank or trust account withdrawals.** Money withdrawn from a bank or trust account is excluded as income even if used to meet current living expenses.

(5) **Capital gains.** The proceeds from the sale of capital goods or equipment ~~is~~are excluded.

(6) **Household income for certain children adopted through Oklahoma Department of Human Services (OKDHS).** The income of all household members is exempt for a child only when conditions in (A) through (E) are met. The:

(A) child has been adopted through OKDHS or a federally recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent who is applying for benefits;

(B) adoptive parent applying for benefits must have a fully executed Form 04AN002E, Adoption Assistance Agreement, that lists child care as an adoption assistance benefit for the child and also includes Form 04AN033E, Post Adoption Child Care Referral;

(C) adoptive parent and child are residents of Oklahoma;

(D) child is five years of age or younger; and

(E) need for child care is for employment only and proof is provided. Subsidized child care may be approved only for the days and hours the parent works. In a two-parent family, care may also be approved for sleep time when one parent works days and the other parent works during normal night time sleep hours. Refer to OAC 340:40-7-8.

(~~6~~7) **Earnings of children.** Earnings of a person 17 years of age and younger who is considered a child in the case is excluded as long as the child is attending school regularly. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. Earned income of a child who is head of his or her own household, such as is the case for a minor parent, is treated as adult income.

(~~7~~8) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is in excess of $30 per calendar quarter.

(~~8~~9) **Reimbursements.** Reimbursements for past or future expenses to the extent they do not exceed actual expenses are excluded.

(~~9~~10) **Tax refunds.** Federal or state income tax refunds, including the state and federal Earned Income Tax Credit (EITC), and advance payments of federal EITC are excluded.

(~~10~~11) **Money received for third parties.** Money received and used for the care and maintenance of a third party who is not a household member is excluded.

(~~11~~12) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded. Verification that the income is a loan is required.

(~~12~~13) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs ~~is~~are excluded.

(~~13~~14) **Educational assistance.** ~~All education~~Educational assistance including grants, work-study, scholarships, ~~and student~~fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money

received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money received is not intended to be a reimbursement and is a gain to the client, it is considered income.

(~~14~~15) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act is excluded.

(~~15~~16) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in SCORE and ACE is excluded.

(~~16~~17) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies which is received in-kind or in cash for rent, mortgage payments, or utilities is excluded.

(~~17~~18) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(19) **Title IV E of the Social Security Act or State Adoption Subsidy.** Federal or state funded adoption subsidy payments made to adoptive parents are excluded as income.

(~~18~~20) **Victims of Crime Act of 1984.** Payments made from the crime ~~victims~~victims'compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 are excluded. [42 USC 10602]

(~~19~~21) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by the Developmental Disabilities Services Division of the Oklahoma Department of Human Services (OKDHS) are excluded as income.

(~~20~~22) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household are excluded. Payments specified by a court order or other legally binding agreement to be paid directly to the client but that are instead diverted to pay a third party for a household expense are counted as income.

(~~21~~23) **Money received by another household for a household member.**

(A) When a child spends part of the month in two separate households and receives countable income, the worker determines which household actually receives the income. Only the portion of the income that is actually received by the household applying for or receiving a child care benefit is considered as income for that household.

(B) When a minor parent is the payee and lives with one of his or her parents or a caretaker who receives child support for the minor parent, that child support is considered income for the parent or caretaker and not considered for the child care benefit.

(~~22~~24) **Income excluded by federal law.** Income excluded by federal law is defined as:

(A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act [Public Law (P. L.) 92-203, § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded only if the monthly amount, when converted to an hourly rate, is less than the Oklahoma minimum wage;

(D) income derived from submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, Sec. 6];

(E) Indian payments, which include judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior of the Bureau of Indian Affairs or distributed by the tribe subject to approval by the Secretary of the Interior. Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any income from mineral leases, from tribal businesses investments, and the like, 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;

(F) 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, is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, earnings, and payments ~~received by a child(ren) in the household from a program funded by~~made for participation in the Workforce Investment Act (WIA)~~, including Job Corps income are not counted as income;~~to persons of all ages

and student status. There are numerous programs for which payments are excluded. These programs include Summer Youth, Job Corp, paid classroom training, and others. The exception to the income exclusion is income to persons for on-the-job training paid to participants 19 years and older. This income is treated as any other earned income. See OAC 340:40-7-11(b)(4);

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Trust Act of 1993. Title I includes three Acts: Serve-America, The Community Service, Schools and Service-Learning Act of 1990, the American Conservation and Youth Service Corps Act of 1990, and the National and Community Service Act. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service-Learning Program and the AmeriCorps Umbrella Program come under this Title. This includes AmeriCorps income;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP), and also utility payments and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds paid to persons under the Community Service Employment Program under Title V. [P.L. 100-175] This program is authorized by the Older Americans Act. Each State and various organizations receive some Title V funds. These organizations include:

(i) Green Thumb;
(ii) National Council on Aging;
(iii) National Council of Senior Citizens;
(iv) American Association of Retired Persons;
(v) U.S. Forest Service;
(vi) National Association for Spanish Speaking;
(vii) National Urban League;
(viii) National Council on Black Aging; and
(ix) National Council on Indian Aging;

(L) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);

(M) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in interment camps during World War II;

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

(O) payments for the fulfillment of a Plan for Achieving Self-Support under Title XVI of the Social Security Act;

(P) payments made to persons because of their status as victims of Nazi persecution;

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

(R) monetary allowances provided to certain children of Vietnam War veterans as described in Chapter 18 of Title 38 of the United States Code (USC);

(S) 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. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) the value of the food benefit allotment under the Food and Nutrition Act of 2008; and

(U) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food services program for children under the National School Lunch Act of 1970, both as amended by the Omnibus Budget Reconciliation Act of 1981.

340:40-7-13. Computation of income

(a) Any income from an ongoing source that is received regularly but in amounts that vary, or income received irregularly, is averaged over a minimum of 30 days unless the client has received fewer than 30 days of representative income. This includes overtime pay, irregular child support, and other occasional increases or decreases in the monthly gross income. When income is received more often than once per month, the income is converted to a monthly amount.

(b) Income of the applicant or recipient is verified by the best available information.

(1) When the applicant has received at least 30 days of income, the best available information is whatever records are available that best establish the amount of income already received and expected for future months. When the last 30 days of income is not available, actual income must be verified and recomputed within 90 calendar days.

(2) When the client's ongoing income has changed and the last 30 days of income are not indicative of future earnings, best available information may be an employer statement rather than pay stubs. When work hours remain the same but the client received a pay raise, best available information may be to average the work hours over the last 30 days and multiply the figure by the new pay rate.

(3) For earned income, pay stubs are used for verification only if the client's name or Social Security number, date(s) of the pay period, and amount of income before deductions are shown on the pay stub. When this information is not shown on the pay stub, or pay stubs are not available, employer verification is required.

(c) With new employment, the worker verifies the beginning date, date the first full paycheck is expected to be received, hourly rate, and anticipated number of hours per week. Income from a new source is never used in calculating the family share co-payment until after income is received. See OAC 340:40-7-10 for general provisions regarding income.

(d) To calculate income for an initial certification, the worker:

(1) uses actual income received for the month of application and current month, if known, except when:

(A) all income for the month has not been received and verified. Instead the worker uses any full representative paychecks to anticipate income for the certification month and future months;

(B) the person is paid every two weeks and received three checks in the month of certification from ongoing employment; or

(C) the person is paid weekly and received five checks in the month of certification from ongoing employment; or

(2) anticipates income for the month of application and current month when the household receives an extra check in the initial month due to a third or fifth week and the income is ongoing. In the month of application, the anticipated income may be less than a full month's wages.

(e) To calculate income at review, the worker determines eligibility based on circumstances anticipated for future months using the best information available.

(~~e~~f) All earned and unearned income is added together to arrive at the gross income for the household.

(~~d~~g) Once gross income is computed, the only allowable deduction from gross income is for the amount of any verified legally-binding child support payments paid by a household member to or for a non-household member, including child support and child care support payments made to a third party on behalf of the non-household member.

(~~e~~h) The worker uses Oklahoma Department of Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Co-payment Chart to determine whether the household meets income guidelines. See OAC 340:40-5-1(8).

SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-1. Review of child care eligibility

(a) **Child care review.** The worker completes a review of all conditions of eligibility for subsidized child care benefits no later than 12 months from the date of approval of the application or from the last review. When the need factor for child care is for a protective or preventive reason, child care is reviewed more often in accordance with OAC 340:40-7-8(e). The client or the client's authorized representative completes and signs Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E, Responsibilities and Signature for Benefits. If the client is a benefit reporter as described in subsection (b) of this Section, Form 08MP004E, Benefit Review Report, may also be used as a review form for subsidized child care benefits. When circumstances change between review months, the worker evaluates whether to make a change to the client's family share co-payment and/or plan of service or to complete a new application.

(b) **Benefit reporter households.** If a client receiving subsidized child care benefits is also receiving food benefits and/or SoonerCare (Medicaid) and is considered a benefit reporter for one or both of these programs, the client is considered a benefit reporter for the Child Care Subsidy Program. The client is considered a semi-annual reporter when he or she also receives food benefits and is a semi-annual reporter for the Supplemental Nutrition Assistance (SNAP) program. When the client does not receive food benefits, he or she is considered an annual benefit reporter as SoonerCare (Medicaid) clients are annual benefit reporters.

(1) Benefit reporter households are sent a computer-generated Form 08MP004E in the 5th month of certification for semi-annual benefit reporters and the 11th month of certification for annual benefit reporters. The client will continue to receive ~~a~~Form 08MP004E every 5th or 11th month thereafter as long as the subsidized child care benefits remain active and the client remains in benefit reporting status.

(2) Form 08MP004E asks households to report changes in the household's circumstances that could affect their benefits. Form 08MP004E must be completed and returned to the human services center, along with all required verification, by the last day of the 6th or 12th month of the review period or the subsidized child care benefits automatically close.

(3) If the household fails to provide sufficient information regarding a deductible expense, continued eligibility is determined without regard to the deduction.

(4) The worker must act on any changes reported on Form 08MP004E in a timely manner.

(c) **Synchronization of benefits.** When the client is receiving other benefits from the Oklahoma Department of Human Services (OKDHS) in addition to the subsidized child care benefits, certification and review dates must be coordinated with the other programs.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-2. Guidelines for use in approving in-home child care

(a) **Purpose.** In-home child care is defined as care given to a child by a person coming into the child's own home for the express purpose of caring for the child. A parent can choose an in-home provider even when an out-of-home provider is available. The purpose of standards for in-home care is to help ensure the safety of children cared for in their own home when the usual responsible adult is temporarily absent due to employment, training, illness, or other valid reason.

(b) **Qualifications of caregiver.** The worker helps the family select a caregiver capable of providing adequate care and supervision of the child. The caregiver:

(1) must be at least 18 years of age;

(2) demonstrates the vitality and flexibility needed to care for children as well as the ability to exercise good judgment and appropriate authority;

(3) must provide personal references prior to approval if, in the worker's judgment, they are considered necessary;

(4) cannot be a member of the child's household, whether relative or non-relative;

(5) can only care for the ~~child(ren)~~child of one family at a time. The provider can give care to more than one family as long as the hours do not overlap and the ~~child(ren)~~child of each family is cared for in his or her own home; and

(6) must not be under the effects of alcohol, illegal drugs, or medication that impairs functioning when caring for children.

(c) **Requirements prior to approval of the caregiver for subsidy payment.** Upon selection of a caregiver, requirements in paragraphs (1) through (3) must be met before the caregiver may be approved as an in-home provider.

(1) The client and caregiver must complete and sign forms described in (A) through (C).

(A) Form 08CC003E, In-home Mutual Agreement and Notification to Provide Child Care Services. This form notifies the caregiver of the eligibility and child care plan for the child requiring care and the intent of the parent or caretaker to receive care from the caregiver. Once approved, it also serves as the in-home provider's authorization to bill the Oklahoma Department of Human Services (OKDHS) for services provided on or after approval.

(B) Form 08CC004E, Mutual Agreement Regarding the Plan of Care. This form serves as a basis for discussion between the parent or caretaker and the in-home provider of the plan of care for the child, duties of the in-home provider, how to handle emergencies, and the family rules.

(C) Form 08CC005E, In-Home Provider Health and Safety Checklist. This form serves as a basis for discussion between the parent or caretaker and the in-home provider of adequate safety precautions and possible safety hazards in the child's home. The parent or caretaker is also responsible for advising the provider of known risks of a contagious condition of one or more persons in the household. The disclosure allows for training in the universal precautions against exposure.

(2) The caregiver must provide photo identification and a copy of his or her Social Security card.

(3) The caregiver must complete a criminal history investigation as described in paragraph (A) and not be guilty of crimes or enter a plea of guilty or nolo contendere, no contest, to crimes described in paragraph (B).

(A) Criminal history investigations:

(i) are required and must be ~~requested~~provided by each caregiver and substitute caregiver, prior to caring for children;

(ii) are not required for persons who have documentation of a criminal history investigation within the last 12 months;

(iii) must be obtained from:

(I) the Oklahoma State Bureau of Investigation (OSBI); and

(II) the authorized agency in the previous state of residence if the individual has resided in Oklahoma less than one year;

(iv) must include a search of the Oklahoma Department of Corrections files maintained by the OSBI pursuant to the Sex Offenders Registration Act; and

(v) must include the worker completing a computer check using the Social Security number of the potential caregiver prior to approval as an in-home provider. When a Child Welfare (CW) case number appears, the worker consults with CW staff to see if concerns exist about this person's ability to care for children.

(B) A caregiver whose criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or repeated convictions that indicate a pattern of criminal activity is not approved as an in-home provider. Persons who are convicted of or enter a plea of guilty or nolo contendere, no contest, to certain crimes are not approved to care for children or be a substitute caregiver. These crimes include:

(i) violence against a person;

(ii) child abuse or neglect;

(iii) possession, sale, or distribution of illegal drugs;

(iv) sexual misconduct; or

(v) gross irresponsibility or disregard for the safety of others.

(4) Once requirements described in paragraphs (1) through (3) are met, the worker faxes a memo and supporting documentation to the Family Support Services Division (FSSD) Child Care Subsidy Section to request approval.

(A) If the chosen caregiver is approved as an in-home provider, the approval is valid for a maximum of one year from the date FSSD Child Care Subsidy Section staff signs Form 08CC003E. This form must be renewed annually. Once approved, FSSD Child Care Subsidy Section staff ~~mail~~mails the in-home provider the "In-home Child Care Provider Handbook for Subsidy Payments" to advise him or her how to claim for OKDHS payment and a copy of Form 08CC003E advising the in-home provider of the assigned contract number.

(B) If the chosen caregiver is not approved as an in-home provider, FSSD Child Care Subsidy Section staff sends a letter to the caregiver advising of the denial. The worker sends Form 08MP037E, Notice

Regarding Social Services, to the client advising him or her to choose another caregiver.

(d) **Duties of the caregiver.** The caregiver:

(1) provides adequate care and supervision of children at all times, including frequent observations of children in cribs or playpens. The caregiver must arrange to have a competent adult provide consistent supervision during his or her absence from the home;

(2) is responsible only for each child specified in Form 08CC003E;

(3) must be aware of adequate safety precautions and take action to correct hazards to children's safety, both indoors and outdoors;

(4) provides opportunities for learning, indoor and outdoor play, rest periods, and meals. The caregiver ensures that the use of television is age-appropriate and suitable for children;

(5) must be able to give understanding, consistent, and loving guidance. Discipline is constructive and educational in nature and appropriate to the child's age and circumstances. Loud, profane, and abusive language, corporal punishment, or any technique that is either humiliating or frightening to children is not used. Discipline is not associated with rest, toilet training, or loss of food;

(6) seeks emergency medical attention in case of sudden illness or accident. The parent or guardian stipulates who is called in case of an emergency by entering this information on Form 07LC038E, Child Information, provided by OKDHS. The caregiver has emergency telephone numbers readily available at all times. Emergency telephone numbers include the fire department, police department, ambulance service, and physician or clinic;

(7) is responsible for preparation and serving of food. The child's family provides the food used to prepare snacks and meals. The caregiver consults with the child's parent(s) or guardian to ensure a balanced diet suitable to the age and physical development of the child; and

(8) ensures the child's school attendance in accordance with the requirements of the State Department of Education.

(e) **In-home provider training requirements after approval.** The in-home provider must read "The Good Health Handbook - A Guide For Those Caring For Children" within 90 calendar days of the approval date of the in-home provider shown on Form 08CC003E. The in-home provider must then sign and complete Form 08CC008E, In-Home Child care Provider Training Declaration of Completion, and return it to the ~~worker~~FSSD Child Care Subsidy Section staff. The signature and completion of Form 08CC008E meets the in-home provider training requirement for the first year of approval.

(1) After the first year of approval, the in-home provider must receive and declare six clock hours of training yearly. The provider can meet the training requirement by attending workshops, formal training programs, viewing videos, or through individual job related readings. The declaration is valid for one year from the date the provider signs the document.

(2) Training hours earned by the in-home provider are transferable from one family to another during the year the declaration is in force.

(f) **Requirements prior to approval for a special needs child care rate for a child with disabilities.** When an in-home child care provider cares for a child with disabilities, the provider may be approved for the special needs rate in addition to the applicable daily rate. Prior to receiving this additional rate:

(1) the client, provider, and worker must complete Form 08AD006E, Special Needs Child Care Rate Certification, as described in OAC 340:40-7-3.1;

(2) the provider must be currently certified in first aid and infant and child cardiopulmonary resuscitation (CPR). Only training that is OKDHS approved, such as Red Cross, American Heart Association, or First Care, is accepted;

(3) the provider must receive on-site consultation regarding the nature of the child's disability and the development of the child care plan which may include how to operate equipment needed by the child and any specialized training needs. The consultant also provides any available resource materials that might aid the provider in caring for the child. This consultation may be provided by a:

(A) health professional;

(B) child guidance specialist;

(C) SoonerStart provider if the child is under three years of age;

(D) public school teacher familiar with that child; or

(E) consultant through the Center for Early Childhood Professional Development; and

(4) the provider must agree to obtain six additional hours of training in areas that address the care of children with disabilities within six months of approval. This training is documented on Form 08CC008E.

(A) First aid, CPR, or informal training may not be counted to meet the special training requirement.

(B) Recommended training includes:

(i) Special Care's Unique Environments;

(ii) Child Care Careers' Helping Children with Special Needs;

(iii) SoonerStart training;

(iv) Training Inclusive Child Care Equal Terrific Opportunities for Children (TIC-TOC) training;

(v) formal training from an OKDHS approved sponsor training list; or

(vi) specialized workshops or conferences addressing the care of children with disabilities.

340:40-13-5. Child care provider contracts

(a) **Criteria.** In order for the Oklahoma Department of Human Services (OKDHS) to purchase out-of-home child care services, a provider must have a current Form 08CC001E, Child Care Provider Contract, signed by both the owner of the facility and the OKDHS Director or designee on file with the Family Support Services Division (FSSD) Child Care Subsidy

Section staff. OKDHS assures all persons that OKDHS or any provider of contractual services, does not take into account a person's race, color, religion, sex, national origin, or disability in the selection or eligibility of persons to receive services and in the manner of providing them. Age may be a factor only to the extent that certain services are designed for a particular age group.

(1) Written complaints of noncompliance with the assurance in (a) of this Section may be made to the Director of OKDHS or to the Secretary of Health and Human Services, Washington, D.C. 20201.

(2) Local Oklahoma Child Care Services (OCCS) licensing staff provides initial information about contracts for child care facilities. The provider contacts the child care liaison to request a contract.

(3) Child care contracts are valid for a maximum of one year. Contracts are automatically renewed for successive one year terms, under the same terms and conditions, unless either the child care provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the current term.

(b) **License and star status for child care centers and homes.** OKDHS does not contract with child care providers located out-of-state unless the provider had a contract in effect on January 1, 2010. Child care providers may only obtain an OKDHS contract after they are licensed or permitted.

(1) A child care center requesting a contract must have a license or permit and have a one plus, two, or three star status. The child care center provider may sign Form 08CC001E if a one plus, two or three star status shows on the child care licensing system (CCLS) within 30 calendar days.

(2) A child care home provider requesting a contract must have a license or a permit.

(A) If licensed, the child care home provider may sign Form 08CC001E if one star status or higher shows on CCLS within 30 calendar days.

(B) If on permit, the child care home provider may sign Form 08CC001E if one star plus status or higher shows on CCLS within 30 calendar days.

(~~b~~c) **Procedure for obtaining child care contracts.** ~~Out-of-home providers may only obtain an OKDHS contract if they are licensed or on permit. A child care center provider requesting an initial contract must be licensed or permitted and have a one plus, two, or three star status before signing Form 08CC001E. A one star child care home provider requesting an initial contract must be licensed; not on permit, before signing Form 08CC001E. A child care home provider at one plus, two, or three star status requesting an initial contract must be licensed or permitted before signing Form 08CC001E.~~ The procedures in (1) through (~~8~~5) of this subsection are used to obtain child care contracts.

(1) OCCS licensing staff ~~give~~gives the child care provider a ~~promotional~~ flyer ~~containing information about contracting with OKDHS~~titled "Obtaining a Contract with OKDHS for Child Care Subsidy Payments." The provider is instructed to contact the child care liaison to obtain the compact disk (CD) titled "Orientation to Child Care Subsidy Contracts" for training and review of the contracting requirements. The CD includes instructions on how to complete the training, take the proficiency test, and print the certificate of completion.

(2) When contacted by the owner or ~~director~~authorized signor of a child care facility, the child care liaison explains that the owner or authorized signor must ~~review the "Contracting with DHS for Child Care Subsidy Payments Handbook,"~~ view the required training CD, ~~and~~ pass the proficiency test, and provide the certificate of completion before ~~an initial~~signing a contract ~~is submitted to the FSSD Child Care Subsidy Section~~. The date on the certificate of completion must be within 30 calendar days of the date the contract is signed. Directors are not required but are highly encouraged to view the training.

~~(A) If the owner of a child care center does not live in Oklahoma, the director of the facility must also fulfill this requirement.~~

~~(B) Child care directors are not required but are highly encouraged to view the required training.~~

(3) ~~If the provider wishes to contract with OKDHS following this training,~~Once the certificate of completion is provided, the child care liaison ~~gives Form 08CC001E to the child care provider after typing~~types all identifying information on ~~the contract~~Form 08CC001E. The child care liaison gives Form 08CC001E to the provider and explains that the earliest date a contract is valid is the date of approval by the OKDHS Director or designee.

(4) The owner ~~and director sign~~or authorized signor signs the contract ~~before a Notary Public~~ and ~~return~~returns the contract to the child care liaison. The owner or authorized signor must also provide:

(A) proof of his or her identity~~,~~;

(B) a copy of ~~his or her~~the owner's or authorized signor's Social Security card~~,~~; ~~and proof of ownership of the child care business.~~

(C) a copy of the Oklahoma State Bureau of Investigation (OSBI) background investigation report for the owner or authorized signor of a center or a child care home;

(D) proof of the employer identification number (EIN) for a child care center provider and any home provider who is not a sole proprietor; and

(E) a copy of the certificate of completion of the required CD training.

(5) The child care liaison sends Form 08CC001E, the Contract Routing Checklist, and the documents listed in (c)(4)(A-E) of this Section to the FSSD Child Care Subsidy Section staff for approval or denial ~~along with:~~.

(A) ~~the Contract Routing Checklist;~~If approved, the FSSD Child Care Subsidy Section staff assigns a contract number and sends a copy of the signed contract back to the provider.

(B) ~~a copy of the owner's Social Security card;~~If denied, the FSSD Child Care Subsidy Section staff returns the original contract to the provider with a letter advising it is not in the best interest of OKDHS to contract with the provider.

(C) ~~proof of ownership;~~If the child care provider signs Form 08CC001E but fails to complete other contracting requirements within 30 calendar days, the child care liaison attaches Form 08CC001E to the Contract Routing Checklist and sends it to the FSSD Child Care Subsidy Section staff for denial.

~~(D) a copy of the provider's Oklahoma State Bureau of Investigation (OSBI) background investigation report;~~

~~(E) a copy of the OSBI background investigation report for the:~~

~~(i) director and/or business manager of a child care center;~~

~~(ii) spouse of a child care home owner; or~~

~~(iii) assistant caregiver in a large family child care home;~~

~~and~~

~~(F) proof of the employer identification number (EIN) for a child care center provider.~~

~~(6) If the child care provider signs Form 08CC001E but fails to complete other contracting requirements within 30 calendar days, the child care liaison attaches Form 08CC001E to the Contract Routing Checklist and sends it to the FSSD Child Care Subsidy Section for denial.~~

~~(7) If approved, the FSSD Child Care Subsidy Section staff assigns a contract number and sends a copy of the signed contract back to the provider.~~

~~(8) If denied, the FSSD Child Care Subsidy Section returns the original contract to the provider with a letter advising the provider OKDHS has decided it is in the best interest of OKDHS not to contract with the provider.~~

~~(c) **Out-of-state providers.** OKDHS does not contract with out-of-state child care providers.~~

(d) **Changes that must be reported.** Form 08CC001E advises child care providers ~~to~~what changes they must report to the FSSD Child Care Subsidy Section staff~~the anticipated sale of the business, change of legal business entity, change of location, or plan to stop caring for children~~ no less than 30 calendar days prior to the ~~change occurring~~effective date of any changes. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. ~~A new contract is required in the situations included in (1) through (4).~~Changes that must be reported include:

(1) collaborations or agreements;

(2) anticipated sale of the business;

(3) change of legal business entity;

(4) change of address;

(5) change in facility status;

(6) legal name change; or

(7) plan to stop caring for children.

(e) **Changes that do not require a new contract.** Changes that do not require a new contract include a:

(1) legal name change;

(2) change of location. When a child care center or home provider changes the location of his or her child care business, the provider must notify FSSD Child Care Subsidy Section staff of the new location and sign a new license application agreeing to care for children at the new location. The provider's license and contract remain open with the same:

(A) begin date;

(B) number assigned; and

(C) star status; and

(3) facility status change from a child care home to a large child care home or from a large child care home to a child care home as long as the same license number is used.

(f) **Changes that require a new contract.** Changes that require a new contract are included in (1) through (3) of this subsection. When a new contract is required, procedures in (c) of this Section are used to complete and submit child care contract requests.

(1) **Change in facility status.** A change in facility status occurs when a facility changes from a home to a center or a center to a home. ~~A change from a family child care home to a large family child care home does not require a new contract as long as the same license number is used.~~

(A) When the status of a child care home changes to a child care center, a new license application is required. ~~Prior to signing a new contract, the provider must be issued a license or permit at one plus, two, or three star status.~~A child care center provider may sign Form 08CC001E if the:

(i) new license or permit application is pending; and

(ii) provider meets or is anticipated by OCCS licensing staff to meet one plus status or higher within 30 calendar days.

(B) When the status of a child care center changes to a child care home, a new license application is required. ~~Prior to signing a new contract, the provider must be issued a license or permit at one plus, two, or three star status, or be licensed; not permitted, at one star status.~~A child care home provider may sign Form 08CC001E if the:

(i) license application is pending at any star status; or

(ii) permit application is pending and the provider meets or is anticipated by OCCS licensing staff to meet one plus, two, or three star status within 30 calendar days.

(2) **Change in ownership for a child care center.** ~~The~~When the owner of a child care center changes, the new owner ~~must meet or be anticipated by OCCS licensing staff to meet one plus, two, or three star status within 30 calendar days before a new contract is signed and submitted~~or authorized signor may sign Form 08CC001E~~to the FSSD Child Care Subsidy Section.~~if the:

(A) new license or permit application is pending; and

(B) provider meets or is anticipated by OCCS licensing staff to meet one plus star status or higher within 30 calendar days.

~~(3) **Change of location.** When a child care center or home provider changes the location of his or her child care~~

~~business, the provider must sign a new license application agreeing to care for children only in the new location and notify FSSD Child Care Subsidy Section staff of the new location. The provider's license and contract remain open with the same:~~

~~(A) begin date;~~

~~(B) number assigned; and~~

~~(C) star status.~~

(~~4~~3) **Change of legal business entity.** ~~The child care provider must complete a new license application and contract when the provider changes his or her legal business entity.~~ Examples of changing legal business entity include changing from a sole proprietor to a corporation, partnership, or limited liability company. ~~The provider must provide proof of ownership.~~

(A) ~~A child care center provider who was at one plus, two, or three star status under their previous legal business entity may sign and submit Form 08CC001E to the FSSD Child Care Subsidy Section while the new license application is pending. A child care center provider who was at one star status under the previous legal business entity may not sign a new contract until attaining one plus, two, or three star status even if a child already receiving child care subsidy benefits is currently in care under their previous legal business entity.~~When a child care center changes the business entity, a new license application is required. A child care center provider may sign Form 08CC001E if the:

(i) new license or permit application is pending; and

(ii) provider meets or is anticipated by OCCS licensing staff to meet one plus status or higher within 30 calendar days.

(B) ~~Child care home providers who were at one plus, two, or three star status under their previous legal business entity may sign and submit Form 08CC001E to the FSSD Child Care Subsidy Section while the new license application is pending. Child care home providers who were at one star status may only sign a new contract once they are licensed; they may not be in permit status.~~When a child care home changes the business entity, a new license application is required. A child care home provider may sign Form 08CC001E if the:

(i) license application is pending at any star status; or

(ii) permit application is pending and the provider meets or is anticipated by OCCS licensing staff to meet one plus status or higher within 30 calendar days.

(~~e~~g) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, he or she agrees to provide care only at the physical address designated in the contract. In certain circumstances, a child care center provider who owns more than one child care center ~~only~~ may move children ~~eligible for~~receiving subsidized child care benefits to an alternate center only after he or she receives prior approval in writing from the FSSD Child Care Subsidy Section staff authorizing him or her to move the children and the point-of-service (POS) machine to the alternate site for a designated period of time. FSSD Child Care Subsidy Section staff ~~gives~~ may give approval when (1) through (4) are met~~:~~.

(1) ~~the~~The same owner or legal business entity owns the alternate site~~;~~.

(2) ~~the~~The alternate site is licensed and contracted at the same star level and the provider has adequate licensed capacity at the alternate site~~;~~.

(3) ~~there~~There is a legitimate business reason for providing care in another location~~; and~~.

(4) ~~the~~The provider advises FSSD Child Care Subsidy Section staff how he or she is ensuring that parents are aware their children are being cared for at a ~~difference~~different location.

(~~f~~h) **Renewal of child care contracts.** ~~Child care provider contracts are effective for terms not to exceed one year, the commencement date of which is determined by the FSSD Child Care Subsidy Section staff.~~ Contracts are automatically renewed for successive one year terms, under the same terms and conditions, unless either the provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the previous term. A contract is not renewed when a provider fails to ~~attend~~complete required contract training or to provide any other information or documents requested during the contract renewal period.

(~~g~~i) **Contract violations.** When the child care provider signs Form 08CC001E, the provider is agreeing to abide by the terms of the contract. When human services center (HSC) staff ~~become~~ becomes aware that a provider is violating the terms of the contract, he or she advises the provider to stop the practice immediately and sends an e-mail to FSSD Child Care Subsidy Section staff advising of the circumstances. HSC staff may also complete Form 19MP001E, Referral Form, to report the violation to the Office of Inspector General. Examples of contract violations include, but are not limited to:

(1) discriminating against persons seeking services either by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, or the Americans with Disabilities Act of 1990;

(2) failing to maintain a drug-free workplace;

(3) possessing or swiping a client's electronic benefit transfer (EBT) card;

(4) knowing a client's personal identification number (PIN);

(5) failing to ensure accurate time and attendance information was recorded by the parent or caretaker on the POS machine. The attendance, not time, of a child approved for the part-time or blended unit type must be recorded on the POS machine during the school year by the parent or caretaker;

(6) charging a client receiving subsidized child care more than the OKDHS rate for days and hours within the client's plan of service;

(7) charging a client or requiring a client to swipe attendance for days and hours outside of client's plan of service

~~or requiring that the client swipe attendance for those days and hours~~ when ~~the additional~~those days and hours are a requirement of the provider~~, and~~ not a choice of the client;

(8) charging a client receiving subsidized child care an allowable fee not charged to non-OKDHS participants;

(~~8~~9) moving the children from the agreed upon location shown in the contract for reasons other than field trips and claiming for services at the other location without prior written approval from the FSSD Child Care Subsidy Section staff;

(~~9~~10) moving the POS machine and allowing parents to record time and attendance at a different location than agreed upon in the contract without receiving prior written approval from the FSSD Child Care Subsidy Section staff in accordance with subsection (~~e~~g) of this Section;

(~~10~~11) failing to advise and provide OKDHS a completed copy of any agreement the provider enters into within 30 calendar days of entering into a collaboration or agreement. This includes agreements with Head Start, Early Head Start, public schools, and/or any other programs receiving state or federal funding;

(~~11~~12) claiming and/or receiving payment from OKDHS for the same hours of care the provider receives payment from another state or federal funding source;

(~~12~~13) failing to inform OKDHS of a change in facility status, location, legal business entity, or ownership of the business at least 30 calendar days in advance of the change;

(~~13~~14) filing manual claims when claims could be filed through the EBT system;

(~~14~~15) failing to post all of the facility's rates and fees;

(~~15~~16) subcontracting services to another provider ~~without written prior approval from OKDHS~~;

(~~16~~17) refusing unlimited access by a parent or caretaker to the areas of the facility used for child care during the hours of operation;

(~~17~~18) refusing to make available to OKDHS within an hour of request by any OKDHS representative all business records that document proper fiscal and program management by the provider;

(~~18~~19) breaching the contract signed by the provider with the OKDHS EBT contractor;

(~~19~~20) not maintaining written records for ~~any~~ manual claims filed or attendance records required by OCCS Licensing during the last three years;

(~~20~~21) failing to inform OKDHS in writing within ten calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of the child care business, who has been convicted of a criminal offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act; and

(~~21~~22) failing to report the income from the child care business within ten calendar days to his or her Family Support Services (FSS) worker if receiving benefits.

(~~h~~j) **Cancellation of child care provider contracts.** FSSD Child Care Subsidy Section staff initiates the cancellation by issuing a notice to the provider by certified mail and regular mail at the same time.

(1) Contracts may be ~~canceled~~cancelled:

(A) with cause. The effective date of cancellation is 13 calendar days after FSSD staff mails the notice. This allows three calendar days for mailing time. The notice must contain a reference to the grounds for cancellation including the specific contract provision(s) that was violated; or

(B) without cause. The effective date of cancellation is 33 calendar days after FSSD staff ~~mail~~mails the notice. This allows three calendar days for mailing time.

(2) The FSSD Child Care Subsidy Section staff communicates with the child care liaison when a contract is being ~~canceled~~cancelled to ensure that HSC staff ~~have~~has sufficient time to plan with clients to find another facility, if necessary. When it is necessary to cancel authorizations with a child care provider, the provider is notified by use of a computer-generated notice. FSSD Child Care Subsidy Section staff closes all authorizations with the provider whose contract is ~~canceled~~cancelled except for Child Welfare (CW) authorizations. An e-mail is sent to the KIDS Help Desk requesting closure of CW authorizations.

SUBCHAPTER 15. OVERPAYMENTS

340:40-15-1. Overpayments

(a) **Determinations.** Overpayments occur as a result of agency, client, or provider error. A client or child care provider overpayment is determined by Oklahoma Department of Human Services (OKDHS) staff when a child care benefit was received or paid in error. Workers, Office of Inspector General (OIG) auditors or investigators, Quality Control reviewers, staff from the Finance Division, or other OKDHS staff may identify a possible overpayment.

(1) **Agency error overpayment claim.** An agency error overpayment claim is established against either the client or the child care provider depending on the circumstances. An agency error overpayment occurs when due diligence was not exercised by OKDHS.

(A) When the worker incorrectly calculates the amount of care approved or the income, which results in an incorrect co-payment, the worker and supervisor establish the agency error overpayment against the client.

(B) Finance Division staff ~~establish~~establishes agency error overpayments against the provider for plan of service errors when OKDHS pays an incorrect rate.

(2) **Client error overpayment claim.** A client error overpayment claim is established against the client when the client:

(A) provides incorrect information at the time of application or review;

(B) fails to report within ten days any change that affects eligibility; or

(C) uses child care for days and hours the client is not eligible for child care.

(3) **Provider error overpayment claim.** A provider error overpayment claim is established against the provider when the provider:

(A) submits incorrect claims;

(B) fails to timely void inaccurate attendance entered in the point-of-service (POS) machine by the client;

(C) receives payment for care the provider did not provide and is not entitled to receive. This can occur when the provider has possession of the client's electronic benefit transfer (EBT) card and swipes attendance for a day a child did not attend or facility staff ~~request~~requests that a parent do so;

(D) receives payment for care from OKDHS that was provided after the date his or her child care license has been revoked or contract ~~canceled~~cancelled;

(E) moves POS machine to a different location prior to obtaining written approval from the FSSD Child Care Subsidy Section staff and payment was made for care during that period; or

(F) fails to accurately maintain records as required by OKDHS for three years or until the resolution of pending legal issues whichever is later.

(4) **Establishing the overpayment.**

(A) The establishment of a client overpayment is made by the worker's supervisor or staff in the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section.

(B) Finance Division staff ~~establish~~establishes all provider overpayment claims.

(C) At the time a claim is established~~, Form 08AD012E, Notification of Overpayment~~, an overpayment notice and Form ~~08TA016E~~08OP011E, Repayment Agreement, are automatically issued and mailed to the household.

(5) **Liquidated damages.** Per OAC 340:2-11-150, Finance Division staff may assess liquidated damages in addition to an overpayment when the provider:

(A) is in possession of the client's EBT card;

(B) swipes the card through the POS machine; or

(C) knows the client's personal identification number (PIN).

(b) **Notice of overpayment.** Finance Division staff sends an overpayment notice to the provider once the overpayment has been established. FSSD Benefit Integrity and Recovery Section staff sends the client a monthly account statement that reflects all payment and account information beginning the month following the initial notice month.

(c) **Appeal rights.** Only a client has the right to appeal all or part of any overpayment established against his or her case.

(d) **Repayment of an overpayment claim.** OKDHS requires repayment of all established overpayments.

(1) Form ~~08TA016E~~08OP011E, Repayment Agreement, is sent to the client with the original overpayment notice.

(2) Finance Division staff ~~send~~sends a letter to the provider that explains the recoupment process for vendor overpayments. Providers must contact the Finance Division if they have questions concerning the repayment plans for overpayments that occur after the EBT system was implemented.

[OAR Docket #10-642; filed ??-??-??]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

[OAR Docket #10-643]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Application Process
340:50-3-2 through 340:50-3-3 [AMENDED]
Subchapter 5. Non-Financial Eligibility Criteria
Part 1. Household Definition
340:50-5-2 [AMENDED]
340:50-5-10.1 [AMENDED]
Part 3. Special Households
340:50-5-30 [AMENDED]
Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees
340:50-5-45 [AMENDED]
340:50-5-48 [AMENDED]
Part 7. Related Provisions
340:50-5-64.1 [AMENDED]
Part 9 Work Registration
340:50-5-91 through 340:50-5-94 [AMENDED]
340:50-5-96 [AMENDED]
Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-22 [AMENDED]
340:50-7-29 through 340:50-7-31 [AMENDED]
Part 5. Determination of Income
340:50-7-45 through 340:50-7-46 [AMENDED]
Subchapter 9. Eligibility and Benefit Determination Procedures
340:50-9-1 [AMENDED]
Subchapter 10. Electronic Benefit Transfer (EBT)
340:50-10-1 [AMENDED]
340:50-10-9 [AMENDED]
340:50-10-11 [AMENDED]
Subchapter 11. Special Procedures
Part 1. Households Entitled to Expedited Service
340:50-11-1 [AMENDED]
Part 3. Simplified ~~Food Stamp~~Supplemental Nutrition Assistance Program (~~SFSP~~ SSNAP) for Temporary Assistance for Needy Families (TANF) and Companion State Supplemental Payment (SSP) Recipient(s)
340:50-11-20 through 340:50-11-22 [AMENDED]
340:50-11-25 [AMENDED]
340:50 11-27 [AMENDED]
Part 7. Replacement When Food Purchased with Food ~~Stamp~~ Benefits Is Destroyed
Part 9. Disaster Procedures and Reporting Requirements
340:50-11-86 [AMENDED]
340:50-11-88 [AMENDED]
Part 11. Special Procedures for Joint Processing of ~~Food Stamp~~Supplemental Nutrition Assistance Program and Supplemental Security Income (SSI) Applicants
340:50-11-105 [AMENDED]
340:50-11-107 through 340:50-11-108 [AMENDED]
Part 12. Categorically Eligible Households
340:50-11-111 [AMENDED]
Subchapter 13. Fair Hearings
340:50-13-2 [AMENDED]
Subchapter 15. Overpayments and Fraud

Part 1. Overpayments
340:50-15-1 [AMENDED]
340:50-15-3 [AMENDED]
340:50-15-5 through 340:50-15-6 [AMENDED]
(Reference APA WF 09-18 and 09-29)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 273.23 of Title 7 of the Code of Federal Regulations (CFR); the Food and Nutrition Act of 2008; and the American Recovery and Reinvestment Act of 2009 which established the Emergency Contingency Fund for state TANF programs as Section 403(c) of the Social Security Act.

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n/a

ANALYSIS:
Revisions to Chapter 50 amend the rules to: (1) change all language regarding food stamps to food benefits; (2) update other language to current terminology; and (3) add clarifying information.

Subchapter 5 is amended to: (1) add information to clarify when children who normally live elsewhere are living with parents on weekends or other occasional times can be included in the benefits; (2) group types of disqualified households together that have their income, resources, and expenses treated the same way; (3) add clarifying language about who is considered a fleeing felon and the actions a worker must take regarding the fleeing felon; (4) update form names; and (5) update information about who is eligible for a Work Opportunity Tax Credit.

Subchapter 7 is amended to: (1) add clarifying language regarding educational income; (2) add additional income that is considered exempt; (3) remove redundant self-employment information from one section; (4) clarify how income from rental property is considered; (5) change fleeing felons to the household type whose income, resources, and expenses are not prorated; (6) add the policy cite for the definition of elderly or disabled; (7) update the allowable dependent care deduction to the total billed to the client; (8) add clarifying language regarding income used in a month when an extra check is received due to a third or fifth check; and (9) add clarifying language regarding when actual and anticipated income is to be used.

Subchapter 9 is amended to: (1) add language regarding determining the net food benefit income; (2) remove three month certification periods as an option; and (3) remove outdated language regarding certification periods.

Subchapter 11 is amended to: (1) remove participation in the Work Supplementation Program (WSP) as a reason why a household receiving Temporary Assistance for Needy Families (TANF) is no longer eligible for Simplified Supplemental Nutrition Assistance Program (SSNAP); (2) add language that food benefits issued due to a disaster must be used within 90 days of certification or they are expunged and cannot be added back into the account; and (3) correct language regarding which households are considered categorically eligible.

Subchapter 13 is amended to add clarifying language that benefits are not continued when an appeal has been filed and the certification period has ended.

Subchapter 15 is amended to remove an obsolete form number.

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 1, 2010:

SUBCHAPTER 3. APPLICATION PROCESS

340:50-3-2. Interview process

(a) **Face-to-face interview.** All households initially applying for food ~~stamp~~ benefits ~~except those waived in (b) of this Section and certain reapplications and recertifications as described in Subchapter 11 of this Chapter~~, including those submitting applications by mail, must have a face-to-face interview with a worker ~~in the county office~~except when the household:

(1) requests the interview be waived because the household is unable to appoint an authorized representative and does not have a household member able to come into the human services center (HSC) because of hardship conditions. Hardship conditions include, but are not limited to:

(A) education, training, or work hours which make it difficult to come into the HSC during office business hours;

(B) illness or the need to care for a family or household member;

(C) bad weather conditions;

(D) transportation problems of any kind;

(E) residence in a rural area; or

(F) advanced age or disability; or

(2) is being recertified for food benefits. At recertification, the interview may be conducted face-to-face or over the telephone.

(b) **Waiver of face-to-face interview.** When the face-to-face interview is waived, the worker conducts the interview as soon as possible either by phone or at a location convenient to the household such as a home visit.

(1) The seven day expedited service or 30 calendar day processing standards apply.

(2) The home visit or telephone interview is scheduled in advance with the household.

(3) The household must provide the required verification. If the household is unable to furnish the required verification, the worker provides assistance.

(c) **Who must be interviewed.** The person interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative who knows the household's circumstances. The household may bring any person of their choice to the face-to-face interview.

(d) **Worker responsibilities during the interview.** During the face-to-face interview, the worker:

(1) reviews the information the household listed on the application form and explores and resolves with the household unclear and incomplete information;

(2) inquires whether changes have occurred in the household's income, resources, deductions, or other circumstances since the application was filed;

(3) advises the household of its rights and responsibilities, including reporting requirements;

(4) conducts the face-to-face interview as an official and confidential discussion of household circumstances limited to facts related to food ~~stamp~~benefit eligibility factors; and

(5) ensures the household's right to privacy is protected.

~~(b) **Waiver of the county office face-to-face interview.** The county office face-to-face interview may be waived upon request by any household that is unable to appoint an authorized representative and does not have a household member able to come into the county office because of hardship conditions.~~

~~(1) Hardship conditions include, but are not limited to:~~

~~(A) education, training, or work hours which make it difficult to come into the office during regular county office business hours;~~

~~(B) illness or the need to care for a family or household member;~~

~~(C) bad weather conditions;~~

~~(D) transportation problems of any kind;~~

~~(E) residence in a rural area; or~~

~~(F) advanced age or disability.~~

~~(2) When the county office face-to-face interview is waived, the worker conducts the interview as soon as possible either by phone or at a location convenient to the household such as a home visit.~~

~~(A) The seven day expedited service or 30 day processing standards apply.~~

~~(B) The home visit is scheduled in advance with the household.~~

~~(C) The household must provide the required verification. If the household is unable to furnish the required verification, the worker provides assistance.~~

(~~c~~e) **Scheduling interviews.** The ~~county office~~ face-to-face interview or alternate interview method is scheduled as promptly as possible after the filing of the application to ensure the household, if eligible, may participate within 30 calendar days following the date of application. If the person to be interviewed is employed, the worker schedules an appointment ~~is scheduled~~ to minimize the person's absence from work even if it must be scheduled outside the normal business hours. If the person is unable to attend a scheduled face-to-face interview for any of the reasons stated in (~~b~~a) of this Section, the worker offers to waive the ~~county office~~ face-to-face interview and schedule a telephone interview or home visit.

(1) **Timely reapplications.** A household making a timely reapplication has the interview scheduled as early as possible, but not later than the last day of the month.

(A) If the household fails to appear for the first interview, further interviews are not scheduled unless the household requests another appointment by the ~~30th~~30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(2) **Untimely reapplications and initial applications.** A household making an untimely reapplication or an initial application is scheduled for an interview as early as possible, but not later than 20 calendar days from the application date.

(A) If the household fails to appear for the scheduled interview, further interviews are not scheduled unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(~~d~~f) **Household cooperation.** To determine eligibility, the application form must be completed and signed, the household or its authorized representative must be interviewed, and information on the application form required to determine eligibility must be verified.

(1) If the household refuses to cooperate with the worker in completing this process, the application is denied at the time of the refusal.

(A) For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take the necessary actions required to complete the application process.

(B) The household is also ineligible if it refuses to cooperate in any subsequent review of eligibility, including reviews generated by reporting changes, recertifications, or an Office of Inspector General Quality Control (QC) review.

(2) If an application is denied or food ~~stamp~~ benefits are terminated for refusal to cooperate, the household may reapply, but may not be determined eligible until it cooperates.

(3) If food ~~stamp~~ benefits have been terminated for refusing to cooperate with the QC reviewer and reapplication is made after 95 calendar days from the end of the QC review period, October 1 through September 30, the household must provide verification of eligibility factors only for the reapplication. For example, if a household had a QC review during the October ~~2003~~2008 through September ~~2004~~2009 annual QC review period and food ~~stamp~~ benefits were terminated for refusal to cooperate with the QC review, the household is required to provide verification for the reapplication only if it is filed after January 2, ~~2005~~2010.

340:50-3-3. Verification

(a) **General standards for verification.** Verification is the use of third party information or documentation to confirm the accuracy of statements made on the application form. For specific policy regarding required verification of non-financial eligibility criteria see OAC 340:50-5, and for financial eligibility criteria see OAC 340:50-7. The household is provided a clear written statement explaining what the household must do to cooperate in obtaining verification and completing the application.

~~(b) **Questionable information.** The worker must verify questionable factors of eligibility, including all factors affecting household composition, prior to certification, only if these would affect a household's entitlement. A household's report of expenses which exceed its income prior to deductions may be grounds for a determination that further verification is required.~~

~~(1) **Questionable information.** To be considered questionable, the information on the application must be inconsistent with:~~

~~(A) statements made by the applicant;~~

~~(B) other information in the case record; or~~

~~(C) other information received by the Oklahoma Department of Human Services (OKDHS).~~

~~(2) **Documentation.** There must be documentation as to:~~

~~(A) the reason the information was considered questionable;~~

~~(B) what documentation was used to resolve the questionable information; and~~

~~(C) the reason an alternate source of documentation, such as a collateral contact or home visit, was made.~~

~~(3) **Determination.** When determining if information is questionable, the worker bases the decision on each household's individual circumstances.~~

(~~c~~b) **Sources of verification.** ~~The following sources~~Sources of verification ~~are not intended to be all inclusive but provides~~that provide the worker with ~~types of~~ evidence that may be used to establish eligibility include but are not limited to (1) through (4) in this subsection.

(1) **Documentary evidence.** The worker uses documents, whenever possible, as the primary source of verification. Examples of documentary evidence include wage stubs, rent receipts, and utility bills.

(A) Although documentary evidence is the primary source of verification, verification cannot be limited to a single document or source.

(B) When information from another source contradicts statements made by the household, the household is immediately afforded the opportunity to resolve the discrepancy.

(C) When documentary evidence cannot be obtained, the worker uses alternate sources of verification, such as collateral contacts and home visits.

(D) In all cases, the worker records the method of verification ~~is recorded~~ in the case record.

(2) **Collateral contacts.** The worker has the responsibility to verify all factors of eligibility for food benefits which may require one or more collateral contacts. The client's signature on the application for food benefits grants the necessary authorization for securing required information or verification.

(A) A collateral contact is a verbal confirmation of a household's circumstances by a person outside the household. The collateral contact may be made either in person or over the phone.

(B) The acceptability of a collateral contact is not restricted to a particular person, but may be anyone that can be expected to provide an accurate third party verification of the household's statement. Examples of acceptable collateral contacts are:

(i) employers;

(ii) community action groups;

(iii) migrant service agencies;

(iv) neighbors of the household; or

(v) other persons outside the household.

(C) If the collateral source is one which requires written authorization before supplying information to the Oklahoma Department of Human Services (OKDHS), the signature of the client on Form 08AD060E, Request for Release of Information, must be obtained. If information is needed regarding another adult household member, that person may need to sign Form 08AD060E before the collateral source agrees to release information.

(3) **Home visits.** A home visit can be used as verification if documentary evidence cannot be obtained from other sources and the visit is scheduled in advance with the household.

(4) **Field investigation.** The worker conducts an intensive field investigation when a household is suspected of withholding information or of intentional program violations. A field investigation is made after the worker has exhausted all other methods of verification and still does not have enough evidence to certify, deny, or close food benefits.

(A) The intensive field investigation includes all questionable factors of eligibility. The worker makes every effort to obtain the most reliable second-party verification available. Contacts may include, but are not limited to, the applicant or recipient, other adult household members, employers, banks, government agencies, landlords, neighbors, and utility companies. The client does not have to provide specific written authorization unless it is required by the collateral source before they can or will furnish the requested information.

(B) Persons who are contacted for information related to a client's eligibility must be advised of the reason the information is needed and how it will be used. If the person providing the information is unwilling to have his or her identity revealed to the client, the information is not used to make an eligibility decision nor is it recorded in the case record. The

worker must attempt to verify the information using an alternate source.

(C) The worker contacts the client when the information gathered during the investigation differs from that given by the client. The client is given the opportunity to clear up conflicting information when possible. When the client cannot be contacted, the worker documents, in the case record, what attempts were made.

(D) The worker documents in the case record all verified evidence gathered during the course of the investigation ~~is documented, in detail, in the case record~~. This documentation must include:

(i) what information was received, dates related to the information, source of the verification, and the date the information was received;

(ii) a complete explanation of conflicting information and what attempts were made to resolve the differences with the client; and

(iii) when the client refuses to cooperate in determining eligibility, information to clearly show that the client was given the opportunity to cooperate and was able to do so.

(E) When the eligibility determination is delayed due to a field investigation the worker manually issues Form 08MP039E, Notice to Client of Action Taken, informing the client of the pending status of the application.

(~~d~~c) **Responsibility for providing verification.**

(1) **Household responsibility.** The household has primary responsibility for providing documentary evidence to support its income statements and to resolve any questionable information. Households may supply documentary evidence in person, through the mail, or through an authorized representative.

(2) **Worker responsibility.** The worker assists the household in obtaining this verification provided the household is cooperating with the worker.

(A) The ~~human services center (HSC)~~worker accepts any reasonable documentary evidence provided by the household and is primarily concerned with how adequately the verification confirms the statement on the application.

(B) If it would be too difficult or impossible for the household to obtain documentary evidence in a timely manner, the worker offers assistance to the household in obtaining the documentary evidence.

(C) The household is not required to provide multiple sources of verification when the household has already provided information which adequately supports the statements on the application. However, the worker may require households to provide additional verification when the existing verification is incomplete.

(D) An application is never denied solely because a person outside the food benefit household fails to cooperate in providing information, verification, or other help needed to process an application. Disqualified or ineligible persons are considered members of the food benefit household for this provision.

(~~e~~d) **Documenting case files.**

(1) **Case files.** Case files must be documented in detail to support eligibility, ineligibility, and benefit level determinations.

(2) **Documentation.** Documentation must include:

(A) sources of verification, dates of the sources of verification, and amounts verified;

(B) computations used to arrive at monthly income deductions;

(C) why verification is required to resolve questionable information;

(D) what documentation was used to resolve the questionable information; and

(E) the reason an alternate source of documentation, such as a collateral contact or home visit, was made.

(e) **Questionable information.** Prior to certification, the worker must verify questionable factors of eligibility, including all factors affecting household composition, only if these would affect a household's entitlement. A household's report of expenses which exceed its income prior to deductions may be grounds for a determination that further verification is required.

(1) **Questionable information.** To be considered questionable, the information on the application must be inconsistent with:

(A) statements made by the applicant;

(B) other information in the case record; or

(C) other information received by OKDHS.

(2) **Documentation.** There must be documentation as to:

(A) the reason the information was considered questionable;

(B) what documentation was used to resolve the questionable information; and

(C) the reason an alternate source of documentation, such as a collateral contact or home visit, was made.

(3) **Determination.** When determining if information is questionable, the worker bases the decision on each household's individual circumstances.

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 1. HOUSEHOLD DEFINITION

340:50-5-2. Periods of absence

~~An individual~~A person who is away from the home for extended periods during the month, but who returns to the home for part of each month, may be considered a member of

the food ~~stamp~~benefit household. This would include ~~individuals~~persons who are away working, attending school, ~~etc~~and similar situations.

(1) ~~An individual~~A person who attends a boarding school, including the state schools for the deaf and blind, is not considered institutionalized as long as ~~he/she~~he or she returns home on ~~week-ends~~weekends and holidays.

(2) A child who lives with a parent on weekends and occasionally at other times may be claimed as part of the parent's food benefit household as long as the child is not included in another active food benefit household. In instances where both the father and mother of the child participate in the Supplemental Nutrition Assistance Program (SNAP) during the same month, the parent who has the child the majority of the time would be authorized to include the child in his or her SNAP household.

340:50-5-10.1. Disqualified household members

Individual household members may be disqualified for:

(1) willful misrepresentation~~,~~or fraud;

(2) failure to register for employment or participate in the ~~Food Stamp~~Supplemental Nutrition Assistance Program Employment and Training Program;

(3) being a fleeing felon.

(A) Fleeing felon means the person:

(i) has knowledge that a warrant has been issued for his or her arrest in relation to a felony; and

(ii) is acting with the intent to avoid prosecution or arrest.

(B) When the worker has information that a person has a felony warrant issued for his or her arrest, the worker:

(i) does not initiate contact with law enforcement officials;

(ii) verifies the person has knowledge of the warrant by asking the person if he or she has satisfied the warrant; and

(iii) allows the person an opportunity to submit documentation showing the warrant has been satisfied.

(I) If the warrant has not been satisfied, the person is not eligible to receive food benefits.

(II) If the household provides verification showing the person is not a fleeing felon, the person may be included in the food benefits, if otherwise eligible;

(~~3~~4) failure to obtain or refusal to provide a Social Security number;

(~~4~~5) not being a qualified alien;

~~(5) being a fleeing felon;~~

(6) being a probation or parole violator; or

(7) being an able-bodied adult without dependents and not meeting work requirements specified in OAC 340:50-5-64.

PART 3. SPECIAL HOUSEHOLDS

340:50-5-30. Providers of meals for the homeless

Food and Nutrition Service (FNS) ~~shall authorize~~authorizes as retail food stores, those providers of meals for the homeless which apply and qualify for authorization to accept food ~~stamps~~benefits from homeless food ~~stamp~~benefit recipients. Such meal providers must be public or private, non-profit organizations as defined by the Internal Revenue Service.

(1) Providers of meals for the homeless are approved by the Oklahoma Department of Human Services as meal providers prior to application for authorization by FNS for acceptance of food ~~stamps~~benefits.

(2) Meals served by the providers must include food purchased by the providers.

(3) ~~Individuals~~Persons who are employed by or act as volunteers for organizations that provide meals for the homeless may not act as authorized representatives for homeless food ~~stamp~~benefit recipients.

PART 5. STUDENTS, STRIKERS, RESIDENT FARM LABORERS, MIGRANT HOUSEHOLDS, SPONSORED ALIENS, AND SCHOOL EMPLOYEES

340:50-5-45. Students

(a) **Student classification.** Persons enrolled at least half-time in an institution of higher education are considered students through vacation and breaks as well as normal periods of class attendance. Persons who graduate, are expelled or suspended, dropout, or do not intend to register for the next normal school term, excluding summer school, are no longer considered students. Student enrollment status begins on the first day of the school term of the institution of higher education.

(1) A college or university which offers degree programs is considered an institution of higher education even when a high school diploma or equivalency certificate is not required to enroll. A college includes a junior, community, two-year, or four-year college, or university.

(A) Students enrolled at least half time in the **regularcurriculum** are considered enrolled in higher education.

(B) ~~Individuals~~Persons enrolled at a college or university in special programs, such as courses for English as a second language, or other courses which are not part of the regular degree programs are not considered enrolled in higher education.

(2) Business, technical, trade, or vocational schools which normally require a high school diploma or equivalency certificate for enrollment in the curriculum are also considered higher education.

(3) Courses in business, technical, trade, or vocational schools which do not require a high school diploma or equivalency certificate for enrollment are not considered higher education.

(b) **Students not subject to eligibility restrictions.** The students described in this subsection may participate in the

~~Food Stamp~~Supplemental Nutrition Assistance Program (SNAP) if all other eligibility criteria are met. Eligibility restrictions discussed in subsection (c) of this Section do not apply if the students are:

(1) under age 18 or age 50 or older;

(2) physically or mentally unfit.

(A) If mental or physical unfitness is claimed and the unfitness is not evident to the worker, verification may be required.

(B) Appropriate verification may consist of:

(i) receipt of temporary or permanent disability benefits issued by governmental or private sources;

(ii) participation in a state vocational rehabilitation (VR) program; or

(iii) a statement from a physician or licensed or certified psychologist;

(3) attending high school;

(4) participating in an on-the-job training (OJT) program. Students are considered participating in ~~on the job training~~OJT programs only during the period of time the students are being trained by the employer;

(5) attending an institution of higher education less than half-time; or

(6) enrolled half-time or more in schools and training programs which are not institutions of higher education.

(c) **Eligibility restrictions for students.**

(1) Persons between the ages of 18 and 50 who are physically and mentally fit and are enrolled at least half-time in an institution of higher education may participate in the ~~Food Stamp Program~~SNAP only if:

(A) employed for an average of 20 hours per week or 80 hours per month and paid for that employment. Earning wages equal to the federal minimum wage times 20 is not a substitute for this restriction;

(B) self-employed for an average of 20 hours per week or 80 hours per month and receives weekly earnings at least equal to the federal minimum wage times 20;

(C) participating in a state or federally financed work study program during the regular school year.

(i) To qualify under this provision, the students must be approved for work study at the time of application for food benefits.

(I) The work study must be approved for the school term and the students must anticipate actually working during the school term.

(II) The exemption begins with the month ~~in which~~ the school term begins or the month work study is approved, whichever is later.

(III) Once begun the exemption continues until the end of the month ~~in which~~ the school term ends, or it becomes known the students have refused an assignment.

(ii) The exemption does not continue between terms when there is a break of a full month or longer unless the student is participating in a work study program during the break;

(D) responsible for the care of a dependent household member under the age of six;

(E) responsible for the care of a dependent household member six through 11 years of age when the worker determines that adequate child care is not available to enable the student to attend class and work an average of 20 hours per week or participate in a state or federally financed work study program. The reasons for lack of adequate child care include, but are not limited to, location of the nearest child care facility or availability of funds to pay child care expenses. Determination of availability of adequate child care is made on a case-by-case basis;

(F) single parents enrolled in an institution of higher education on a full-time basis as determined by the institution and responsible for the care of a dependent child under age 12, regardless of the availability of child care.

(i) This provision applies in those situations where only one natural, adoptive, or stepparent regardless of marital status is in the same food benefit household as the child.

(ii) If no natural, adoptive, or stepparent is in the same food benefit household as the child, another full-time student in the same food benefit household as the child may qualify for eligible student status under this provision if he or she has parental control over the child and is not living with his or her spouse;

(G) Temporary Assistance for Needy Families (TANF) recipients; or

(H) assigned to or placed in an institution of higher education through:

(i) the Workforce Investment Act (WIA) Program;

(ii) a food benefit employment and training program;

(iii) the Job Opportunities and Basic Skills (JOBS) program under Title IV of the Social Security Act;

(iv) a program under Section 236 of the Trade Act of 1974 currently known as The Trade Adjustment Assistance Program and administered by the Oklahoma Employment Security Commission; or

(v) a state or local employment or training program, as determined appropriate by the United States Department of Agriculture, Food and Nutrition Service (FNS).

(2) Only one person may be considered as responsible for a dependent child. The caretaker need not be the person providing for the child's support.

340:50-5-48. Migrant farm laborers

Migrant farm laborers usually have little or no income upon arriving at a work area; therefore, the worker should be alert to the need for emergency food and determine whether the migrant farm laborer's household ~~will qualify~~qualifies for expedited services.

(1) **Resources.** ~~Special~~When the migrant household contains a household member who is disqualified from the Supplemental Nutrition Assistance Program (SNAP) due to an intentional program violation as described at OAC 340:50-15-25, special care should be taken ~~in dealing with migrants~~ to determine if there are out-of-state resources or income from real property in the home-base area. For example, a migrant who claims Texas as a home-base area and who is applying for food ~~stamps~~benefits in Oklahoma is questioned as to the availability of resources in Texas as well as in Oklahoma. Particular attention is paid to real property in the home-base area.

(A) Each applicant household is permitted one home and surrounding property as an exemption from resources. Since the household may be temporarily away from the home-base for employment, the home and surrounding property in the home-base area may be exempt from consideration as a resource.

(B) Shelter costs for the home when unoccupied because of employment may be allowed if the household intends to return~~; however,~~.When the home is occupied, the current occupants ~~of the home, if any,~~ must not be claiming the shelter costs and the house must not be leased or rented in order for shelter costs to be allowed.

(C) The worker explores the possibility that out-of-state real property is being rented or is producing income. If home property is producing income, the income must be added to all the household's income in determining eligibility and food ~~stamp~~benefit allotment.

(2) **Work registration.** Employable members of migrant households who are not employed at least ~~thirty~~30 hours a week or receiving weekly earnings equal to the federal minimum wage times ~~thirty~~30 hours must register for and accept suitable employment the same as other persons.

(3) **Exempt income of children in migrant households.** Since many migrant households receive one payment in combination for work performed by all household members, the income of a student under 18 years of age must be differentiated from the rest of the household's income. The worker prorates equally the income among the number of household members working and excludes that portion allowed to the student.

PART 7. RELATED PROVISIONS

340:50-5-64.1. Work Opportunity Tax Credit (WOTC)

The ~~work~~Work Opportunity Tax Credit (WOTC) law permits for-profit employers to take a credit on their federal income tax when workers from certain target groups are hired. Workers in these target groups have faced significant barriers to employment. The WOTC is equal to ~~35%~~between 25% to 40% of the first year wages up to ~~$6,000~~$9000 depending on the number of hours the employee works and the applicable target group for that person. ~~To claim credit, the employee must be retained at least 180 days or work at least 400 hours.~~The main objective of this program is to enable the targeted employees to gradually move from economic dependency into self-sufficiency as they earn a steady income and become contributing taxpayers, while the participating employers are compensated by being able to reduce their federal income tax liability.

(1) WOTC is available to employers for workers hired from targeted food ~~stamp~~benefit recipient groups in (A) through (L) of this subsection.

(A) **Qualified veterans.** The veteran must reside with a household currently receiving food ~~stamp~~ benefits or a household that received food ~~stamp~~ benefits for at least three consecutive months out of the last ~~12~~15 months before the date hired for employment.

(B) **Qualified food ~~stamp~~benefit recipients.** Qualified food ~~stamp~~benefit recipients are persons between the ages of 18 and ~~24~~39 who:

(i) reside with a household currently receiving food ~~stamp~~ benefits or a household that received food ~~stamp~~ benefits for at least six consecutive months prior to their hiring date~~.~~; or

(ii) are ~~Able-Bodied Adults Without Dependents~~able-bodied adults without dependents no longer eligible for benefits who reside with a household currently receiving food ~~stamp~~ benefits or a household that received food ~~stamp~~ benefits for at least three months out of the last five consecutive months prior to their hiring date.

(C) **Long-term Temporary Assistance for Needy Families (TANF) recipient.** A member of a family that:

(i) received or recently received TANF payments for at least 18 consecutive months ending on the hiring date; or

(ii) received TANF payments for any 18 months beginning after August 5, 1997, and the earliest 18-month period beginning after August 5, 1997 ended during the past two years; or

(iii) stopped being eligible for TANF payments during the past two years because federal or state law limited the maximum time those payments could be made.

(D) **Other TANF recipient.** A member of a family that is receiving or recently received TANF benefits for any nine-month period during the 18-month period ending on the hiring date.

(E) **Designated community resident.** An 18 to 39 year old resident of one of the federally designated Empowerment Zones (EZs), Enterprise Communities (ECs), Renewal Communities (RCs), and for individuals who begin to work for an employer after May 25, 2007, this High-Risk Youth group has been renamed "Designated Community Resident" and expanded to include residents of Rural Renewal Counties.

(F) **Summer Youth employee.** A 16 or 17 year old EZ, EC, or RC resident hired between May 1 and September 15.

(G) **Vocational Rehabilitation referral.** A person who completed or is completing rehabilitative services from a state certified agency, and Employment Network or the United States (U.S.) Department of Veterans Affairs.

(H) **Qualified ex-felon.** A person who has been convicted of a felony and has a hiring date which is not more than one year after the last date on which he or she was convicted or released from prison.

(I) **Supplemental Security Income (SSI) recipient.** A recipient of SSI benefits for any month ending during the past 60 day period ending on the hire date.

(J) **Hurricane Katrina employee.** A recipient in this group does not require certification.

(K) **Unemployed veteran.** A veteran hired after 2008 and before 2011 who:

(i) has been discharged or released from active duty in the U.S. Armed Forces at any time during the five year period ending on the hiring date; and

(ii) received unemployment compensation under state or federal law for at least four weeks during the one year period ending on the hiring date.

(L) **Disconnected youth.** A person who is certified as:

(i) having attained age 16, but not 25, on the hiring date;

(ii) not regularly attending any secondary, technical, or post-secondary school during the six-month period preceding the hiring date;

(iii) not regularly employed during the six-month period preceding the hiring date; and

(iv) not readily employable by reason of lacking a sufficient number of basic skills.

(2) Through an agreement with the Oklahoma Employment Security Commission (OESC) the Oklahoma Department of Human Services (OKDHS) is able to issue ~~WOTC~~ the U.S. Department of Labor Form ETA-9062, Conditional Certification Work Opportunity Tax Credit,~~forms for Food Stamp~~to food benefit recipients.

(3) The ~~Conditional Certificate~~ Form ETA-9062~~,~~ and a letter from the ~~social~~ worker stating the number of months the participant has been a food ~~stamp~~benefit recipient must be given to the participant to present to the employer on or before the first day of employment. An explanation is given to the participant about the purpose of the form and that the tax credit may help the participant get a job.

PART 9. WORK REGISTRATION

340:50-5-91. Determination of voluntary quit

When a household files an application or when a participating household reports loss of income, the ~~social services specialist~~worker determines if the voluntary quit sanction applies. When a non-compliant head of household moves from one food ~~stamp~~benefit household to another, he or she cannot be designated as head of household if the new household has already selected an adult parent as its head of household.

340:50-5-92. Determination of good cause

Upon determination the head of household voluntarily quit his or her employment, the ~~social services specialist~~worker considers the facts and circumstances. The ~~social services specialist~~worker uses information submitted by the principal wage earner and the employer to determine if the voluntary quit is with good cause. Good cause for leaving employment includes:

(1) discrimination by an employer based on age, race, sex, color, ~~handicap~~disability, religious beliefs, national origin, or political beliefs;

(2) work demands or conditions which render continued employment unreasonable, such as working without being paid on schedule;

(3) acceptance by the head of household of other employment, or enrollment at least half-time in any recognized school, training program, or institution of higher education, requiring the head of household to leave employment;

(4) acceptance by any other household member of other employment or enrollment at least half-time in any recognized school, training program, or institution of higher education in another county or area requiring the household to move and thereby requiring the head of household to leave employment;

(5) resignations by persons under the age of 60 which are recognized by the employer as retirement;

(6) employment which becomes unsuitable after the acceptance of such employment because it no longer meets the criteria of suitable employment as specified at OAC 340:50-5-88(8);

(7) ~~acceptance of~~leaving employment after accepting a bona fide offer of employment of more than 20 hours a week or in which the weekly earnings are equivalent to the federal minimum wage multiplied by 20 hours ~~which, because of circumstances beyond the control of the head of household, subsequently either does~~because the agreed upon work hours or weekly earnings do not materialize ~~or results in employment of less than 20 hours a week or weekly earnings of less than federal minimum wage multiplied by 20 hours~~;

(8) leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work. There may be some circumstances where households will apply for food ~~stamp~~ benefits between jobs, particularly in cases where work may not yet be available at the new site. Even though employment at the new site has not actually begun, the quitting of the previous employment is considered with good cause if it is part of the pattern of that type of employment; or

(9) circumstances beyond the ~~registrant's~~person's control, such as but not limited to:

(A) illness;

(B) illness of another household member sufficiently serious to require the presence of the registrant;
(C) unavailability of transportation;
(D) lack of adequate child care for children who have reached age six but are under age 12; or
(E) an unanticipated emergency.

340:50-5-93. Verification

(a) To the extent that the information given by the household is questionable, the ~~social services specialist~~worker requests verification of the household's statements. The primary responsibility for providing verification rests with the household. If it is difficult or impossible for the household to obtain documentary evidence in a timely manner, the ~~social services specialist~~ worker offers assistance to the household to obtain the needed verification.

(b) Acceptable sources of verification include, but are not limited to~~,~~:
(1) the previous employer~~,~~;
(2) ~~employees~~employee associations~~,~~;
(3) union representatives~~,~~; and
(4) grievance committees or organizations.

(c) ~~Whenever~~When documentary evidence cannot be obtained, the ~~social services specialist~~ worker substitutes a collateral contact. The ~~social services specialist~~worker is responsible for obtaining verification from acceptable collateral contacts provided by the household.

(d) If the household and ~~social services specialist~~worker are unable to obtain requested verification from these or other sources because the voluntary quit resulted from circumstances which cannot be verified, the household is not denied food ~~stamp~~ benefits.

340:50-5-94. Penalty for voluntary quit

When the head of household who is a required work registrant has quit a job of at least 20 hours a week or the equivalent of the federal minimum wage multiplied by 20 hours, without good cause, the actions described in this Section are taken.

(1) **Applicant household.** The worker denies the application ~~is denied~~ and imposes the sanction ~~imposed~~ for 90 calendar days starting from the date of quit or until eligibility is reestablished**.**

(2) **Participating household.** Within ten calendar days after ~~determination of~~the worker determines a voluntary quit occurred, the ~~social services specialist~~worker closes the ~~case~~ food benefits giving advance notice.

(A) The disqualification period runs continuously for three months beginning with the month the adverse action is effective or until eligibility is reestablished.

(B) ~~When~~A household is regarded as a participating household when the worker discovers, after certification, a voluntary quit which occurred 60 calendar days prior to the application for benefits or in the time between application and certification ~~is discovered or identified after certification, the household is regarded as a participating household~~. The period of disqualification is for three months or until eligibility is reestablished.

(3) **Households with special circumstances.**

(A) **Voluntary quit occurs or ~~determined~~is discovered in the last month of certification.** When a voluntary quit occurs or is ~~determined~~discovered in the last month of a certification period, the worker denies recertification for the household ~~is denied recertification~~ for a period of 90 days. The 90 days begin the day after the last certification period ends or until eligibility is reestablished. If such a household does not reapply for food ~~stamp~~ benefits by the end of the certification period, an overpayment claim is established for the benefits received by the household for up to 90 days.

(i) The 90 days begin the first of the month after the month in which the voluntary quit occurred.

(ii) If there are fewer than 90 days from the first month after the month in which the voluntary quit occurred to the end of the certification period, ~~a~~ an overpayment claim is imposed. The household remains ineligible for a prorated number of days with the end result being ~~a~~an overpayment claim is established or the household is ineligible for a full 90 day period or until eligibility is reestablished.

(B) **Fair hearings.** Each household has a right to a fair hearing to appeal a denial or termination of benefits due to a voluntary quit determination. If the participating household's benefits are continued pending a fair hearing and the ~~Agency determination is upheld~~hearing decision upholds the voluntary quit determination, the disqualification period begins the first month after the hearing decision is rendered.

(C) **Changing households.** Persons disqualified for quitting a job as head of one household carry their disqualification with them if they join a new household as its head. The new household is disqualified.

(i) When the new household has already selected an adult parent as its head of household, a noncompliant head of household cannot be designated as head of household by the ~~Agency~~Oklahoma Department of Human Services unless the new household elected to designate such ~~an individual~~a person as its head. The new household remains ineligible for the remainder of the disqualification period unless the person who causes the disqualification ends it in a manner prescribed in OAC 340:50-5-95.

(ii) If ~~an individual~~a person who voluntarily quit joins a new household and is not the household head, the disqualification is terminated.

340:50-5-96. Reapplication during the disqualification period

If an application is filed in the third calendar month of the three-month disqualification period, the ~~social services~~

~~specialist~~worker certifies the household if all other eligibility criteria are met beginning the first day after the disqualification period ends.

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 3. INCOME

340:50-7-22. Income exclusions

Only the payments listed in this Section are excluded from the household's income, from income of disqualified members whose income is counted, or from the income of ineligible aliens who would otherwise be household members. No other income is excluded.

(1) **In-kind income.** In-kind income is any gain or benefit which is not in the form of money payable directly to the household, including non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(2) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household.

(3) **~~Education~~Educational assistance.** ~~All education~~Educational assistance including grants, work-study, scholarships, fellowships,~~and student~~educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement, as described in paragraph (7) of this Section, and is a gain to the client, it is considered income.

(4) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments provided by Developmental Disabilities Services Division (DDSD) are excluded.

(5) **Income excluded by law.** Income excluded by law is:

(A) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. [Public Law (P.L.) 91-646, § 216] Such payments are:

(i) payments to persons displaced due to the acquisition of real property;

(ii) relocation payments to a displaced home owner toward the purchase of a replacement dwelling if the owner purchased and occupied the dwelling within one year following displacement; and

(iii) replacement housing payments to displaced persons not eligible for a home owner's payment;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act [P.L. 92-203 § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program (RSVP), foster grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended;

(D) income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, § 6];

(E) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Also excluded is any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded, as long as they meet the distribution requirements as stated in this paragraph. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family.

(i) Excluded funds deposited in a bank or other financial institution are excluded as long as they are kept in a separate account and not commingled in an account with non-excluded funds. When the excluded funds are commingled in an account with non-excluded funds they retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource.

(ii) Purchases made with excluded funds are considered a resource;

(F) 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. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, earnings, and payments made for participation in the Workforce Investment Act (WIA) to persons of all ages and student status. There are numerous programs for which payments are excluded. These programs include Summer Youth, Job Corps, paid classroom training, and others. The exception to the income exclusion is income to persons for

on-the-job training paid to participants 19 years old and older. This income is treated as any other earned income;

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Act, such as University Year for Action (UYA), Senior Companion Program, AmeriCorps Volunteers in Service to America (VISTA) and other AmeriCorps Programs, are not included as income for purposes of determining food benefit eligibility and benefit level;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP) and utility payments, and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds that are paid to persons under the Community Service Employment Program under Title V, P.L. 100-175. This program is authorized by the Older Americans Act. Each state and various organizations receive some Title V funds. These organizations include:

(i) Experience Works;

(ii) National Council on Aging;

(iii) National Council of Senior Citizens;

(iv) American Association of Retired Persons (AARP);

(v) U. S. Forest Service;

(vi) National Association for Spanish Speaking Elderly;

(vii) National Urban League;

(viii) National Council on Black Aging; and

(ix) National Council on Indian Aging;

(L) Earned Income Tax Credit (EITC) payments received as part of a tax refund and also EITC advance payments received as part of a paycheck [P.L. 100-435];

(M) refunds of the state EITC as result of filing a state income tax return;

(N) 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.);

(O) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in interment camps during World War II;

(P) 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;

(Q) payments for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(R) payments made to persons because of their status as victims of Nazi persecution;

(S) funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to persons directly affected by the event. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain persons who are children of Vietnam War veterans; ~~and~~

(U) Disaster Unemployment Assistance paid to persons unemployed as a result of a major disaster; and

(V) benefits paid to certain veterans and the spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II by the Filipino Veterans Equity Compensation Fund.

(6) **Payments which are not considered income.**

(A) The payments in (i) through (iii) are not considered as income.

(i) Monies withheld from any income source to repay a prior overpayment from that same source.

(ii) Monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source.

(iii) Child support payments received by Temporary Assistance for Needy Families (TANF) recipients which must be sent to the Oklahoma Child Support Services (OCSS) to maintain TANF eligibility.

(B) Monies withheld or returned to repay overpayments in federal, state, or local means-tested assistance programs are counted when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.

(i) In the Supplemental Nutrition Assistance Program (SNAP), willful misrepresentation is considered as intentional program violation.

(ii) The State Supplemental Payment to the Aged, Blind, and Disabled and TANF programs define intentional program violation using the terms restitution, fraud, and willful misrepresentation.

(iii) The Social Security Administration (SSA) and Veterans Benefits Administration programs define intentional program violation as fraud. Supplemental Security Income (SSI) is a means-tested program within SSA.

(7) **Reimbursements.**

(A) Reimbursements for past or future expenses to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household are not considered. Examples are reimbursements for:

(i) job or training related expenses such as travel, per diem, uniforms, and transportation to and from job or training site. However, if these expenses are not reimbursements, they are considered income;

(ii) out-of-pocket expenses incurred by volunteers in the course of their work;

(iii) medical or dependent care; and

(iv) services provided by Title XX of the Social Security Act.

(B) When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount of the reimbursement that exceeds the actual incurred expenses is counted as income. A reimbursement is not considered to exceed actual expenses unless the provider or household indicates the amount is excessive.

(8) **Money received for third parties.** Money received and used for the care and maintenance of a third party beneficiary who is not a household member is not considered.

(A) If the intended beneficiaries of a single payment are both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member is excluded.

(B) If the non-household member's portion cannot be readily identified, as in TANF payments, the payment is evenly prorated among intended beneficiaries. The exclusion is applied to the non-household member's pro rata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

(9) **Earnings of a child.** Earned income of a child who is head of his or her own household is counted. The earned income of an elementary or high school student 17 years of age or younger who is under parental control of an adult household member is excluded. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings cannot be differentiated from those of other household members, the total earnings are prorated equally among the working members, and the child's prorated share is excluded.

(10) **Other types of excluded income.**

(A) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded. Verification that the income is a loan is required.

(B) **Irregular Income.** Exclude any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated which is $30 or less per quarter.

(C) **Non-recurring lump sum payments.** Exclude money received in the form of non-recurring lump sum payments, including but not limited to: income tax refunds, rebates, credits, retroactive lump sums from SSA, SSI, public assistance, Railroad Retirement pensions, or other payments, or retroactive lump sum insurance settlements. These payments are counted as resources.

(D) **Cost of self-employment.** Exclude the cost of producing self-employment income.

(E) **Income of non-household members.** The income of non-household members who have not been disqualified or are not ineligible aliens is not considered available to the household.

(F) **Charitable contributions.** Exclude cash contributions to a household from one or more private non-profit charitable organizations, not to exceed $300 in a federal fiscal year quarter. For the purposes of this provision a quarter includes these specific months:

(i) October, November, December;

(ii) January, February, March;

(iii) April, May, June; and

(iv) July, August, September.

(G) **Department of Housing and Urban Development's (HUD) Family Self-sufficiency Program (FSS) escrow accounts.** Families participating in the HUD FSS program may withdraw money from their escrow accounts prior to completion of the program. This money is excluded both as income and as a resource.

(H) **Individual Development Account (IDA).** Any funds deposited in an IDA operated under the Assets for Independence Act and the interest that accrues.

340:50-7-29. Income inclusions

(a) **Earned income.** Earned income is income which a household receives in the form of wages, self-employment, or training allowances and for which a person puts forth daily, physical labor. The types of earnings listed in (1) through (4) of this subsection, including money from the sale of whole blood or blood plasma, are considered earned income.

(1) **Wages.** All wages and salaries for services performed as an employee, including sick pay paid by the employer to an employee who plans to return to work when recovered, are considered as earned income. Wages that are garnisheed or diverted and paid to a third party for a household's expenses are also included.

(2) **Self-employment.** The worker determines the household's total gross income from a self-employment enterprise~~, including the total gain from the sale of any capital goods or equipment related to the business, but excluding the cost of producing the income and payments from roomers or boarders and rent from rental property are considered self-employment income. Income from~~

~~rental property is considered earned income only if a member of the household is actively engaged in management of the property an average of at least 20 hours per week~~in accordance with procedures described at OAC 340:50-7-30.

(3) **Title I payments of the Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [Public Law (P.L.) 93-113] are considered as income unless excluded in OAC 340:50-7-22.

(4) **On-the-job training.** Income earned in on-the-job training positions is considered earned income. This includes on-the-job training provided under Section 204(b)(1)(c) or Section 264(c)(1)(A) of the Workforce Investment Act for persons 19 years of age or older.

(b) **Unearned income.** In general, unearned income is that income which a household receives and is not in the form of wages, self-employment, or training allowances and for which a person does not put forth any daily, physical labor. The types of income listed in (1) through (5) of this subsection, while not all inclusive, are considered unearned.

(1) **Assistance payments.** Assistance payments from a federally aided public assistance program, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments are considered as unearned income.

(A) A household's food benefit amount does not increase when the benefit received from another program is reduced, suspended, or terminated because of a penalty imposed for an intentional failure to comply with a requirement of that program. The other program must be a means-tested, federal, state, or local welfare or public assistance program which is governed by welfare or public assistance laws or regulations and which distributes public funds, such as, SSI and TANF. Policy at OAC 340:10-2-2 explains the TANF penalty considered for SNAP.

(i) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, Oklahoma Department of Human Services (OKDHS) is not held responsible. The worker must make a good faith effort to get the needed information and record the details and results of this effort in the case file.

(ii) The household's current food benefit amount is not reduced, suspended, or terminated when the benefits under another assistance program are decreased.

(iii) When eligible members are added to the food benefit, the benefit must be adjusted regardless of whether the household is prohibited from receiving benefits for the additional member under another federal, state, or local welfare or public assistance means-tested program.

(iv) Changes in the household circumstances which are not related to the penalty imposed by another federal, state, or local welfare or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(v) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty.

(B) The provision in (A) of this paragraph does not apply to persons or households subject to disqualification from SNAP for noncompliance with a comparable work requirement under Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income.

(3) **Support and alimony.** Support and alimony payments that are made directly to the household from non-household members, money deducted or diverted from court-ordered support or alimony payments, or other binding written support or alimony agreement, to a third party for a household expense must be considered as income when the court order directs that the payment be made to the household.

(4) **Grants and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or profit are considered as income. Income from royalties is treated as unearned income.

(5) **Monies which are withdrawn or dividends which are or could be received by a household from trust funds.** Dividends which the household has the option of either receiving as income or reinvesting in the trust are considered as income in the month they become available to the household.

(c) **Income of disqualified or ineligible household members.** A complete list of reasons for disqualification of household members is found in OAC 340:50-5-10.1. Income of disqualified persons and unqualified aliens is counted as indicated in paragraphs (1) and (2) of this subsection.

(1) **Income of a person disqualified for failure to comply with food benefit Employment and Training (E&T) Program requirements, a fleeing felon disqualification, or willful misrepresentation~~,~~ or fraud.** All income of a person disqualified for failure to comply with food benefit E&T requirements, a fleeing felon disqualification, or willful misrepresentation~~,~~or fraud, is counted in it's entirety as available to the remaining household members. Utility, medical, dependent care, and excess shelter deductions ~~continue to apply to~~are not prorated for the ~~remaining~~ household ~~members~~.

(2) **Income of persons disqualified for reasons other than willful misrepresentation, a fleeing felon disqualification, or failure to comply with E&T requirements.**

Income of persons disqualified for reasons other than those stated in paragraph (1) of this subsection is prorated among all household members.

(A) A pro rata share of the income of a disqualified person is considered as income available to the remaining members. This pro rata share is calculated by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified member.

(B) All but the disqualified member's share is considered as income available to the remaining household members. The earned income deduction from OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions applies to the prorated income attributed to the household if it was earned by the disqualified member.

(C) That portion of the household's allowable shelter and dependent care expenses which are either paid by or billed to the disqualified member is divided evenly among the household members, including the disqualified member. When the household is using the utility standard, it too is evenly prorated. All but the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

(3) **Determining eligibility and benefit level.** The needs of a disqualified or ineligible household member are not considered when determining the household's size for purposes of assigning a benefit level to the household or for purposes of comparing the household's monthly income with the income eligibility standard.

340:50-7-30. Self-employed households

Households whose income is derived either wholly or in part from a self-employment enterprise are treated in accordance with the procedures listed in paragraphs (1) through (10).

(1) **Capital gains.** The proceeds from the sale of capital goods or equipment is income for program purposes and is calculated in the same manner as a capital gain for federal income tax purposes. Even though a percentage of the proceeds from the sale of capital goods or equipment is taxed for federal income tax purposes, the worker counts the full amount of capital gain as income.

(2) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(A) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(B) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(3) **Self-employed farm income.** To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1,000 or more from the farming enterprise.

(A) Farming is defined as cultivating or operating a farm for profit either as owner or tenant.

(B) A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and plantations, ranches, ranges, and orchards.

(i) A fish farm is an area where fish are grown or raised and where they are artificially fed, protected, and cared for, and does not include an area where they are only caught or harvested.

(ii) A plant nursery is a farm for purposes of this definition.

(4) **Monthly self-employment income.** Self-employment income received on a monthly basis but which represents a household's annual support is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(5) **Seasonal self-employment income.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. For example, the income of self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year is averaged over the summer months rather than a 12-month period.

(6) **Annualized self-employment income.** Self-employment income which represents a household's annual support must be annualized over a 12-month period, even if the income is received in a shorter period of time. For example, self-employment income received by crop farmers must be averaged over a 12-month period if the income represents the farmer's annual support.

(A) If the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced substantial increase or decrease in business, the worker calculates the self-employment income on anticipated earnings.

(B) The worker does not calculate self-employment income on the basis of prior earnings such as income tax returns when an increase or decrease of business has occurred.

(i) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(ii) If the business has been in operation for a short time and there is insufficient data to make a reasonable projection, self-employment income

is recomputed at each new certification until a full year's information is available.

(7) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(A) For those households whose self-employment income is calculated on an anticipated basis, the worker adds any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divides this amount by 12. This amount is used in successive certification periods during the next 12 months except that a new average monthly amount must be calculated over this 12-month period if the anticipated amount of capital gain changes.

(B) The worker adds the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtracts the cost of producing the self-employment income.

(8) **Determining net monthly self-employment income.** When the household has business expenses associated with its self-employment income, the business expenses must be deducted before determining whether the household meets the maximum gross income standards shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. When the household does not have business expenses, the gross self-employment income is used.

(A) When the household has filed an income tax return on its self-employment income for the most recent year, the worker uses the net self-employment income shown on the income tax return and divides the net self-employment income by the number of months to be averaged.

(B) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) to determine the net monthly self-employment income.

(i) The gross self-employment income, including capital gains, is computed using the client's self-employment business records.

(ii) If the client declares they incurred business expenses, the worker then subtracts 50% of the gross self-employment income as business expenses. If the household did not incur business expenses, a business expense deduction is not given.

(iii) The worker then divides the net self-employment income by the number of months to be averaged.

(C) The monthly net self-employment income is added to all other earned income received by the household.

(i) The total monthly earned income less the earned income deduction according to OKDHS Appendix C-3 is then added to all other monthly income received by the household.

(ii) The standard deduction, dependent care, and shelter costs are computed as for any other household and subtracted to determine the monthly net income of the household.

(9) **Household with income from boarders.** A household that operates a commercial boarding house may be considered a food benefit household and self-employed as shown in paragraph (8) of this subsection. A household with boarders or roomers that is not a commercial boarding house may receive food benefits as shown in subparagraphs (A) through (C) of this paragraph.

(A) A person paying a reasonable amount for room and board is excluded from the household when determining the household's eligibility and benefit level. Payments from the boarder are treated as self-employment income if the boarder is paying a reasonable amount.

(i) The income from a boarder includes all direct payments to the household for room and meals, including contributions to the household for part of the household shelter expense.

(ii) Shelter expenses paid directly by a boarder to someone outside the household are not counted as income to the household.

(B) After determining the income received from the boarder, the worker excludes 50% of the boarder payment as the cost of doing business.

(C) The net income from self-employment is included with other earned income and the earned income deduction from OKDHS Appendix C-3 is taken.

(i) Shelter cost the household actually incurred, even if the boarder contributes to the household for part of the household's shelter expense, is computed to determine if the household will receive a shelter deduction.

(ii) The shelter and utility cost must not include any expense billed to and directly paid by the boarder to a third party.

(10) **Income from rental property.** Income received from rental property is considered ~~earned~~self-employment income ~~if a member of the household is actively engaged in the management of the property an average of at least 20 hours per week~~.

(A) It is treated as earned income if a member of the household is actively engaged in the management of the property an average of at least 20 hours per week.

(B) When a household member is not actively engaged in the management of the property at least 20 hours each week, the income is considered unearned. The person is allowed business expenses described at (8) of this Section.

340:50-7-31. Deductions

(a) Deductible expenses from income include only certain costs of dependent care, shelter, the earned income allowance,

a standard deduction, certain medical costs for elderly or disabled household members, and legally binding child support payments as described in ~~this Subchapter~~ OAC 340:50-7.

(1) That portion of the household's allowable shelter, utility, and dependent care expenses, which are either paid by or billed to a disqualified household member, as defined by OAC 340:50-7-29(c)(2), is divided evenly among the household members, including the disqualified member. All except the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

(2) Business expenses for the self-employed are handled in accordance with OAC 340:50-7-30.

(b) Deductions from income are allowed for the expenses listed in paragraphs (1) through (6) of this subsection.

(1) **Standard deduction.** The appropriate standard deduction as shown in Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefits Allotments and Standards for Income and Deductions, is deducted from the household's income.

(2) **Earned income deduction.** The appropriate amount of earned income deduction from OKDHS Appendix C-3 is deducted from the gross earned income to cover the cost of state and local income taxes, pensions, union dues, and work related expenses. The earned income deduction is not allowed on any portion of income ~~earned under a work supplementation or support program~~ that is attributable to public assistance. No other deduction is allowed from the gross earned income.

(3) **Medical expense deduction.** Medical expenses exceeding $35 per month incurred by any elderly or disabled household members, as defined at OAC 340:50-5-4, are deductible. The $35 is subtracted from medical expenses only once per household even though the household has more than one elderly or disabled member. When the household does not know the amount of on-going medical expenses that can be anticipated monthly over the certification period, the anticipated expense amount may be determined by averaging at least the past two month's expenses.

(A) Households report and verify medical expenses at certification and each recertification. Households are not required to report changes in medical expenses during the certification period.

(i) When a household voluntarily reports a change in medical expenses that will reduce the food benefit allotment, no verification is needed. However, the change does require notice of adverse action.

(ii) When a household voluntarily reports a change in medical expenses that will increase the food benefit allotment, the change must be verified before the change is made.

(iii) If OKDHS finds out about a change from a source other than the household, the change is acted on if it is considered verified upon receipt. The household is not contacted for additional information. When the change requires contacting the household for additional information or verification, no change is made.

(B) If a household reports an anticipated medical expense at the time of certification, but is unable to provide the verification at that time, the household is told the expense will be allowed when the verification is provided during the certification period. Upon verification, a household may elect to have a one-time medical deduction or have the expense averaged over the remaining months of the certification period. Allowable costs are:

(i) medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by state law or other qualified health professional;

(ii) hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for a person who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state;

(iii) prescription drugs and other over-the-counter medication, including insulin, when approved by a licensed practitioner or other qualified health professional. Costs of medical supplies, sick-room equipment, including rentals, or other prescribed equipment are also included;

(iv) health and hospitalization policy premiums;

(v) Medicare premiums, and any cost-sharing or spend-down expenses incurred by Medicare or SoonerCare (Medicaid) recipients;

(vi) dentures, hearing aids, and prosthetics;

(vii) eye glasses prescribed by a licensed practitioner, and securing and maintaining a seeing eye or hearing dog, including the cost of dog food and veterinarian bills;

(viii) reasonable cost of transportation and lodging to obtain medical treatment or services; and

(ix) maintaining an attendant, homemaker, home health aide, child care services, or housekeeper due to age, infirmity, or illness. If this expense also qualifies as a dependent care expense as described in paragraph (4) of this subsection, it is considered as a medical expense rather than a dependent care expense. Additionally, if the household furnishes a majority of the caretaker's meals, an amount equal to one allotment is added to the medical expense for meals provided. The allotment used is the amount in effect at certification.

(C) Cost for special diets or health and accident insurance policies such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are **not** allowable medical costs.

(4) **Dependent care.** Dependent care is payment for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment or to attend training or education preparatory to employment.

(A) This deduction is applicable regardless of whether ~~or not~~ the household member is subject to the Supplemental Nutrition Assistance Program Employment and Training requirements.

(B) If this expense also qualifies as a medical expense, it is considered as a medical expense rather than a dependent care expense. ~~See OKDHS Appendix C-3 for the maximum dependent care deduction allowable.~~

(C) There is no maximum dependent care deduction. The total reported by the client is an allowable expense as long as it meets the criteria in this Section.

(D) Dependent care is only verified when the:

(i) expenses claimed would actually result in a deduction and other information available to the worker is inconsistent with the household's claim that it incurs a dependent care expense; or

(ii) ~~that the~~ household incurs the expense for reasons of employment, seeking employment, ~~or~~ training, or education for employment.

(5) **Legally-binding child support.** A deduction is allowed for verified legally-binding child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member.

(6) **Shelter costs.** A household is allowed a shelter deduction when the monthly shelter cost is in excess of 50% of the household's income after all other deductions are allowed. The shelter deduction alone cannot exceed the maximum amount as shown in OKDHS Appendix C-3, unless the household has an elderly or disabled member. Households with an elderly or disabled member receive an excess shelter deduction for the monthly cost that exceeds 50% of the household's income after all of the deductions listed in paragraphs (1) through (6) of this subsection have been allowed. All homeless households who incur or can expect to incur a shelter cost during the month are entitled to use the estimated homeless shelter deduction to determine food benefit eligibility and benefit level. This estimate covers all shelter costs as described in this paragraph. If a homeless household is living in a vehicle for which they are making payments, the monthly payment may be allowed as a shelter cost. If the household's actual verified shelter cost exceeds the estimated amount, the larger amount is used. Shelter costs include only:

(A) continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments. The charge for renting or buying the land on which a mobile home is located is also considered shelter cost;

(B) property taxes, state and local assessments, and insurance on the structure itself except the separate costs for insuring furniture or personal belongings.

(i) The cost of vehicle registration or tag for a mobile or motor home is not a shelter expense.

(ii) A mobile home is taxed as part of the property tax when the land is owned or being purchased. This is considered as a shelter expense.

(iii) Unregistered mobile homes on rented land are taxed as personal property. The personal property tax for the mobile home is considered a shelter expense. No other personal property tax is considered a shelter expense;

(C) charges for heating, cooling, or cooking fuel; electricity; water, sewage, garbage, and trash collection fees; and the basic service fee for one telephone including tax on the basic fee. A household that incurs an allowable utility expense receives the total amount of the utility standard specified in OKDHS Appendix C-3 for one of the mandatory utility standards in (i) through (iii) of this subparagraph.

(i) The standard utility allowance (SUA) is a single standard based on annual averages that include costs for heating, cooling, and cooking fuel; electricity; basic telephone service; and water, sewage, and garbage.

(I) The SUA may be used as long as the household is billed for heating or cooling during the year. Households billed less often than monthly for heating costs such as butane or propane may continue to use the utility standard between billing months. If the household reports they no longer incur a heating or cooling expense, but still have a utility expense, the standard must be changed to either the basic utility allowance (BUA) or telephone standard.

(II) A household with utility expenses which are reimbursed or paid by an excluded payment such as a vendor payment, Housing and Urban Development (HUD) or Farmers Home Administration (FmHA) payment may use the SUA when the heating or cooling cost exceeds the amount of the excluded payment.

(ii) The BUA includes utility charges other than for heating and/or cooling which the household incurs.

(iii) The telephone standard is used if the household is not entitled to use the SUA or BUA but has a telephone cost; and

(D) the shelter costs for the home even when not actually occupied by the household because of employment or training away from home, illness, or abandonment of the home due to disaster or casualty loss.

(i) For the cost of a vacated home to be included in shelter costs the:

(I) household must intend to return to the home;

(II) current occupants of the home, if any, must not be claiming the shelter costs during the absence of the household; and

(III) home must not be rented or leased during the absence of the household.

(ii) If a deductible expense must be verified and obtaining the verification may delay the household's certification, the worker advises the household that the household's eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense.

(iii) The appropriate utility standard is used if the household is entitled to claim it.

(c) The worker calculates a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation for the expenses is based on the most recent month's bills unless the household is reasonably certain a change will occur.

(d) Households may elect to have an expense that:

(1) is billed monthly and fluctuates, averaged;

(2) is billed less often than monthly, averaged forward over the interval between scheduled billings; or

(3) if there is no scheduled billing interval, averaged forward over the period the expense is intended to cover.

(e) A deduction is allowed in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense.

(1) For example, rent which is due each month is included in the household's shelter costs, even if the household has not yet paid the expense.

(2) Amounts carried forward from past billing periods are not deductible even if included in the most recent billing and actually paid by the household.

(3) A particular expense may only be deducted once.

(f) The portion of an expense paid by an excluded reimbursement or vendor payment is not deductible. The amount left after deducting the excluded payment is deductible. This includes HUD and FmHA rent and utility payments. Expenses are only deductible if the service is provided by someone outside the household and the household makes a money payment for the service.

PART 5. DETERMINATION OF INCOME

340:50-7-45. Income

(a) The methods in this Part are used to estimate income. The worker uses the method(s) that will best predict income for the current and future months. Actual income is ~~always~~ used for the current and prior month, if known prior to teleprocessing the certification. When an extra check is received in the initial month due to a third or fifth week and the income is ongoing, it is converted to anticipated income. In the month of application, the anticipated income may be less than a full month's wages. In this case, use the actual or actual anticipated income for the month of application. For the remaining months of the certification period, the income is averaged and converted to a monthly amount to be used. If the household income is received more often than monthly, the income for future months of the certification period must be converted to a monthly amount, if the conversion represents the income anticipated to be received by the household.

(b) Household income means income from all sources excluding only those items described in ~~Section 22 of this Subchapter~~OAC 340:50-7-22. The income considered is that income which is expected to be received during the period of certification. When an applicant or recipient reports no income and/or the household's expenses such as rent or mortgage, utilities, other payments, or miscellaneous personal expenses exceed the income, the worker must determine with the household how these needs are met.

(c) Gross, non-exempt income is verified for all households prior to certification. In cases where all attempts to verify income have been unsuccessful because the person or organization providing the income fails to cooperate with the household, the worker determines the amount to be used based on the best available information.

(1) **Method of verifying income.** The worker uses documentary evidence as the primary source of verification. If other types of verification are used, the worker must document in the case why an alternate source was needed.

(A) Documents which can be used to verify earned income are:

(i) pay stubs;

(ii) employee W-2 forms;

(iii) wage tax receipts;

(iv) state or federal income tax returns;

(v) self-employed bookkeeping credits;

(vi) sales or expenditure records;

(vii) employer wage records;

(viii) statements from an employer;

(ix) Oklahoma Employment Security Commission (OESC) statements; or

(x) Oklahoma Tax Commission statements.

(B) Verification of other types of income, documents, or records generally available from the applicant are:

(i) award letters;

(ii) benefit payment checks;

(iii) correspondence on benefits;

(iv) income tax records;

(v) support and alimony payments as evidenced by court order;

(vi) divorce or separation papers; or

(vii) contribution checks.

(C) Other sources of income verification include;

(i) State Data Exchange (SDX) system;

(ii) Beneficiary and Earnings Data Exchange (BENDEX) system;

(iii) OESC wage records;

(iv) union records;

(v) workers' compensation records;

(vi) information received from the Department of Veterans ~~Benefits Administration~~Affairs records; or

(vii) tax records.

(2) **Unreported income.** When there is an indication other income which has not been reported is available to the household, the worker must explore the possibilities of unreported income. When the applicant states he or she has no earnings or other income and the applicant is employable or it appears he or she may be eligible for other benefits, such as Social Security, Supplemental Security Income (SSI), unemployment compensation, or public assistance, it may be necessary to verify the applicant is not receiving income from such sources.

(3) **Other required verification.** When verifying income is exempt as a loan, a simple statement signed by both parties which indicates the payment is a loan and must be repaid is sufficient verification. If the household receives payment on a recurrent or regular basis from the same source, but claims the payments are a loan, the worker must require the provider of the loan sign an affidavit which state the payments are being made or that payments will be made in accordance with an established repayment schedule.

340:50-7-46. Converting to monthly income

(a) **Converting income.** When a full month's income is anticipated but is received more often than monthly, the income is converted to a monthly amount as indicated in (1) through (5) of this subsection. When the amounts to be converted differ, such as fluctuating daily, weekly, or biweekly amounts, an average is obtained and the average is multiplied by 4.3 or 2.15 whichever is applicable. Cents are carried through all steps and then rounded to the nearest dollar when the monthly amount is determined. One cent through 49 cents are rounded down and 50 cents through 99 cents are rounded up. The worker must exercise extreme caution when determining whether income is received twice per month or biweekly, ~~(~~every two weeks~~)~~.

(1) **Daily.** Income received on a daily basis is converted to a weekly amount then multiplied by 4.3 only when there is a consistency in days worked each week and a regularity of pay dates.

(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.

(5) **Irregular income.** Income received at irregular intervals is not converted.

(b) **Anticipating income.** For the purpose of determining the household's eligibility and monthly benefit allotment, the worker takes into account the income already received by the household and any anticipated income the household can be reasonably certain to receive during the certification period. In the month of application, the anticipated income may be less than a full month's wages. In this case, use the actual or actual anticipated income for the month of application. For the remaining months of the certification period, the worker averages and converts the income to a monthly amount.

(1) **Uncertain income.** If the amount of income that will be received or when it will be received is uncertain, that portion of the household's income is not counted. For example, a household's anticipated income from a new source, such as a new job, recently applied for public assistance, or unemployment benefits, may be uncertain as to the time and the amount of the initial payment.

(A) The anticipated payment is not considered unless there is reasonable certainty concerning the month the payment will be received and the amount of the payment.

(B) The payment is disregarded if there is no way to determine the amount of the payment.

(C) If the exact amount of the income is not known, that portion of it which can be anticipated with reasonable certainty must be considered as income.

(D) In cases where the receipt of income is reasonably anticipated but the monthly amount may fluctuate, the household may elect to have their income averaged.

(E) Households are advised to report all changes in gross monthly income as required.

(2) **Income received in the past 30 calendar days.** Income received during the past 30 calendar days may be used as an indicator of income anticipated to be available to the household during the next certification period. Past income is not used to anticipate future income for any month in which a change in income has occurred or employment has terminated.

(3) **Regular employment.** When the head of the household or other members of the household have regular employment, income from previous months is usually a good indicator of the amount of income that can be anticipated in the month of application and subsequent months. If information supplied by the household or collateral contact indicates that future income will differ substantially from the previous month's income, the worker uses the information to make a reasonable estimate of the anticipated income. The method used to determine the income is fully documented in the case record.

(4) **Withheld wages.** Wages withheld at the request of the employee are considered income to the household in the month the wages would otherwise be paid by the employer. Wages withheld by the employer as a general practice even if in violation of the law are not counted as income to the household, unless the household anticipates that it will ask for and receive an advance, or the household anticipates that it will receive income from previously held wages. Advances on wages are counted as income when they can be reasonably anticipated.

(c) **Averaging income.** Households, except for destitute and migrant or seasonal farm worker households, may have their income averaged. To determine the household's eligibility, all other income is added to this averaged monthly income then the income exclusions and deductions are applied in the normal manner.

(1) **Fluctuating income.** Households with fluctuating income may elect to have the income averaged.

(A) If the household indicates the most recent 30 calendar days income is representative of anticipated future earnings, it is appropriate to use this income for computing gross monthly income.

(B) When the household indicates the most recent 30 calendar days of income is not representative of anticipated future income, the worker uses additional months income to arrive at a representative anticipated monthly gross income.

(C) Income that is received more often than monthly is converted to a monthly income prior to determining a monthly average. The number of months used to arrive at the average income need not be the same as the number of months in the certification period. For example, if fluctuating income for the past 30 calendar days and the month of application are known and, with reasonable certainty, are representative of the income fluctuations anticipated for the coming months, the income for the two months may be averaged and projected over the certification period.

(2) **Employment contract and self-employment.** Households which by contract or self-employment derive their annual income in a period of time shorter than one year must have that income annualized over a 12-month period, provided the income from the contract is not received on an hourly or piece-work basis. These households may include school employees, sharecroppers, farmers, and other self-employed households. These provisions do not apply to migrant or seasonal farm workers.

(d) **SSA/SSI Income.** When using the Beneficiary and Earnings Data Exchange System (BENDEX) or the State Data Exchange System (System) to verify Social Security (SSA) benefits or Supplemental Security Income (SSI), see OAC 340:65-3-4.

SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

340:50-9-1. Determining the food benefit allotment

(a) **Cases with unverified deductible expenses.**

(1) **Food benefits without deductions.** If a deductible expense which must be verified in accordance with OAC 340:50-7-31 cannot be verified before the 30-day processing standard for applications expires, the worker determines the household's benefit level without giving a deduction for the claimed but unverified expense. If the household:

(A) is eligible without allowing the expense, an allotment which does not reflect deduction of the expense is provided within 30 calendar days after the application is filed; or

(B) chooses to claim expenses for an unoccupied home, the worker verifies the household's utility expenses for the unoccupied home and uses the appropriate utility standard.

(2) **Benefits delayed.** If a deductible expense cannot be verified before the 30-day processing standard for applications expires and the household is ineligible unless the expense is allowed, the household application is held pending or denied.

(b) **Determining household eligibility.** In calculating net monthly income, cents are used in determining each source of each person's monthly income and the household's monthly dependent care, shelter, legally binding child support payments, or medical expense. When the monthly amount of each person's source of income or each of the household's expenses is established, and at all other steps of the net income computation, cents are rounded to the nearest dollar, 1 cent through 49 cents is rounded down and 50 cents through 99 cents is rounded up. Due to changes in household composition or circumstances, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The worker is required to change ~~the~~ one income standard to the other when any change is made to adjust the household's eligibility, benefit level, or certification period, or at recertification, whichever is earlier.

(1) **Households without elderly or disabled members.** If the household does not have an elderly or disabled member, the household's total gross monthly income and household size are the first basis for determining eligibility. The household is not eligible if the total gross income exceeds the Maximum Gross Income Standard for the appropriate household size as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. After gross income, resource, and non-financial conditions of eligibility are established, the net food benefit monthly income is computed and compared to the Maximum Net Income Standard for the appropriate household size as shown on OKDHS Appendix C-3. If the net food benefit income does not exceed this standard, the household is determined eligible. The steps in (A) through (H) are used to determine the household's net food benefit monthly income.

(A) Add gross monthly income earned by all household members including any net self-employment income minus the earned income exclusions to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction according to the OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(E) Subtract monthly dependent care expenses. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid

for under an employment and training (E&T) program or other source.

(F) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(G) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions given in subparagraphs (A) through (F) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(H) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income if the total of excess shelter costs does not exceed the maximum shown in OKDHS Appendix C-3. If the total of the shelter costs exceeds the standard shown in OKDHS Appendix C-3, only the amount not exceeding the standard is deducted.

(2) **Households with an elderly or disabled member.** When a household that includes an elderly or disabled member meets the other resource and non-financial conditions of eligibility, the household's net food benefit monthly income and household size are the basis for determining eligibility. The net food benefit monthly income is compared to the Maximum Net Income Standards for the appropriate household size as shown on OKDHS Appendix C-3. If the net food benefit income does not exceed this standard, the household is determined eligible. The steps listed in (A) through (I) are used to determine the household's net food benefit income if the household includes an elderly or disabled member.

(A) Add gross monthly income earned by all household members, including any net self-employment income minus the earned income exclusions, to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction from OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(E) Subtract medical expenses which exceed $35 for the elderly or disabled household members only. Thirty-five dollars is subtracted only once for the household rather than for each household member.

(F) Subtract monthly dependent care expenses. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid for under an E&T program or other source.

(G) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(H) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions in (A) through (G) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(I) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income.

(c) **Food benefit allotment.**

(1) **Initial month proration.**

(A) Initial month means the first month the household is certified for food benefits following any period during which the household was not certified. Food benefit allotments for an initial month are based upon the date of the application and prorated from the date of application.

(i) Proration of benefits from the application date applies to the new case if one food benefit household separates into two or more food benefit households.

(ii) Migrant and seasonal farm worker's food benefits are not prorated when the household has received food benefits in the prior month.

(iii) While a household's eligibility for the initial month is determined by considering the household's circumstances for the entire month of application, the benefit is based on the day of the month the household applies for benefits.

(iv) The monthly benefit that the recipient would be eligible to receive if proration did not apply must be determined prior to computation by using the prorated benefit on OKDHS Appendix B, Prorated TANF and Food Benefits: Proration Payment Form, or by using the formula: (31 minus the application date) x monthly benefit divided by 30 = the prorated benefit.

(B) The prorated benefit is rounded down to the lower dollar. If the answer is less than $10, the household is denied for the month of application but certified for the next month. If the household applies on the 31st day of the month, use the 30th for the application date for purposes of this provision. Households that apply after the 15th of the month are issued the prorated benefits for the month of application and the benefits for the first full future month on the same day.

(C) When a household is certified for the month following the month of initial application because the household failed to furnish necessary information,

benefits are prorated from the date the household furnished the information. The application date becomes the date information was furnished to OKDHS.

(2) **Monthly benefit.** The monthly benefit for all months except the initial month is the amount listed on OKDHS Appendix C-3 for the appropriate household size and net income.

(d) **Delayed applications.** Applications that are not approved or denied by the 30th calendar day are considered delayed applications. On the 30th calendar day following the application date, every delayed application is assessed to determine who caused the delay. The purpose of this assessment is to determine if the benefits are denied and what date is used to prorate benefits if the household is determined eligible at a later date.

(1) **Delay caused by the Oklahoma Department of Human Services (OKDHS).** When the processing delay is caused by OKDHS, the application remains in pending status. At the end of the first 30 calendar days the household is notified of the reason the application is still pending using Form 08MP039E, Notice to Client of Action Taken. If the household is later determined eligible, the case is certified back to the date of application. OKDHS caused delays include, but are not limited to, the circumstances given in (A) through (F) of this subparagraph.

(A) The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared for the interview but subsequently failed to provide the required verification. During the interview the worker did not explain to the household or provide the information in writing regarding:

(i) what factors must be verified;

(ii) what is considered acceptable verification; or

(iii) by what date the information must be supplied.

(B) An interview was never scheduled for the household.

(C) The worker did not offer or provide assistance to the household in obtaining the verification as required or did offer assistance but failed to follow through on collateral contacts or release of information.

(D) The worker discovered that additional information was required after the interview but the client did not have ten calendar days between the request for the verification and the 30th calendar day of the application process.

(E) The household missed their first interview on or before the 30th calendar day and requested that the interview be rescheduled. The human services center (HSC) was unable to schedule the second interview date until after the 30th calendar day.

(F) The eligible household provided all the required verification on or before the 30th day, and the application was not approved or denied.

(2) **Delay caused by the household.** When the processing delay is caused by the household, the application is denied on the 30th calendar day. The household is notified by computer-generated notice that the application is denied. When the household provides the required verification in the second 30 calendar days, a new application is not required. If the household is determined eligible, the food benefit allotment is prorated from the date the household provided the verification. Household caused delays include, but are not limited to, the circumstances given in (A) through (C) of this subparagraph.

(A) The household's first interview was scheduled on or before the 20th calendar day following the date of application. The household appeared at the interview but subsequently failed to provide the required verification. The worker provided the household with a statement of required verification, offered to assist the household in obtaining the verification, and also allowed the household sufficient time to provide the verification.

(B) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The interview was rescheduled to be held on the 30th calendar day; however, the household did not provide all the required verification at the rescheduled interview.

(C) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The household stated they could not come in until after the 30th calendar day.

(e) **Certification periods.** Definite certification periods are established for each eligible household to receive benefits. At the expiration of each certification period, entitlement to food benefits is established only upon a recertification based upon a newly completed application, an interview, and required verification provided. [OAC 340:50-3-2] Under no circumstances are benefits continued beyond the end of a certification period without a redetermination of eligibility.

(1) **Month of application.** The month of application is the first month in the certification period for initial applicants if eligibility is determined within the 30-day period.

(A) Because of anticipated changes, a household may be eligible for the month of application but ineligible for the subsequent month. In this situation, the household is certified for the month of application only.

(B) If a household is found to be ineligible and is denied benefits for the month of application but is eligible for subsequent months, a new application form is not needed and the case is certified effective the month following the month of application.

(2) **Missed interview.** During the application process, a household who did not appear for their first scheduled interview may request a new interview date be scheduled through the 30th day following their application date. See delayed applications in paragraph (d) of this Section to determine the proration date of the food benefit allotment.

(3) **Information furnished after the application is denied.** When an application is denied because the household did not provide the requested information and the applicant furnishes the required information to determine eligibility within the second 30-day period, a new application is not required. The worker certifies food benefits using the date the information or verification is furnished as the application, certification, or proration date.

(f) **Length of certification periods.** Households are assigned the longest certification period possible based on the predictability of the household's circumstances. ~~In (3) and (4) of this paragraph, the length of the incapacity must be expected to exceed the length of the certification period.~~

(1) **One month.** A one-month certification is assigned to:

(A) households eligible only for the month of application; and

(B) migrant farm worker households, in the work stream, who apply before the 16th of the month.

(2) **Two months.** A two-month certification is assigned to:

(A) households eligible only for the month of certification and subsequent month; and

(B) migrant farm worker households, in the work stream, who apply after the 15th of the month.

~~(3) **Three months.** A three-month certification is assigned to households with countable able-bodied adults without dependents (ABAWDs) who are being certified for their initial countable months or have regained eligibility and are being certified for three additional countable months.~~

~~(A) The worker reviews the case carefully to determine if there have been overissuances or underissuances due to the household's failure to report changes in:~~

~~(i) income;~~

~~(ii) household composition; or~~

~~(iii) residence that changes the shelter expense.~~

~~(B) The factors in (A)(i) through (iii) of this subparagraph are some of the factors to be checked, but are not meant to be all inclusive. The length of the certification period assigned groups in this subparagraph is based on review of the history of the household and the ABAWD status of household members.~~

(~~4~~3) **Twelve months.**

(A) A 12-month certification period is assigned to households at certification unless:

(i) the household includes an able-bodied adult without dependents (ABAWD) member who is not meeting the work requirement or is not otherwise exempt; or

(ii) all adult household members are elderly or disabled with no earned income.

(B) These households are required to complete Form 08MP004E, Benefit Review Report, at six-month intervals. They are known as semi-annual reporters.

(~~5~~4) **Twenty-four months.** A 24-month certification period is assigned to households when all adult members are elderly or disabled with no earned income. These households are required to complete Form 08MP004E at 12-month intervals. They are known as annual reporters.

SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT)

340:50-10-1. Scope and applicability

Food ~~stamp~~ benefits are delivered by an on-line ~~Electronic Benefit Transfer~~electronic benefit transfer (EBT) system where the benefits are stored in a central computer database and electronically accessed by eligible households at the point of sale via plastic debit cards. Upon initial certification, households are issued a notice indicating an availability date of access to their benefits.

340:50-10-9. Expungement of benefits

The ~~Agency~~Oklahoma Department of Human Services (OKDHS) expunges benefits that have not been accessed by the household after a period of one year.

340:50-10-11. Food ~~stamp~~benefit household leaves the state

When a household moves to another state and has food benefits remaining in their account, the ~~Oklahoma Department of Human Services (OKDHS) does not convert their electronic benefits to coupons~~household must either use the food benefits in Oklahoma prior to leaving or find a retailer in another state that accepts the Access Oklahoma card. The Access Oklahoma card can be used in most states~~. Most~~as most major retailers accept the Access Oklahoma card. ~~If the household is unable to locate a store near their new residence, the benefits must be used in Oklahoma before they move or can be used to purchase food in areas or states that accept the Access Oklahoma card during their move.~~

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 1. HOUSEHOLDS ENTITLED TO EXPEDITED SERVICE

340:50-11-1. Criteria

These criteria apply to all households making application or reapplication for food ~~stamps~~ benefits, including residents of approved drug and alcohol treatment centers and group homes. ~~The following households are~~Households entitled to expedited services include households:

(1) ~~Households~~ with less than $150 gross income if their liquid resources do not exceed $100~~.~~;

(2) ~~Migrant~~with migrant or seasonal farm ~~worker households~~workers who are considered destitute if their liquid resources do not exceed $100~~.~~; and

(3) ~~Eligible households~~ whose combined monthly gross income and liquid resources are less than the household's monthly rent or mortgage and/or utilities.

PART 3. SIMPLIFIED ~~FOOD STAMP~~*SUPPLEMENTAL NUTRITION ASSISTANCE* PROGRAM (~~SFSP~~*SSNAP*) FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) AND COMPANION STATE SUPPLEMENTAL PAYMENT (SSP) RECIPIENT(S)

340:50-11-20. Scope

(a) The Simplified ~~Food Stamp Program (SFSP)~~Supplemental Nutrition Assistance Program (SSNAP) rules in this Subchapter are used when **ALL** food benefit household members are included in:

(1) Temporary Assistance for Needy Families (TANF) cash assistance; or

(2) TANF cash assistance and a companion State Supplemental Payment (SSP) case.

(b) ~~SFSP~~SSNAP procedures do not apply when:

(1) no household member receives TANF cash assistance;

(2) all household members receive SSP; or

(3) ~~a household member is participating in the Work Supplementation Program; or~~

~~(4)~~ any household member is a disqualified food benefit household member as described in OAC 340:50-5-10.1.

340:50-11-21. Household definition

Food ~~stamp~~benefit household members are determined using Part 1 of Subchapter 5 of this Chapter.

340:50-11-22. Application processing

At the time of application for Temporary Assistance for Needy Families (TANF), the worker determines if the applicant wants to receive or is currently receiving food benefits and if the household is eligible for the Simplified ~~Food Stamp~~Supplemental Nutrition Assistance Program (~~SFSP~~SSNAP). If the household is receiving non-public assistance (non-PA) food benefits at the time of the TANF application, the food benefits remain as non-PA until TANF is certified.

(1) **Households within ~~SFSP~~SSNAP scope.** If the household ~~is not receiving food benefits and wants food benefits~~has applied for TANF, non-PA ~~Food Stamp~~ Supplemental Nutrition Assistance Program (~~FSP~~SNAP) rules are used to determine eligibility when the:

(A) ~~the~~ household qualifies for expedited service and the TANF application will not be certified within seven calendar days;

(B) ~~the~~ TANF application will take longer than 30 calendar days to determine eligibility; or

(C) ~~the~~ TANF application will not be completed and certified for the month of application and food benefits must be issued for the initial month.

(2) **Denial of TANF.** When the TANF application is denied, the worker must determine if the household is eligible for food benefits using non-PA ~~FSP~~SNAP rules. As a result of this determination the worker:

(A) denies eligibility for food benefits; or

(B) approves eligibility for food benefits.

340:50-11-25. Proration of food benefits

Initial month food benefits are prorated. The initial month means the first month the household is certified for food benefits following any period of time during which the household was not certified. If the household's benefits are continuous, the food benefits are not prorated even when there is a change from non-public assistance (non-PA) Supplemental Nutrition Assistance Program (SNAP) to the Simplified ~~Food Stamp~~Supplemental Nutrition Assistance Program (~~SFSP~~SSNAP) or ~~SFSP~~SSNAP to ~~non-PA~~SNAP.

340:50-11-27. Changes after application and during the certification period

Households are required to report changes in accordance with OAC 340:65-5. At each application or redetermination, households are advised of their reporting responsibilities. Households are given a supply of Form 08FB038E, Changes in Household Circumstances, and advised to contact their worker to request additional forms as needed.

(1) **Reported change results in closure of TANF.** When the Temporary Assistance for Needy Families (TANF) cash assistance is closed and the household is receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) food benefits, the actions described in (A) through (C) are taken~~:~~.

(A) The worker closes the food benefits the same effective date as the TANF cash assistance closure when the TANF is closed as a result of:

(i) death of the payee;

(ii) failure or refusal to participate in TANF Work;

(iii) the household moves ~~out of state~~out-of-state; or

(iv) the household requests closure of the TANF cash assistance and food benefits~~;~~.

(B) The computer converts the SSNAP food benefits to transitional food benefits (TFB) when the TANF cash assistance is closed for reasons other than those listed in (A) of this paragraph and:

(i) there is no companion State Supplemental Payment (SSP) case; or

(ii) the TANF case is the primary food benefit case, and the companion SSP case remains open.

(C) The computer converts the food benefits to Supplemental Nutrition Assistance Program (SNAP)

food benefits when the TANF cash assistance is closed for reasons other than those listed in (A) of this paragraph and the companion SSP case, which is the primary food benefit case, remains open.

(2) **Reported changes during the TFB certification period.** The household is not required to report changes timely while receiving TFB. If there is an application for TANF while in TFB status, at certification of the TANF cash assistance, food benefits are converted to ~~Simplified Supplemental Nutrition Assistance Program (~~SSNAP~~)~~ as long as all household members are receiving cash assistance.

(3) **Notifications.** The TANF applicant is given a copy of the signed and dated application form which informs the applicant food benefit eligibility is determined using information contained in the application. Notification of eligibility is required at certification and any time the food benefit amount changes. The notice is computer-generated.

PART 7. REPLACEMENT WHEN FOOD PURCHASED WITH FOOD ~~STAMP~~ BENEFITS IS DESTROYED

PART 9. DISASTER PROCEDURES AND REPORTING REQUIREMENTS

340:50-11-86. Emergency food ~~stamp~~benefit assistance in disasters declared by Food and Nutrition Service (FNS)

~~DHS~~The Oklahoma Department of Human Services (OKDHS) is responsible for operating a Disaster ~~Food Stamp~~Supplemental Nutrition Assistance Program (~~DFSP~~DSNAP). Food and Consumer Service Handbook 320 is used as the basic guidelines for operating a ~~DFSP~~ DSNAP.

(1) When a major or lesser disaster is declared by FNS, those counties involved are notified by the ~~State Office~~Family Support Services Division (FSSD) Supplemental Nutrition Assistance Program (SNAP) Section staff. At that time the ~~State Office~~FSSD SNAP Section staff issues policy and procedures to be followed.

(2) Maximum income limits, benefit allotments, and application procedures are followed for FNS declared disasters. Emergency benefit allotments are equal to the value of the food actually lost in the disaster but are not greater than the applicable maximum monthly food ~~stamp~~ benefit allotment for the household size.

(3) Once benefits are issued they must be used no later than 90 calendar days from certification. Benefits not used within 90 days of certification are expunged and cannot be put back into the client's account.

340:50-11-88. Mechanical disaster

The definition of mechanical disaster means the halting for at least 15 consecutive calendar days of the operation of all equipment available to the Oklahoma Department of Human Services (OKDHS) for food ~~stamp~~ benefit issuance. To be eligible for benefits under the mechanical disaster provisions, a household must already be certified as eligible to participate in the program as of the month in which the disaster occurred. In the event of a mechanical disaster, all current food ~~stamp~~benefit recipients are notified ~~by the State Office~~ that a mechanical disaster has occurred through announcements in the mass media. Steps are taken to issue benefits by an alternate system. Persons who apply for food ~~stamps~~benefits after the breakdown of equipment are handled in the same manner.

PART 11. SPECIAL PROCEDURES FOR JOINT PROCESSING OF ~~FOOD STAMP~~ SUPPLEMENTAL NUTRION ASSISTANCE PROGRAM (SNAP) AND *SUPPLEMENTAL SECURITY INCOME* (SSI) APPLICANTS

340:50-11-105. Initial applications

(a) ~~Whenever~~When a member of a household consisting only of ~~SSI~~ applicants or recipients of Supplemental Security Income (SSI), transacts business at a Social Security Administration (SSA) ~~Office~~office, or contact station, ~~the~~ SSA informs the household of its right to apply for food benefits at the:

(1) ~~Its right to apply for food stamps at the~~ SSA Office without going to ~~the County DHS Office~~a local Oklahoma Department of Human Services (OKDHS) human services center (HSC); and

(2) ~~Its right to apply for food stamps directly at the county DHS Office~~local OKDHS HSC if the household chooses to do so.

(~~3~~b) If it appears that a household will be entitled to expedited services, ~~the~~ SSA ~~will advise~~ advises the household that they may receive benefits quicker if they apply ~~directly~~ at the ~~County DHS Office~~local HSC. When an SSI household chooses to apply for food ~~stamps~~benefits at ~~the~~ SSA ~~Office~~, the SSA ~~will complete~~staff completes a food ~~stamp~~benefit application and ~~forward~~ forwards it to the appropriate ~~County DHS Office~~HSC within one working day of receipt of a signed application. ~~Each application will be attached to Form SSA 4233, Social Security Administration Transmittal for Food Stamp Application.~~ In addition to completing the application, SSA ~~will record~~records documentation of all verifications available when the application was completed and ~~will prescreen~~prescreens for expedited service entitlement. ~~Information obtained will be reported on Form SSA 4233.~~

340:50-11-107. Work registration

The work registration requirement is waived until the ~~SSI~~Social Security Administration makes an eligibility determination ~~is made~~ for a household member who is applying jointly for Supplemental Security Income (SSI) and food ~~stamps~~benefits. ~~If~~When the household member is determined eligible for SSI, ~~he/she~~he or she becomes exempt from work registration. ~~However, if he/she~~If he or she is determined ineligible for SSI, work registration requirements must be met. If the certification period ~~will expire~~expires by the end of the month following the month notice of SSI ineligibility is

received by the ~~county office~~human services center (HSC), the worker applies work registration requirements ~~are applied~~ at the next recertification~~; otherwise,~~.Otherwise, the worker applies work registration requirements ~~are applied~~ within ten calendar days of when the ~~county~~HSC is notified of SSI ineligibility.

340:50-11-108. Certification period

~~A~~The worker assigns a certification period not to exceed 12 months ~~is assigned~~ in accordance with OAC 340:50-9-1. In cases where the Supplemental Security Income (SSI) determination results in a denial and the worker believes that food ~~stamp~~benefit eligibility or benefit levels may be affected, the worker takes action in accordance with OAC 340:50-9-5.

PART 12. CATEGORICALLY ELIGIBLE HOUSEHOLDS

340:50-11-111. Categorically eligible household

(a) **Purpose.** This Part includes the requirements for establishing categorically eligible households for the Supplemental Nutrition Assistance Program (SNAP).

(b) **Definitions.** The following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Categorically eligible household"** means:

(A) any household, as defined in OAC 340:50-11-20, in which all members receive or are authorized to receive:

(i) Temporary Assistance ~~to~~for Needy Families (TANF) cash assistance; or

(ii) a combination of ~~State Supplemental Payment (SSP)~~Supplemental Security Income (SSI) and TANF cash assistance;

(B) any household in which all members receive or are authorized to receive ~~Supplemental Security Income (~~SSI~~)~~; or

(C) any household in which members receive or are authorized to receive services through the Oklahoma Marriage Initiative except as excluded in (d) of this Section.

(2) **"Authorized to receive"** means that the person has been determined eligible for benefits and has been notified of this determination even though the benefits have not yet been received.

(c) **Suspended, recouped, or benefit not issued.** The fact that TANF or SSI benefits have been suspended, recouped, or are less than the minimum amount paid ~~will have~~has no impact on a determination of categorical eligibility.

(d) **Ineligible households.** A household may not be classified as a categorically eligible household when:

(1) the entire household is institutionalized and the institution is not listed at OAC 340:50-5-25 as an institution where residents may participate in SNAP; or

(2) any member of the household is disqualified for an intentional program violation as defined in OAC 340:50-15-25.

SUBCHAPTER 13. FAIR HEARINGS

340:50-13-2. Hearing based on any action relating to a food benefit or case

(a) **Client rights.** Every applicant and participating household has the right to appeal any action relating to their food benefit application or case. Applicants and recipients are advised orally as well as in writing of their right to a fair hearing and of the procedures for appealing any decision.

(b) **Hearing request.** Every applicant and participating household who believes proper consideration has not been given to the circumstances surrounding their situation may request a hearing. This request may be made orally or in writing.

(1) When the aggrieved client chooses to orally request a hearing instead of making a written request, the client is given an opportunity to review the situation with a supervisory or administrative staff member in the local office. If the situation is not resolved in the review or the aggrieved client does not wish to review the situation with local supervisory or administrative staff, a memorandum is prepared summarizing the client's reason(s) for requesting a fair hearing and the identifying portion of Form 13MP001E, Request for a Fair Hearing, is completed.

(2) Households wishing to contest a denial of expedited service must be given an opportunity to have an Oklahoma Department of Human Services (OKDHS) conference scheduled within two working days unless the household requests it be scheduled later or states it does not wish to have an OKDHS conference. The conference is handled in accordance with procedures in OAC 340:2-5-61. A fair hearing must be held if the issue is not resolved or the household does not withdraw its request for a fair hearing by signing Form 13MP004E, Withdrawal of Request for Hearing.

(c) **Participation during appeal.** When a household requests a hearing during the ten-day advance notice period, the household can choose to continue participation on the basis of the household's situation authorized immediately prior to the notice of adverse action. The continuation of benefits can only occur if the certification period has not expired. If the appeal is not sustained, the client is required to reimburse the benefits received ineligibly. If the household chooses not to continue participation on the basis immediately prior to the notice of adverse action and the appeal is sustained, the household is entitled to the retroactive benefits lost during the appeal period.

(1) When the household fails to request continuation of benefits within the advance notice period and later establishes there was good cause for the failure, the worker reinstates the benefits to the prior basis.

(2) When benefits are reduced or terminated as a result of a mass change without individual notice of adverse action, OKDHS, upon request of the household, reinstates benefits if the issue being appealed is that eligibility or benefits were improperly computed.

(3) When a household requests a hearing and continuation of benefits as a result of an action taken by OKDHS at initial certification or on a subsequent application, benefits

are not reinstated or continued except as authorized at such initial or subsequent certification.

(d) **Reduction or termination prior to hearing decision.** Once continued, benefits are not reduced or terminated prior to a hearing decision except under the circumstances in (1) and (2) of this subsection.

(1) **Change in circumstances while hearing is pending.** If a change in circumstances, other than the issue being appealed, occurs while the hearing decision is pending which affects the household's eligibility or basis of issuance and the household does not request an additional hearing and continuation of benefits after the notice of adverse action, such action is initiated by the worker. The benefit allotment must be based on any income the household had prior to the first notice of adverse action.

(2) **Notification to household.** The head of the household is mailed written notice of the decision of the Appeals Committee per OAC 340:2-5-76 and is apprised of the reason for the decision. At the same time, the head of the household is advised of any further right to appeal.

(e) **Hearing decision.** Decisions of the Appeals Committee may not run counter to federal law, regulation, or policy. The hearing is conducted, a decision is reached, and the household and human services center are notified within 60 calendar days of receipt of the fair hearing request. A decision which results in an increase in household benefits is reflected in the benefit within ten days of the receipt of the hearing decision.

SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

PART 1. OVERPAYMENTS

340:50-15-1. Scope and applicability

An overissuance or overpayment of food benefits occurs when a household receives more food benefits than it is entitled to receive. When the worker determines a household may have received more food benefits than it is entitled to receive, the worker documents the circumstances leading to the overpayment and computes the amount of the overpayment.

(1) Instances which may result in establishment of an overpayment claim include, but are not limited to:

(A) the household:

(i) failing to provide the Oklahoma Department of Human Services with correct or complete information;

(ii) failing to report changes in household circumstances;

(iii) electing to receive benefits pending a fair hearing decision which subsequently found the household ineligible or eligible for fewer benefits; or

(iv) trafficking benefits;

(B) the worker:

(i) assigning an incorrect allotment;

(ii) failing to take prompt action on a change reported by the household;

(iii) incorrectly computing the household's income, deductions, or both; or

(iv) incorrectly authorizing issuance to a household; or

(C) any overissuance discovered as a result of an Office of Inspector General (OIG) Administrative Review Unit review.

(2) Persons responsible for paying a claim are:

(A) each person who was an adult member of the household when the overpayment or trafficking benefits occurred and which resulted in an established overpayment claim; or

(B) a person connected to the household, such as an authorized representative, who actually trafficks or otherwise causes an overpayment or trafficking.

(3) The Family Support Services Division (FSSD) Benefit Integrity and Recovery Section classifies overpayments as inadvertent household error, intentional program violation also known as fraud, or agency error. All food benefit overpayment claims are considered as inadvertent household error or agency error until Form 08OP016E, Administrative Disqualification Hearing Waiver, is signed or a court of law finds a household guilty of fraud.

(4) The worker and supervisor calculate all overpayment claims and establish any overpayments under $500 due to inadvertent household error and all agency error overpayments, regardless of the amount. Once an overpayment is established, notices sent to the client include:

(A) ~~Form 08OP009E,~~the Notification of Food Benefit Overpayment notice;

(B) page 1 of Form 08OP005E, Report of Food Benefit Overissuance; and

(C) Form 08OP118E, Food Benefit Repayment Agreement.

(5) When the overpayment is $500 or more and due to inadvertent client error, it is sent to the FSSD Benefit Integrity and Recovery Section. FSSD Benefit Integrity and Recovery Section staff either establishes the overpayment claim and notifies the household of the overpayment with appropriate notices or refers the case to OIG for a possible judicial determination.

(A) When the case is transferred to OIG, the overpayment claim is not established and notices are not sent to clients until after OIG completes its determination.

(B) After OIG acquires a judicial determination and the claim is either determined to be an intentional program violation or fraud or remains an inadvertent household error, the claim is released back to the FSSD Benefit Integrity and Recovery Section to establish the overpayment claim.

(C) After the overpayment claim is established, the client is sent Form 08OP009E, page 1 of Form 08OP005E, and Form 08OP118E.

(6) Food benefit overpayment claims classified as inadvertent household error or agency error do not cover

more than 12 months prior to the month in which the overpayment was discovered. Food benefit overpayments classified as fraud or intentional program violation may cover the entire time the overpayment occurred. However, the time covered cannot include periods more than six years prior to the date the overpayment was discovered.

(7) Food benefit overpayments arising from trafficking related offenses are the value of the trafficked benefits as determined by the person's admission, adjudication, or documentation that forms the basis for the trafficking determination. OIG refers these cases directly to the FSSD Benefit Integrity and Recovery Section for establishment of the claim and/or disqualification.

340:50-15-3. Overpayment claim procedures

(a) The earned income deduction is not allowed in determining the overpayment amount when a recipient fails to report earned income in a timely manner.

(b) When the worker believes a household received an overissuance of food benefits, the worker documents the circumstances causing the overpayment and calculates the overpayment claim. The food benefit claim is considered established when the overpayment notice is dated and mailed to the client.

(c) The worker and supervisor establish overpayment claims classified as inadvertent household error and less than $500, and all agency error claims regardless of the amount. Notices sent to the client include:

(1) ~~Form 08OP009,~~the Notification of Food Benefit Overpayment notice;

(2) page 1 of Form 08OP005E, Report of Food ~~Stamps~~Benefit Overissuance; and

(3) Form 08OP118E, Food Benefit Repayment Agreement.

(d) Calculated overpayments that are $500 and over that are not due to agency error are not established until reviewed by staff in the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section staff. In most instances after calculation, FSSD staff sends these overpayments to the Office of the Inspector General (OIG) to determine fraudulent intent prior to establishing the overpayment.

340:50-15-5. Right to appeal

If there is a disagreement with the overpayment decision, the household may request a hearing within 90 calendar days of the date on ~~Form 08OP009E,~~the Notification of Food Benefit Overpayment notice. Upon notification from the Appeals Unit of receipt of Form 13MP001E, Request for a Fair Hearing, the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section postpones reduction in food benefits pending the hearing decision.

340:50-15-6. Development of repayment

(a) **Repayment of established overpayment claims.** Households must make repayment on all established overpayment claims regardless of the reason for the overpayment. Family Support Services Division (FSSD) Benefit Integrity and Recovery Section initiates collection efforts against all adult household members except those who are deceased. Collection may be received from two separate households for the same claim. Any repayment option shown at (d) of this Section may be used to collect the overpayment claim from any adult who was in the household at the time of the overpayment and who is not currently a member of the household undergoing allotment reduction.

(b) **Repayment plan time frames.** After the overpayment is established, the FSSD Benefit Integrity and Recovery Section sends the client Form 08OP118E, Food Benefit Repayment Agreement, that explains the acceptable methods of repayment for the debt classification. The client is responsible for completing and returning Form 08OP118E within the appropriate time frame.

(1) The food benefit overpayment claim is considered delinquent if the overpayment claim is not paid within 30 calendar days of the date of the ~~Form 08OP009E,~~ Notification of Food Benefit Overpayment notice, or a monthly payment, as designated on the repayment agreement, has not been made by the due date.

(2) An overpayment claim is not considered delinquent if another food benefit overpayment claim for the same household is currently being paid either through a previous repayment agreement or allotment reduction.

(c) **Consequences of non-return of repayment agreement.** Paragraphs (1) and (2) of this subsection describe the consequences of non-return of the repayment agreement within appropriate time frames.

(1) **Agency error or inadvertent household error.** To make a voluntary plan of repayment of an agency error or inadvertent household error claim, the client must complete and return Form 08OP118E within 30 calendar days of the date on the form. If the client fails to return Form 08OP118E, FSSD begins recoupment from the client's food benefits or other collection methods.

(2) **Intentional program violation.** To make a voluntary plan of repayment of an intentional program violation debt, the client must complete and return Form 08OP118E, within 30 calendar days of the date on the form. If the client fails to return Form 08OP118E, FSSD begins recoupment from the client's food benefits or other collection methods.

(d) **Repayment options.**

(1) **Payment in full.** The client may repay an overpayment claim in one lump sum by personal check, money order, cashier's check, or Electronic Benefit Transfer (EBT) debit with a signed statement.

(2) **Monthly payments.** The client may repay an overpayment claim in regular monthly installments by personal check, money order, cashier's check, or approved EBT debits. The amount to be repaid in monthly installments cannot be less than the amount that could be recovered through allotment reduction.

(A) **Agency error or inadvertent household error.** The FSSD Benefit Integrity and Recovery Section processes the reduction in the amount of 10% of the client's monthly allotment or $10, whichever is

greater. The client may request a reduction up to the client's maximum monthly allotment.

(B) **Intentional program violation.** The FSSD Benefit Integrity and Recovery Section processes the reduction in the amount of 20% of the client's monthly allotment or $20, whichever is greater. The client may request a reduction up to the client's maximum monthly allotment.

(3) **Lost benefit reductions.** Any lost benefit due the household is used as payment on a food benefit overpayment claim.

(4) **Client authorized EBT debits.** A household may make a voluntary payment through a debit from the EBT Access account. In order to debit the EBT account, a signed statement must be received from the client or the household's ~~authorizedrepresentative~~ authorized representative giving permission for the debit. This statement is faxed to the FSSD Benefit Integrity and Recovery Section for immediate processing.

(5) **Expunged benefits.** Expunged food benefits are those where the account has not been accessed for one year. These expunged benefits, when known and identified with an overpayment account are used to adjust the overpayment balance by the amount of the expunged benefit.

(6) **Stale benefits.** Stale food benefits are those where the account has not been accessed for three months. These benefits, when known and identified with an overpayment account, are used as payment on a food benefit overpayment claim.

(e) **Reconsideration of repayment plan.** The client may request reconsideration of the repayment plan by submitting information regarding changes in family and financial circumstances directly to the FSSD Benefit Integrity and Recovery Section. The FSSD Benefit Integrity and Recovery Section reconsiders any repayment plan if circumstances warrant.

(f) **Referrals for Treasury Offset Program (TOP).** If the client fails to pay the overpayment claims or payments have become delinquent, the FSSD Benefit Integrity and Recovery Section makes a referral to TOP.

(1) **Criteria for TOP.** The criteria for state and federal tax offsets are the:

(A) amount owed must be at least $25;

(B) claim is under ten years delinquent except for judgment claims;

(C) claim is delinquent by 180 days;

(D) overpayment claim is not part of a bankruptcy stay or under litigation or review;

(E) client received the original notification of the debt; and

(F) overpayment claim is not being collected through allotment reduction, also known as recoupment, or under an approved repayment plan.

(2) **Notification of TOP.** The FSSD Benefit Integrity and Recovery Section notifies a person of any intended referral to TOP 60 calendar days prior to referring the overpayment claim to TOP. The notice is mailed to the household at the address provided by United States Department of Agriculture (USDA), Food and Nutrition Service. Information contained in the notice includes:

(A) the person's Social Security number;

(B) the citation of the statutory authority for the offset;

(C) the instructions on how to pay the claim;

(D) the person's right to request a review;

(E) all TOP exemptions and restrictions;

(F) information regarding spousal protection from offset;

(G) a statement that all adult household members who were members when the overpayment occurred are liable for repayment of the food benefit overpayment claim; and

(H) the person's right to review applicable records.

(3) **Request for review of intended action.** A person whose food benefit overpayment claim is referred to TOP may ask for a review of the intended action. The person's contention that the claim is not past due or legally enforceable is the basis for the review.

(A) A claim is not past due and legally enforceable if the person:

(i) proves the claim has been paid;

(ii) cited for offset is not the person who owes the claim;

(iii) substantiates bankruptcy action; or

(iv) denies he or she was informed of the overpayment claim and a review of Oklahoma Department of Human Services files substantiates the denial.

(B) The person must request the review within 60 calendar days of the TOP notice date. FSSD Benefit Integrity and Recovery Section sends written notification of the review decision to persons requesting reviews. The notice informs the person requesting a review why the overpayment is or is not being referred to TOP and further review rights to which he or she is entitled.

(C) The person can avoid referral to TOP if the person pays the overpayment claim in full or a payment specified by the FSSD Benefit Integrity and Recovery Section along with an acceptable repayment agreement is received within 60 calendar days from the date of the TOP notice.

[OAR Docket #10-643; filed ??-??-??]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 60. REFUGEE RESETTLEMENT PROGRAM

[OAR Docket #10-644]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
340:60-1-3 [AMENDED]
(Reference APA WF 09-13)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)]; Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006; Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008; Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008; and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act of 2009.
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27 Ok Reg 26
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09-1240
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n/a
ANALYSIS:
Chapter 60 permanent rule amendments update legal cites for aliens in special immigrant status.
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 MAY 27, 2010:

340:60-1-3. Refugee Resettlement Program (RRP)

(a) **The Refugee Act of 1980.** The Oklahoma Department of Human Services (OKDHS) RRP uses the international definition of refugee adopted under the Refugee Act of 1980.

(b) **Refugee documentation.** An applicant for assistance under the RRP must provide documentation issued by the United States Citizenship and Immigration Services (USCIS). Acceptable documentation includes, but is not limited to:

(1) Form I-94, Departure Record;

(2) Form I-551, Legal Permanent Resident Card;

(3) a passport stamped with the classification status;

(4) a T-Visa; or

(5) a letter or order from the USCIS or court granting asylum.

(c) **Refugee status.** Documentation from USCIS provided by the applicant must show the applicant's status is:

(1) paroled as a refugee or asylee under Section 212(d)(5) of the Immigration and Nationality Act (INA);

(2) admitted as a refugee under Section 207 of the INA;

(3) granted asylum under Section 208 of the INA;

(4) admitted as an Amerasian immigrant from Vietnam under Section 584 of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1989, as amended;

(5) admitted for permanent residence, provided the person previously held one of the statuses identified in this Section;

(6) a Cuban or Haitian entrant;

(7) an alien and his or her eligible relatives who are victims of a severe form of trafficking pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000 which was reauthorized and amended by the Trafficking Victims Protection Reauthorization Act of 2003;

(8) an Iraqi admitted ~~under~~in special immigrant status ~~pursuant to Section 525 of Division G of Public Law (P.L.) 110-161 of the Consolidated Appropriations Act of 2008,~~as defined in Section 101(a)(27) of the INA [8 U.S.C. 1101(a)(27)], and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 1244 of P.L. 110-181,~~of~~ the National Defense Authorization Act for Fiscal Year 2008 pursuant to Section 525 of Division G of P.L. 110-161, the Consolidated Appropriations Act of 2008, and Section 1244 of P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008; or

(9) an Afghan admitted ~~under~~in special immigrant status ~~pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act of 2008 and~~as defined in Section 101(a)(27) of the INA [8 U.S.C. 1101 (a)(27)] and per Section 1059, P.L. 109-163, the National Defense Authorization Act for Fiscal Year 2006, and Section 602, Division F, P.L. 111-08, the Omnibus Appropriations Act, 2009, pursuant to Section 525 of Division G of P.L. 110-161 of the Consolidated Appropriations Act, 2009.

(d) **Verification of alien status.** A declaration of alien status is required at application for all persons applying for RRP.

(1) Under penalty of perjury, the applicant declares the alien status of all persons applying for RRP benefits on the application form and signs the application. After certification, this declaration is made on Form 08MP022E, Declaration of Citizenship Status, before additional persons are added to the benefit.

(2) The Systematic Alien Verification for Entitlement (SAVE) process is used to verify alien status per OAC 340:65-3-4(5).

(e) **Exclusions from RRP.** Persons excluded from participation in RRP are:

(1) resident aliens who did not previously have the status of refugee or asylee; or
(2) any applicant for asylum who has not been granted asylum status.

[OAR Docket #10-644; filed ??-??-??]

TITLE 405. OKLAHOMA DEPARTMENT OF LIBRARIES
CHAPTER 35. FEES

[OAR Docket #10-637]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
405:35-1-2 [AMENDED]
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Oklahoma Department of Libraries; 65 O.S. Section 2-106(m); 65 O.S. Section 3-120(c)
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Chapter 35 rules are amended to (1) revise language referring to specific online legal products to conform to language used by the Department of Central Services in its statewide contract for online legal databases; (2) eliminate the fees for publications no longer available; and (3) establish a fee of $5.00 for the filing of public land survey corner records.
CONTACT PERSON:
Jan Davis, Administrative Archivist, (405) 521-2502; Oklahoma Department of Libraries, 200 N.E. 18th Street, Oklahoma City, OK 73105, email address: jdavis@oltn.odl.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 17, 2010:

405:35-1-2. Fee schedule

(a) **Photocopy or computer print out.** The following fees shall be charged for photocopying and computer print outs:
(1) In-house paper to paper photocopy or computer print out - $.10 per copy.
(2) In-house staff assisted paper to paper - $.25 per copy.
(3) Mailed paper to paper - $.25 per copy and $1.00 handling fee ($2.50 minimum).
(4) In-house large format - $1.50 per copy.
(5) Mailed large format - $1.50 per copy and $1.00 handling fee ($2.50 minimum).
(6) In-house Bureau of Land Management - $1.50 per copy.
(7) Mailed Bureau of Land Management - $1.50 per copy and $1.00 handling fee ($2.50 minimum).
(8) In-house corner records - $.25 per copy.
(9) Mailed corner records - $.25 per copy ($2.50 minimum).
(10) Color copies:
(A) 8 1/2" x 11" and 8 1/2" x 14" - $1.50 per copy.
(B) Larger than 8 1/2" x 11" and 8 1/2" x 14" - $2.50 per copy.

(b) **Microfilm.** The following fees shall be charged for microfilming:
(1) Film to film - Fee based on film size, footage and service.
(2) Film to paper - $.30 per copy.

(c) **Microfiche.** The following fees shall be charged for microfiche:
(1) Fiche to fiche - $.50 first copy, $.25 each additional copy.
(2) Fiche to paper - $.30 per copy.

(d) **FAX.** The following fees shall be charged for FAX:
(1) $1.00 first page.
(2) $0.25 each additional page.

(e) The following fees shall be charged for online legal research, (e.g.**LEXIS/NEXIS** and **Westlaw** database searching):
(1) State agencies contracting with the ODL for ~~LEXIS/NEXIS~~online legal research service are billed at the contract amount. Any charges outside the contract will be billed at the amount charged by the service provider plus 10%.
(2) Non-contracting state agencies will be billed for ~~LEXIS/NEXIS or Westlaw searches~~ online legal research in the amount charged by the service provider plus 10%.
(3) ~~LEXIS/NEXIS and Westlaw searches~~Online legal research performed by library staff for the public will be billed at $4.00 for the initial search and $4.00 each for every modification thereof.

(f) **Mailing labels.** The fee for mailing labels shall be $.05 each.

(g) **Publications.** The following fees shall apply to the following publications:
~~(1) Who is Who in the . . . Oklahoma Legislature - $3.00 each + shipping.~~
(~~2~~1) Oklahoma Almanac ~~(softcover) -~~ $15.00 each + shipping.
~~(3) Oklahoma Almanac (hardcover) - $24.95.~~
~~(4) Rates for advertising in the Oklahoma Almanac - one-page ads begin at $1,000.00 (b&w).~~

~~(5) Annual Report of Oklahoma Public Libraries - $3.00 + shipping.~~
~~(6) An Almanac Feature (reprints from the Oklahoma Almanac) - $3.00 + shipping.~~
~~(7) State Questions Since Statehood - $5.00 + shipping.~~
(~~8~~2) ABC - free + shipping.
~~(9) Reproduction of Electronically stored Corner Remonumentation Records on compact disks (CDs).~~
~~(A) Index - $25.00 plus shipping.~~
~~(B) Corner Remonumentation Records - $15.00 per compact disk plus shipping.~~

(h) **Lost book replacement.** The following fees shall be charged for replacement of lost books:
(1) In-print - Actual cost plus $45.00 processing.
(2) Out-of-print - Average cost plus $45.00 processing.

(i) **Oklahoma Union List of Serials.** Fee based upon budget of the user library.

(j) **Search Fee.** The direct cost of a search, when allowed in accordance with 51 O.S. § 24A.5, Paragraph 3, will be calculated at a rate of fifteen dollars ($15.00) per hour.

(k) **Public Land Survey Corner Record Filing Fee.** As allowed in accordance with 65 O.S. § 3-120(c), a $5.00 fee is required for the filing of each public land survey corner record. The fee is payable to the Oklahoma Department of Libraries and shall be due and paid when the record is submitted to the Oklahoma Department of Libraries for filing. The Department shall make no refunds of filing fees for records filed in error.

[OAR Docket #10-637; filed ??-??-??]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-650]

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RULES:
Subchapter 3. Board Organization and Administration
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendment to Rule 505: 1-3-9is intended to effectuate an increase in the annual renewal fee as authorized by the Legislature in the 2009 session.
CONTACT PERSON:
Robert A. Nance, 5801 N. Broadway Extension, Suite 101, Oklahoma City, OK 73118, (405) 843-9909.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 3. BOARD ORGANIZATION AND ADMINISTRATION

505:1-3-9. Examination and Annual License Fee

(a) The fee for examination of candidates for persons desiring to commence the practice of optometry is set at $200.00. This fee shall apply to those initially taking the examination, and to any persons retaking the examination as may be allowed by law or by the rules of the Board.

(b) The annual license fee is set at ~~$200.00~~$300.00 for each fiscal year beginning July 1, ~~2008~~2010.

[OAR Docket #10-650; filed ??-??-??]

TITLE 505. BOARD OF EXAMINERS IN OPTOMETRY
CHAPTER 10. LICENSURE AND REGULATION OF OPTOMETRISTS

[OAR Docket #10-651]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Licensing Procedures
505:10-3-6. [NEW]
AUTHORITY:
The Oklahoma Board of Examiners in Optometry; 59 O.S. §§ 581, 584, 585 et seq.
DATES:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The new Rule 505: 10-3-6 is intended to effectuate legislation the Legislature passed and the Governor signed in 2009, Enrolled House Bill 1678, which authorized eligible volunteers from medically related fields, including optometry, to receive special volunteer licenses to practice without receipt or expectation of compensation.
CONTACT PERSON:
Robert A. Nance, 5801 N. Broadway Extension, Suite 101, Oklahoma City, OK 73118, (405) 843-9909.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 3. LICENSING PROCEDURES

505:10-3-6. Special volunteer licenses

(a) Pursuant to statute, 59 O.S. Supp. 2009, Section 493.5, the Oklahoma Board of Examiners in Optometry creates a special volunteer license to practice optometry within the State of Oklahoma under the following terms and conditions.

(1) The special volunteer license provided for herein shall be the subject of disciplinary action by the Board upon the same grounds, terms, and conditions as all other licenses or certificates to practice optometry in the State of Oklahoma. Additionally, if the Board, acting through its President, Secretary Treasurer, or Executive Director, finds that the public health, safety, or welfare imperatively requires emergency action suspending a special volunteer license, and makes such a finding regarding the emergency in an order, emergency actions may be ordered suspending such license pending the final outcome of proceedings instituted pursuant to the Administrative Procedures Act in a hearing by the full Board at the earliest practical date.

(2) For purposes of this section "eligible volunteer" means an optometrist.

(3) The special volunteer license shall be:

(A) issued to eligible optometrists by the Board of Examiners in Optometry (the Board), or by such person as the Board may designate in writing,

(B) issued without the payment of an application fee, license fee or renewal fee;

(C) issued or renewed without any continuing education requirements in this state;

(D) issued for a fiscal year or part thereof; and

(E) renewable annually upon approval of the Board.

(b) An eligible volunteer shall meet the following requirements before obtaining a special volunteer license:

(1) Completion of a special volunteer license application, in a form to be approved from time to time by the Board, including documentation of:

(A) the school graduation of the optometrist from a recognized school or college of optometry, and

(B) the relevant practice history of the applicant;

(2) Documentation that the eligible volunteer has been previously issued a full and unrestricted license to practice in Oklahoma or in another state of the United States and that he or she has never been the subject of any professional disciplinary action in any jurisdiction;

(3) Acknowledgement and documentation that the practice of the eligible volunteer under the special volunteer license will be exclusively and totally devoted to providing care to needy and indigent persons in Oklahoma or to providing care under the Oklahoma Medical Reserve Corps; and

(4) Acknowledgement and documentation that the eligible volunteer shall not receive or have the expectation to receive any payment or compensation, either direct or indirect, for any services rendered in this state under the special volunteer license. The only exception to the indirect compensation provision is for those out-of-state optometrists that participate in the free care given by means of Telemedicine through the Shriner's Hospitals for Children national network.

(5) Acknowledgement that the eligible volunteer shall practice optometry as limited by the scope of practice of the state in which he or she is regularly licensed, including but not limited to, limitations made in the regularly licensing state regarding the authority to prescribe medications.

(6) Acknowledgement by the eligible volunteer that he or she has reviewed the legal requirements for the practice of optometry in the State of Oklahoma and will practice under the authority of a special volunteer license in conformity with the laws, statutes, and rules, of the State of Oklahoma for optometrists, to include, but not be limited to requirements governing:

(A) equipment required to conduct examinations;

(B) required findings on examination of a patient;

(C) release of contact lens prescription;

(D) Code of Ethics and acts constituting unprofessional conduct; and

(E) in lieu of providing the Board no more than two fixed office locations, provision to the Board a record, on such form as the Board may from time to time require, of all dates, times, and locations at which the eligible volunteer practices optometry within the State of Oklahoma and performs any examination or treatment pursuant to his or her special volunteer license.

(7) Provision by the eligible volunteer for the responsible recording of the particulars of examination or treatment of all patients and the maintenance of patient records, to include either provision of records of examination of

or treatment to the patient, or disclosure of the location within the patient's community where the patient may secure copies of his or her records upon request.

(8) Acknowledgement by the eligible volunteer that before the volunteer professional or volunteer health practitioner provides services, the volunteer professional and the person receiving the services or, if that person is a minor or otherwise legally incapacitated, the person's parent, conservator, legal guardian, or other person with legal responsibility for the care of the person signs a written statement that acknowledges:

(A) that the volunteer professional or volunteer health practitioner providing services has no expectation of and will receive no compensation of any kind for providing the services, and

(B) an understanding of the limitations on the recovery of damages from the volunteer professional or volunteer health practitioner pursuant to law in exchange for receiving free services.

(C) these acknowledgements regarding expectation or receipt of compensation, or limitation on recovery of damages, must be obtained whether the volunteer health practitioner sees the patient for primary care, or is referred the patient by another volunteer health practitioner.

[OAR Docket #10-651; filed ??-??-??]

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

[OAR Docket #10-652]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Use of Towers, Facilities and Communications Services
610-15-1-1. Purpose [AMENDED]
610-15-1-2. Towers and facilities use [AMENDED]
610-15-1-3. Communications services use [AMENDED]
AUTHORITY:
70 O.S. §§ 2166 and 2167; Oklahoma State Regents for Higher Education
DATES:
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The Oklahoma State Regents for Higher Education have consistently made available the use of the towers and facilities of OneNet, the State of Oklahoma's official telecommunications and information network, to institutions of higher education, federal, state, and local government agencies and to private business. The towers and facilities are made available only to the extent that the proposed use does not interfere with the normal maintenance, expansion plans or operation of OneNet.

Requests to utilize the towers and facilities are reviewed on a case-by-case basis by OneNet engineering staff to determine if each is consistent with state and federal laws and regulations. The Oklahoma State Regents for Higher Education make the towers and facilities available on a monthly basis and charge entities standard rates for usage.

The proposed modifications to OneNet's tower and facilities APA rules are intended to bring them in line with current operational and industry standards. Further, the proposed modifications will provide theState Regents' office with additional flexibility to accommodate individual requests that may result in certain fees and/or monthly rates being discounted or waived if it is determined by the Chancellor or the Chancellor's designee to be in the best interest of the State.
CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. USE OF TOWERS, FACILITIES AND COMMUNICATIONS SERVICES

610:15-1-1. Purpose

The Oklahoma State Regents for Higher Education will make available the use of the towers and facilities of ~~the~~ OneNet, the State of Oklahoma's official telecommunications and information network, to ~~institutions of higher education, federal, state and local government agencies and to private business. The towers and facilities will be made available primarily for educational purposes in accordance with 70 O.S., §§ 2166 and 2167 and only to the extent that the proposed use does not interfere with the normal maintenance and operation of the OneNet. Requests to utilize the towers and facilities will be reviewed on a case-by-case basis consistent with state and federal laws and regulations.~~educational entities, governmental agencies and commercial businesses; provided, however, the proposed use does not interfere with the normal maintenance and operations of OneNet. Each request to utilize the towers and facilities must meet standard industry engineering requirements and must be consistent with state and federal laws and regulations.

610:15-1-2. Towers and facilities use

(a) All proposed installations shall be in accordance with good engineering practices and shall be subject to the approval of the OneNet engineering staff. Requests for installation of microwave antennas on the OneNet towers shall be approved only after a tower wind load study is performed by an approved and qualified registered professional engineer. Costs of the study are to be paid for by the proposed user. Any structural modifications required to the tower resulting from the proposed antenna installation will be at the expense of the proposer. Generally, 2-way radio antenna installations will not require a tower analysis to be performed; however, it shall be at the discretion of the ETN engineering staff as to whether or not an analysis is required.

(b) The Oklahoma State Regents for Higher Education will develop a schedule of monthly rates for the use of OneNet's towers and facilities.~~make the OneNet towers and facilities available on a monthly basis at the following rates:~~

~~(1) Two-way radio antenna $1.00 per foot of tower height (subject to increase if transmission lines are greater than .500" in diameter)~~

~~(2) Microwave antennas $200.00 per antenna and $1.00 per foot of tower height~~

~~(3) Building space $10.00 per sq. foot~~

~~(4) A.C. electrical power (2-way radio) $10 per month~~

~~(5) D.C. electrical power $12/Amp.~~

~~(6) Land $2.00 per sq. foot~~

(c) The Chancellor or the Chancellor's designee may waive any or all monthly rates specified in the rate schedule if use of OneNet's towers and facilities is determined to be in the best interest of the State.

(d) The State Regents reserve the right to change the rates or cancel service with a 90-day advance notice to the user.

610:15-1-3. Communications services use

(a) The Oklahoma State Regents for Higher Education will make OneNet's ~~available the use of~~ voice, data and video communications ~~circuits via the fiber optics and microwave network~~services and infrastructure available to ~~institutions of higher education, federal, state, and local government agencies and private business as long as the proposed use is of excess system capacity and it does not interfere with the regular activities of OneNet. The voice, data and video circuits will be made available primarily for educational purposes in accordance with 70 O.S., §§ 2166 and 2167 and only to the extent~~ educational entities, governmental agencies and commercial businesses; provided, however, that the proposed use does not interfere with the normal maintenance and operation of OneNet. ~~Requests to utilize the voice, data and video circuits will be reviewed on a case-by-case basis consistent with state and federal laws and regulations. (In consideration for use of the telecommunications network of OneNet, the State Regents will develop a schedule of rates based on a case-by-case basis upon the discounted fair commercial value of the service to be provided.~~Each request to utilize the voice, data and/or video communications services will be reviewed on an individual basis to ensure it is consistent with state and federal laws and regulations. The State Regents will develop a schedule of rates to be utilized for the services provided and shall have the ability to offer discounted rates on a case-by-case basis if it is determined to be in the best interest of the State.

(b) The State Regents reserve the right to change the rates or cancel service with a 90-day advance notice to the user.

[OAR Docket #10-652; filed ??-??-??]

TITLE 610. STATE REGENTS FOR HIGHER EDUCATION
CHAPTER 20. FISCAL AFFAIRS

[OAR Docket #10-654]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Regents' Endowment Fund Program
610-20-1-3. Establishment and operation of endowment accounts [AMENDED]
610-20-1-4. Report on activities supported by Endowment Fund [AMENDED]
AUTHORITY:
70 O.S. §§ 3951, 3952 and 3954; 70 O.S. §3206 (m); Oklahoma State Regents for Higher Education
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Senate Bill No. 1373 of the 2008 legislative session revised the state-matching commitments for private donations to the endowed chairs program received after July 1, 2008, from an across-the-board dollar for dollar match to a dollar for dollar match for private donations up to $250,000.00 and then 25 cents for every dollar at $250,001.00 and above.
CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. REGENTS' ENDOWMENT FUND PROGRAM

610:20-1-3. Establishment and operation of endowment accounts

(a) **Principal.** The principal held in the Regents' Endowment Fund shall be used for the establishment of and allocated to endowment accounts within the Regents' Endowment Fund for the benefit of public institutions of higher education within the State of Oklahoma.

(b) **Investment return.**

(1) The investment return on the principal of the Regents' Endowment Fund shall be allocated for the benefit of individual institutions for which the accounts are respectively designated and shall be remitted to such institution for the support of endowed chairs and professorships approved by the State Regents, together with other activities approved by the State Regents to improve the quality of instruction and/or research at State System institutions.

(2) The investment income approved by the State Regents for distribution to an institution shall be deposited in the institution's operating revolving fund (Fund 290).

(3) Any investment income not designated for remittance to an institution shall become part of the principal of the Endowment Fund.

(c) **Account levels.** The levels indicated for each category are the amounts of private donations required to establish an account. The private donation will be matched dollar for dollar with public monies for those private donations $250,000 or less and at 25 cents of public monies for every private dollar received at $250,001 and above.

(1) Endowed chair accounts may be established at the comprehensive universities with a minimum private donation of $500,000; at other institutions, the minimum required is $250,000. ~~Thus, when fully funded with both private and public matching monies, chairs at comprehensive universities will be endowed with a minimum of $1,000,000 and chairs at other institutions will be endowed with a minimum of $500,000.~~

(2) At the comprehensive universities, professorship accounts may be established with a minimum private donation of $250,000. At other institutions, professorships may be established with a minimum private donation of $125,000. Thus, when fully funded with both private and public matching monies, professorships at comprehensive universities will be endowed with a minimum of $500,000 and professorships at other institutions will be endowed with a minimum of $250,000.

(3) Lectureships, artist-in-residence, and similar accounts may be established with a minimum private donation of $25,000 only at regional and special purpose universities and two-year colleges. Thus, when fully funded with both private and public matching monies, said accounts will be endowed with a minimum of $50,000.

(4) To be initially eligible for an endowment account within the Regents' Endowment Fund, an institution must request an account and must have on deposit as provided in (f) of this Section an amount equal to at least one-half (50%) of the requested account with a written commitment that the balance will be contributed within a thirty-six (36) month period.

(d) **Time limitations.** The total matching requirements shall be equal to the amount of the requested endowment account in each instance and shall be deposited within a period of thirty-six (36) months from the date of approval of the account by the State Regents. Provided, an institution may deposit in an endowment account matching funds in an amount which exceeds the required matching amount. Any endowment account for which the institution fails to provide the full matching amount within the time established shall be available to be awarded to another public institution of higher education. No investment return shall be remitted to any institution from an endowment account before the institution has deposited the total required match for the endowment account as provided in (f) of this Section.

(e) **Private sources of matching monies.** Funds that an institution provides for matching purposes must originate from monies contributed to the institution after July 1, 1988 from private sources specifically designated by the donor to be used for purposes specified in this program. Monies provided for matching purposes may not be drawn from regularly allocated funds from the Oklahoma State Regents for Higher Education, proceeds of fees or charges authorized by the State Regents for Higher Education, or from federal grants or reimbursements. In instances where the qualifications of all or a portion of the amount of matching monies are questionable, the institution shall request express approval of the State Regents to apply that amount toward the matching requirement. Monies for matching purposes may be contributed to and retained by a foundation for which the sole beneficiary is the respective institution. The foundation must demonstrate that the funds are being held on behalf of the institution as outlined in (f) of this Section; provided, monies contributed by a foundation whose sole beneficiary is an institution may qualify as private matching monies only if the monies are transferred from the foundation to the State Regents for deposit in the State Regents' Endowment Fund. Private matching monies contributed by the foundation may not be retained in that foundation, but must be deposited in the State Regents' Endowment Fund.

(f) **Deposit of private matching monies.**

(1) Any institution that receives matching monies shall deposit the matching funds to one of the following:

(~~1~~A) The State Regents' Endowment Fund

(~~2~~B) The institution's endowment matching fund

(~~3~~C) A fund of a foundation whose sole beneficiary is that institution.

(2) If such matching monies are not deposited in the Regents' Endowment Fund, the net investment return on matching monies shall be retained in the fund.

(g) **Ownership of private matching monies.** Ownership of private matching monies transferred by an institution to the State Regents' Endowment Fund for investment shall remain with the institution. Upon request, the monies may be returned to the institution for deposit in item (f) (2) of this Section.

610:20-1-4. Report on activities supported by Endowment Fund

Each participating institution shall submit ~~an annual report~~reports as requested to the State Regents in which the investments of the matching funds, earned interest income (including capital gains and losses) and the costs of managing the investments are presented in detail. The report shall also include a full accounting of the expenditures of earnings of both the public monies and the private matching monies. Diminution of the original private matching amount may, at the discretion of the State Regents, constitute a forfeiture of the Regents' Endowment Funds which the institutional monies were to match.

[OAR Docket #10-654; filed ??-??-??]

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

[OAR Docket #10-655]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-1. Purpose [AMENDED]
610:25-23-2. Eligibility of participants [AMENDED]
610:25-23-5. Securing Program benefits [AMENDED]
610:25-23-7. Payment of awards; policies and limitations [AMENDED]
AUTHORITY:
70 O.S. §2601 et seq.; 70 O.S. §3206(i); Oklahoma State Regents for Higher Education
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Subchapter 23. Oklahoma Higher Learning Access Program
610:25-23-1 Purpose [AMENDED]
610:25-23-2. Eligibility of participants [AMENDED]
610:25-23-5. Securing Program benefits [AMENDED]
610:25-23-7. Payment of awards; policies and limitations [AMENDED]
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule changes address the following issues:
1. SB 982 of the 2009 legislative session delayed the implementation of a second income limit for participants in the Oklahoma's Promise - Oklahoma Higher Learning Access Program from the 2010-2011 academic year until the 2012-2013 academic year. The proposed rule changes implement this delay and likewise delay mandatory use of the Free Application for Federal Student Aid (FAFSA) until 2012-2013.
2. SB 982 also requires the Oklahoma's Promise award amount to be based on the nonguaranteed tuition rate at applicable state system institutions. In Fall 2008 when the new guaranteed tuition rate option became available to incoming freshmen at the state four-year universities, the Oklahoma's Promise law did not restrict the award to the nonguaranteed tuition rate. 3. For students that are subject to court-ordered joint legal custody arrangements, the proposed changes clarify that appropriate federal regulations that are used for the FAFSA will be used to determine which parent's income to consider toward meeting the program,s income limit.
4. The proposed changes also include language that would provide discretion to the State Regents to allow the option of using an approved application for free/reduced school meals (and possibly other means-tested programs) to document a family's income for purposes of enrolling a student in the program. The amendment would allow the Regents to limit this option to approved pilot projects.
CONTACT PERSON:
David B. Harting, Assistant General Counsel, Oklahoma State Regents for Higher Education, (405) 225-9289, 655 Research Parkway, Suite 200, Oklahoma City, OK 73104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 23. OKLAHOMA HIGHER LEARNING ACCESS PROGRAM

610:25-23-1. Purpose

The Oklahoma Higher Learning Access Program, created by the Oklahoma Higher Learning Access Act passed in 1992 (70 O.S. § 2601 et seq.), is designed to help provide access to postsecondary education opportunities for students with financial need who have demonstrated a commitment to academic success in high school. The program shall also be known as "Oklahoma's Promise". The Act identifies two primary purposes:

(1) The first is to ensure that students who satisfy the requirements of the program, and who pursue an associate or baccalaureate degree in Oklahoma at an accredited public or private institution, or pursue studies in a postsecondary program or course offered through a cooperative agreement between a public technology center and an institution of The Oklahoma State System for Higher Education, are relieved of the burden of paying:

(A) undergraduate resident nonguaranteed tuition at institutions of The Oklahoma State System for Higher Education;

(B) tuition for enrollment in postsecondary programs or courses of a public technology center, not to exceed the amount the student would have received

for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education; or

(C) some portion of fees or tuition at a private institution of higher education in Oklahoma accredited pursuant to 70 O.S. § 4103.

(2) The further purpose of the program is to establish and maintain a variety of support services whereby a broader range of the general student population of this state will be prepared for success in postsecondary endeavors. [70 O.S. § 2602]

610:25-23-2. Eligibility of participants

Eligibility to participate in the program must be established by both the student and his/her parent(s), custodial parent(s), or guardian(s). Students enrolled in the eighth, ninth or tenth grade at a public or private school and whose parents' income meets the financial need criteria are eligible to apply to become a program participant. Students educated by other means who are between the ages of thirteen (13) and fifteen (15) are eligible to apply to become a program participant. Eligibility requirements to participate in the program include the following:

(1) The student must be a resident of the state of Oklahoma or be enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes; and

(2) The student's parent(s), custodial parent(s), or guardian(s) must establish financial need.

(A) To meet the program's financial need criteria, the income of the student's parent(s) from taxable and nontaxable sources shall not exceed $50,000 per year at the time the student applies for participation in the program. A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall not be subject to the determination of financial qualification at the time the student applies for participation in the program.

(B) Parents of students making application to the program must use one of the following options to establish financial need eligibility:

(i) Documentation of their most recent calendar (tax) year income ~~to establish financial need eligibility~~. Parents of tenth-grade applicants may use the calendar (tax) year income that coincides with the spring semester of the tenth-grade if the parents' income is expected to be significantly less than the previous year; or

(ii) Documentation of current yearly income from an officially approved application for free or reduced price school meals or other state or federal means-tested programs as determined by the State Regents. The State Regents may limit use of this option to pilot projects as determined by the State Regents. If requested by the State Regents, parents may be required to provide additional documentation of income.

(C) ~~The~~For students that are subject to court-ordered joint custody arrangements, the OSRHE shall use guidelines consistent with regulations for federal Title IV student financial aid programs to determine ~~a student's custodial~~which parent(s) shall meet the financial need criteria.

610:25-23-5. Securing Program benefits

(a) To qualify for the program benefits for the first semester or other academic unit of postsecondary enrollment, the participant must:

(1) Be a resident of this state both at the time of application to the program and at the time the student graduates from high school, or have been enrolled in a school district located in this state that serves students who reside in both this state and an adjacent state pursuant to a contract as authorized in Section 5-117.1 of Title 70 of the Oklahoma Statutes.

(2) Have graduated within the previous three years from a high school or other educational program if homeschooled. The Oklahoma State Regents for Higher Education may award benefits for a student's first semester or other academic unit of postsecondary enrollment taken more than three (3) years after the student graduates from high school, or other educational program if homeschooled, if the student is a member of the Armed Forces of the United States, the Reserve Corps of the Armed Forces of the United States, or the Oklahoma National Guard, and is ordered to active duty or active duty for special work or training and due to the duty commitment the student is unable to enroll prior to the end of the three-year period. Such three-year period shall be extended by the length of the term of duty.

(3) Have a record of satisfactory compliance with the agreements and program requirements described in 610:25-23-4. Students failing to comply with the agreement and program requirements shall not be eligible for awards. Compliance shall be verified by the local contact person upon a form provided by the OSRHE. Final verification of compliance shall be determined by the OSRHE. A copy of the student's final high school transcript shall be submitted by the local contact person with the student's verification form.

(4) Have satisfied admission standards as established by the Oklahoma State Regents for Higher Education for first-time-entering students for the appropriate type of institution (OSRHE Policy Statement on Admission to, Retention in and Transfer Among Colleges and Universities of the State System) or, if attending a private institution, satisfy the admission standards determined by the private institution; provided, that no student participating in the program shall be admitted into an institution of higher education by special admission standards.

(5) Have secured admission to, and enrolled in, an institution which is a member of The Oklahoma State

System of Higher Education, a postsecondary program offered pursuant to a duly approved cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education, or a private institution of higher learning located within this state and accredited pursuant to Section 4103 of Title 70 of the Oklahoma Statutes.

(6) Be a United States citizen or lawfully present in the United States. This provision shall not apply to any student that was enrolled in the program prior to the end of 2006-07 school year.

(b) For students receiving the program benefit award for the first time in ~~2010-11~~2012-13 and thereafter, at the time the student begins postsecondary education and prior to receiving any program benefit award, the income from taxable and nontaxable sources of the student's parent(s) shall not exceed $100,000 per year. The determination of financial qualification as set forth in this paragraph shall be based on the income of the student, not the income of the parent(s), if the student:

(1) is determined to be independent of the student's parents for federal financial aid purposes,

(2) was in the permanent custody of the Department of Human Services at the time the student enrolled it the program, or

(3) was in the court-ordered custody of a federally-recognized Indian tribe, as defined by the federal Indian Child Welfare Act, at the time the student enrolled in the program.

(c) A student who was adopted while in the permanent custody of the Department of Human Services, in the court-ordered custody of a licensed private nonprofit child-placing agency, or federally recognized Indian tribe, as defined by the federal Indian Child Welfare Act, shall be subject to the following financial qualification at the time the student begins postsecondary education and prior to receiving any program benefit award:

(1) For a student adopted between birth and twelve (12) years of age, the income from taxable and nontaxable sources of the student's parent(s) may not exceed $150,000 per year.

(2) For a student adopted between thirteen (13) and seventeen (17) years of age, the income from taxable and nontaxable sources of the student's parent(s) may not exceed $200,000 per year.

(3) If the student is determined to be independent of the student's parents for federal financial aid purposes, the determination of financial qualification shall be based on the income of the student, not the income of the parent(s).

(d) Award recipients shall apply for financial aid at the institution in which they enroll.

(e) All students eligible to receive the program benefit award for the first time in ~~2010-11~~2012-13 and thereafter must complete an application for federal financial aid (Free Application for Federal Student Aid or FAFSA) or its equivalent. Students not eligible to complete the FAFSA will be provided an alternate method by the OSRHE.

(f) Any person incarcerated in a state, federal, or private correctional facility shall not be eligible to receive program benefits.

610:25-23-7. Payment of awards; policies and limitations

(a) Eligible students enrolled at an institution in The Oklahoma State System of Higher Education shall have an award equivalent to their undergraduate resident nonguaranteed tuition paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Trust Fund [70 O.S. § 3953.1];

(b) Eligible students enrolled in a duly accredited private Oklahoma institution of higher education [70 O.S. § 4103] shall have awards paid to the institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund in an amount equivalent to the average undergraduate resident nonguaranteed tuition if the student were enrolled in a comparable institution of The Oklahoma State System of Higher Education. Comparability of institutions shall be determined by the OSRHE;

(c) Eligible students enrolled in a postsecondary program offered through a cooperative agreement between a public technology center and an institution of The Oklahoma State System of Higher Education shall have an award equivalent to tuition paid, not exceeding the average amount the student would have received for comparable enrollment at a two-year institution within The Oklahoma State System of Higher Education, to the school or institution on the student's behalf by an allocation from the Oklahoma Higher Learning Access Trust Fund;

(d) Funds shall be transferred by the OSRHE from the Oklahoma Higher Learning Access Trust Fund to the institution in which the student is enrolled. No funds shall be paid directly to the student;

(e) Payment will not be allowed for courses taken in excess of those required for a baccalaureate degree;

(f) Students will be eligible for the benefits outlined in this policy for five (5) years from the first date of postsecondary enrollment. The Oklahoma State Regents for Higher Education may award the Oklahoma Higher Learning Access Program benefits for courses of postsecondary units taken more than five (5) years after the student's first semester of postsecondary enrollment only in hardship circumstances; provided, however, no Oklahoma Higher Learning Access Program participant may receive benefits beyond a cumulative time period of five (5) years [70 O.S. § 2604]. Hardship circumstances may include, but are not limited to, sickness, injury, required military service, or service required by the student's religious or cultural traditions;

(g) There will be no limit to the number of awards other than the amount of funds available or the number of eligible students. If sufficient funds are not available to provide awards for all eligible applicants, the OSRHE shall make awards on the basis of need;

(h) Students who have previously received awards shall have priority over students applying for initial awards;

(i) The Oklahoma State Regents for Higher Education shall take into consideration other grants and scholarships received by an eligible applicant when making awards [70 O.S. § 2604]. Award recipients may not receive financial aid in excess of his/her cost of attendance as determined by the institution in which the student is enrolled. The cost of attendance determined by the institution shall be consistent with regulations for federal Title IV student financial aid programs. If necessary, an award shall be reduced by an amount which makes the student's total financial aid equivalent to the student's identified cost of attendance.

[OAR Docket #10-655; filed ??-??-??]

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

[OAR Docket #10-653]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 33. Regional University Baccalaureate Scholarship Program
610-25-33-6. Fiscal Policies [AMENDED]
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The Regional University Baccalaureate Scholarship was created in 1994 to provide support for academically promising students to enroll in baccalaureate degree programs at state system regional universities. The program provides a $3,000 annual award for up to four years and institutions also provide a tuition waiver.

Over the past several years, participation in the program has gradually increased and costs are now exceeding annual funding. The increase in program participation is due to two primary factors:

1. Regional universities have been more successful at recruiting freshmen students that meet the qualifying criteria. The number of freshmen students receiving the award increased from 81 in 2003 to an expected 115 in fall 2009.

2. Students participating in the program have been retaining the scholarship in college at higher rates. The percentage of students retaining the award from the freshman to the sophomore year increased from about 72% in 2002 to 85% in 2007.

The proposed rule amendments address some of the fiscal policies of the program:

1. To provide clearer fiscal control, any transfer of a scholarship to another student or reallocation of unused scholarship "slots" to another institution would be subject to approval by the Chancellor and contingent upon sufficient program funding.

2. The limitation on total state aid that may be received by the student is clarified and made consistent with federal financial aid regulations.

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 MAY 27, 2010:

SUBCHAPTER 33. REGIONAL UNIVERSITY BACCALAUREATE SCHOLARSHIP PROGRAM

610:25-33-6. Fiscal Policies

(a) Students may be awarded additional state-supported financial aid, such as fee waiver scholarships and Oklahoma Tuition Aid Grants, but not in excess of ~~legitimate educational costs~~ the student's cost of attendance as determined by the institution consistent with regulations for federal financial aid.

(b) Students may accept scholarships and grants from non-state sources.

(c) A student may be awarded a scholarship for up to 8 semesters of study in a baccalaureate program at a regional university or until the student is granted a baccalaureate degree, whichever occurs first.

(d) The allocation of appropriated funds to the regional university shall be on the student's behalf and shall contain appropriate restrictions and conditions that such monies be expended only for the purposes authorized.

(e) Subject to approval by the Chancellor and contingent upon sufficient program funding, if ~~If~~ a student fails to meet the requirements for continued eligibility, the university may award the remainder of the student's scholarship to another qualified student.

(f) Unused scholarship awards ~~will~~may be reallocated by the Chancellor to other universities. The reallocation of the unused scholarship funds shall be on the basis of the number of qualified students.

[OAR Docket #10-653; filed ??-??-??]

TITLE 715. TEACHERS' RETIREMENT SYSTEM OF OKLAHOMA CHAPTER 10. GENERAL OPERATIONS

[OAR Docket #10-588]

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PERMANENT final adoption
RULES:
Subchapter 13. Contributions for Membership Service
715:10-13-1 [AMENDED]
715:10-13-5 [AMENDED]
Subchapter 17. Post-Retirement Employment
715:10-17-7 [AMENDED]
715:10-17-12 [AMENDED]
Subchapter 19. Tax-Sheltered Annuity Program
715:10-19-1 [AMENDED]
715:10-19-2 [AMENDED]
715:10-19-3 [AMENDED]
715:10-19-4 [AMENDED]
715:10-19-5 [AMENDED]
715:10-19-7 [AMENDED]
715:10-19-8 [AMENDED]
715:10-19-9 [AMENDED]
715:10-19-11 [AMENDED]
715:10-19-12 [AMENDED]
715:10-19-13 [AMENDED]
Subchapter 21. Investment Policy [REVOKED]
715:10-21-1 [REVOKED]
715:10-21-2 [REVOKED]
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Subchapter 19. Tax-Sheltered Annuity Program
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715:10-19-3 [AMENDED]
715:10-19-4 [AMENDED]
715:10-19-5 [AMENDED]
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ANALYSIS:
715:10-13-1 is being amended to clarify fringe benefits and regular annual compensation. 715:10-13-5 is being amended to clarify that interest may be adjusted on annual compensation corrections in cases where a compensation correction should have been identified by TRS staff but was not.

715:10-17-7 is being amended to clarify when a disabled retiree must complete a TRS Report of Earned Income by Disabled Member Form; removes age "65" and inserts age"62".

715:10-17-12 is being amended to require remitting agencies to submit all earnings reports in a magnetic media format.

715:10-19-1, 715:10-19-2, 715:10-19-3, 715:10-19-4, 715:10-19-5, 715:10-19-7, 715:10-19-9, 715:10-19-11, 715:10-19-12, 715:10-19-13 were adopted as emergency rules and now are being promulgated as permanent rules to ensure continued compliance with Internal Revenue Code Section 403(b).

715:10-19-8 was adopted as an emergency rule and is being promulgated as a permanent rule to ensure continued compliance with Internal Revenue Code Section 403(b) and to clarify that 403(b) funds may be used to purchase permissive service credit.

715:10-21-1 and 715:10-21-2 are being revoked as permanent rules to update the TRS investment policy.

Since all sections under "Subchapter 21. Investment Policy" will be revoked, the word "[REVOKED]" will be added to the subchapter title.
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 MAY 27, 2010:

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-1. Regular annual compensation requirements

Each member of the Teachers' Retirement System is required to make contributions to the Retirement Fund. Monthly contributions are a set percent of "regular annual compensation". Regular annual compensation is defined as wages plus fringe benefits, excluding the flexible benefit allowance provided by Section 26-105 of Title 70 of the Oklahoma Statutes, and shall include all normal periodic payments as provided in subsection D of Section 17-116.2 of Title 70 of the Oklahoma Statutes. Wages and fringe benefits for retirement purposes are defined as normal periodic payment for service the right to which accrues on a regular basis in proportion to the service performed. Such periodic payments shall include staff development or other periodic payments to qualifying members. Fringe benefits shall include employer-paid group health and disability insurance, group term life insurance, annuities and pension contributions and IRS Code Section 125 cafeteria benefits provided on a periodic basis to all qualified members of the employer, which qualify as fringe benefits under the United States Internal Revenue Code. ~~Reimbursement for travel, housing or other expenses are not fringe benefits and do not qualify as regular annual compensation. Payment for unused~~

~~vacation or sick leave, retirement bonuses or any other payment when made for reason of termination or retirement shall not be included as regular annual compensation.~~Excluded from regular annual compensation are: expense reimbursement payments; office, vehicle, housing or other maintenance allowances; the flexible benefit allowance provided pursuant to Section 26-105 of Title 70 of the Oklahoma Statutes; payment for unused vacation and sick leave; any payment made for reason of termination or retirement; maintenance or other non-monetary compensation; payment received as an independent contractor or consultant; or any benefit payments not made pursuant to a valid employment agreement. Contributions can only be remitted on actual wages and fringe benefits. No individual can contribute on unearned or non-existent compensation. Under no circumstances can members pay retirement contributions on more than they actually earn.

715:10-13-5. Compensation corrections

The statutes provide that any member whose regular annual compensation was not determined as provided by law may pay the contribution on such amount not included in the member's regular annual compensation and receive credit for such amount in the calculation of the member's benefit. The member must also pay any employer contributions due TRS which are not paid by the employer. The intent of this provision and the provisions outlined above is to enable members to receive credit for their total contract salary up to applicable limits. Therefore, members' retirement contributions should be based on the gross salary before fringe benefits are subtracted, not after. No adjustments can be made until the corrections are documented as outlined in OAC 715:10-5-6. Any loss incurred by the Retirement System as a result of the failure of a school to comply with existing statutes or TRS Rules shall be paid by the member or school to the Retirement Fund. Interest compounded annually at ten percent (10%) per annum shall be charged on all balances due Teachers' Retirement because of failure to remit the proper contribution. In cases where a compensation correction should have been identified by TRS staff but was not, interest may be adjusted to correct for the error in accordance with TRS procedures.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-7. Employment by a disabled retiree

A member retired under the disability retirement provisions of TRS is not eligible to be employed, in any capacity, by any school, public or private, in Oklahoma or in other state, from the date of retirement to age 62. After age 62, a member receiving disability retirement shall be eligible for post-retirement employment under the same conditions outlined above for other retired members.

(1) A disabled retiree who returns to Oklahoma public education employment at an annual salary equal to or greater than the annual salary received at the time of disability shall again become a contributing member of TRS. Disability retirement payments shall be suspended until the member has qualified to be restored to active service. Upon completion of six (6) months of membership service, the member shall be considered as having met the requirements to be restored to active service. At such time, disability retirement shall be terminated and the unused portion of the accumulated contributions shall be re-established in the member's active retirement account. If the member again retires under a regular retirement allowance, eligibility to receive a monthly retirement allowance shall be based on total years of creditable service (see OAC 715:10-15-21).

(2) Each retired member, who has not attained age ~~65~~62, receiving disability retirement from TRS shall complete a TRS Report of Earned Income by Disabled Member Form and file such form with TRS by April 15 each year. The report will list all "earned" income from all sources. Failure to complete a TRS Report of Earned Income by Disabled Member Form may result in suspension of monthly benefits if the executive secretary of TRS deems such action necessary and appropriate (see OAC 715:10-15-22).

715:10-17-12. Earnings report by remitting agencies

Prior to March 15 of each year, each employer covered by the provisions of TRS shall submit a report showing the total earnings received by each individual, member and non-member of TRS, during the previous calendar year. The report ~~shall have the name, social security number, address and the total earnings paid from all sources from January 1 to December 31 of the year and shall be in the format provided by TRS~~provided by the employer shall be a copy of the magnetic media report prepared and submitted to IRS to report W-2 Tax Statements and other taxable income reportable to IRS and the Social Security Administration. In lieu of ~~this report, the employer may provide a copy of the magnetic media report prepared and submitted to IRS to report W-2 Tax Statements and other taxable income reportable to IRS and the Social Security Administration.~~the magnetic media report above, a magnetic media report may be created having the name, social security number, address and the total earnings paid from all sources from January 1 to December 31 of the year and shall be in the format specified by TRS.

SUBCHAPTER 19. TAX-SHELTERED ANNUITY PROGRAM

715:10-19-1. Authority for program

The TRS Tax-Sheltered Annuity Program ("Program") is designed to meet the requirements of ~~sections~~section 403(b) of the Internal Revenue Code ("Code") and ~~401(g) of the Internal Revenue Code. The TRS Tax-Sheltered Annuity~~the federal regulations that have been promulgated to implement Code Section 403(b), specifically including Treasury Regulations Sections 1.403(b)-1 through 1.403(b)-11. The Program is administered by the Board of Trustees. However, the Board

can retain a third-party to administer the Program, including providing investment options. Code Section 403(b)~~ of the Federal Internal Revenue Code~~ authorizes tax-sheltered annuity programs, setting forth requirements that must be followed. Failure to follow these requirements may cause penalties to be imposed on the individual member or cause the tax-sheltered status of the Oklahoma Teachers' Retirement System program to be disallowed. Changes to ~~this section of the tax code~~Code Section 403(b) by Congress or changes to the federal regulations usually affect the ~~program's~~Program's administration; therefore, this ~~program~~Program will change as often as Congress amends or revises Code Section 403(b) ~~of the IRS Code~~and as changes are made to related federal regulations. Title 70 O.S. 17-108 allows members of ~~TRS~~Teachers' Retirement System of Oklahoma ("TRS") to participate in the ~~TRS Tax-sheltered Annuity~~ Program. ~~In~~However, in making deposits to this ~~program~~Program, the member and the employing school must comply with all applicable aspects of the ~~IRS Code.~~Internal Revenue Code. The provisions of the Program described in this Subchapter 19 are effective as of January 1, 2009, except as otherwise noted in this Subchapter.

715:10-19-2. General description

The following is a general description of the ~~tax sheltered annuity plan available from Teachers' Retirement.~~Program available from TRS. (Where the term "TRS" is used in this subchapter, the term includes, where appropriate, a third-party administrator or other service provider selected by TRS to perform services with respect to the Program.) The member should be aware that tax-sheltered annuity ~~plans~~plan investment options are also offered by ~~most~~many major insurance companies ~~to~~through the ~~employees of~~member's employing Oklahoma public ~~schools~~school.

(1) The ~~403(b) program's~~Program's primary purpose is to enable eligible members to contribute to a supplemental retirement program in preparation for retirement.

(2) An eligible employer makes salary reduction contributions on behalf of ~~an employee~~a member to the ~~403(b) program~~Program at the election of that ~~employee~~member. Employers cannot require contributions to the ~~program~~Program as a condition of employment. However, an employer may establish an auto enrollment feature in accordance with federal law. The member's employer deducts tax-sheltered ~~monies~~contributions from the member's salary and forwards the deductions to TRS. TRS places the monies in the member's Program account ~~and debits or credits earnings monthly.~~. The accounts are debited or credited with earnings according to the member's investment selection. Statements are mailed to the member's home address on a quarterly basis.

(3) Each participating member receives an immediate vested and nonforfeitable interest in the amounts credited to his or her ~~tax sheltered~~Program account. The ~~participant~~member is precluded from selling, assigning, or pledging his or her funds in the ~~tax sheltered~~Program account to another person or party, except to designate a beneficiary in the event of death. However, TRS will honor qualified domestic relations orders within the meaning of 70 O.S. 17-109, OAC 715:10-25-1 et seq, and Code Section 414(p).

(4) ~~Participant's~~Member accounts ~~are not~~may be assessed ~~administration~~investment management fees by TRS for services rendered by TRS.~~ However, investment management fees are deducted from gross earnings prior to earnings being applied to member accounts.~~

(5) Monies in this ~~program~~Program are not insured in the same manner as deposits are insured with various privately operated financial institutions, (i.e. FDIC). TRS may establish a recordkeeping account for each member by TRS. Deposits are kept separate from the member's regular retirement account~~, but are invested in the same manner, using the same investment practices and policies used to invest the other assets of TRS.~~. TRS may select investment options, including a default fund, and may establish procedures related to the transfer of funds among investment options, including mapping instructions and black-out periods. TRS has in general delegated investment authority to each member to select among investment options determined by TRS.

(6) Money deposited in the~~ Teachers' Retirement System Tax Sheltered Annuity~~ Program will not be matched by the State of Oklahoma.

715:10-19-3. Eligible employees

To participate in the ~~403(b) program~~Program, a member must be an active ~~or retired~~ employee of a qualifying educational organization~~, one~~ within the meaning of section 170(b)(1)(A)(ii) of the Internal Revenue Code which normally maintains a regular faculty, curriculum, and a regular organized body of students in attendance at the place where its educational activities are conducted.~~ Oklahoma Department of Education employees are eligible to participate in the program because they perform services for educational organizations. Employees of organizations that are tax exempt because they are organized and operated exclusively for educational purposes are also eligible to participate if the organizations are governmental.~~ University regents or trustees and members of boards of education are not eligible ~~employees~~to participate in the Program since they are elected or appointed. Employees of the Oklahoma Teachers' Retirement System are also not eligible to participate in the Program. Retired members who are employed full-time or part-time by a public school in Oklahoma are eligible to participate in the ~~tax sheltered annuity program~~Program.

715:10-19-4. Program requisites

The Internal Revenue Service has ruled that money deposited in the ~~Teacher Deposit Fund~~Program may be tax-sheltered, provided the following steps are taken:

(1) A board of education or other governing board of an eligible employer adopts a resolution making the ~~TRS Tax sheltered Annuity~~ Program available to its employees. Once this action is taken, this subchapter and 70 O.S. 17-108 shall be deemed to be part of the employer's

written plan document under Treasury Regulations § 1.403(b)-3(b)(3).

(2) The member signs an amended contract with the board of education or governing board for the express purpose of ~~buying an annuity with the Teachers' Retirement System.~~making elective deferrals to the Program. This is done by either taking a reduction in salary or waiving a salary increase. The salary reduction agreement must be entered into prior to the date contributions are to commence and may only apply to amounts earned by the member after the agreement is effective. Nothing in this section shall be construed to prohibit an employer from implementing auto enrollment pursuant to federal law.

(3) An eligible employer permitting any TRS member to contribute to the ~~tax sheltered annuity program~~Program must permit all eligible TRS members to contribute to the ~~program, and other employees to contribute to other 403(b) programs~~Program in accordance with section 403(b)(12)(A)(ii) of the Internal Revenue Code and the Income Tax Regulations thereunder.

715:10-19-5. Contributions

After a member enters into the salary reduction agreement (completing an amended contract and any other payroll requirement specified by the eligible employer), the eligible employer shall make payroll deductions in lieu of the member receiving cash compensation on a monthly basis~~.~~ in accordance with the agreement. The eligible employer shall submit the contributions for all members in the school district to ~~TRS, on TRS Form 42 and TRS Form 17, showing the member's name, social security number and amount contributed on behalf of each member. (No substitute reporting form is accepted by TRS).~~the TRS service provider in the manner prescribed by the service provider.

(1) All contributions to the Program must be salary reductions. Members cannot make direct payments to the ~~403(b) program~~Program. If the contributions are not salary reductions, tax-deferral will not be possible. As a result, the ~~TRS program~~Program will only accept employer payments ~~for employees~~of salary reduction contributions for members. Nothing in this provision prohibits a member from making a rollover contribution to the Program.

(2) Employers should forward ~~tax sheltered~~salary reduction contributions in a timely manner~~.~~, but in no event later than fifteen (15) business days following the end of the month in which the amount would have otherwise been paid to the member. Employers are also responsible for ensuring that members do not contribute more than the maximum amount allowed by federal tax law. Salary reduction agreements are ~~determined by the limits~~limited under the Internal Revenue Code~~.~~, as described in the following:

(A) The amount of ~~deferrals~~salary reduction contributions made in a member's taxable year under the ~~Tax Sheltered Annuity~~ Program, and any other plans, contracts, or arrangements of the employer, may not exceed the amount of the limitation in effect under Internal Revenue Code Section 402(g)(1), as increased by Internal Revenue Code Sections 402(g)(4) ~~and~~, ~~402(g)(8)~~402(g)(7) and 414(v), for such taxable year.

(B) Contributions to the ~~403(b) plan~~Program and to any other section 403(b) plan (or, if required by Internal Revenue Code Section 415 and the Income Tax Regulations thereunder, to any other defined contribution plan) made in a calendar year (unless another twelve (12) month period ending within the calendar year is elected) with respect to an employee may not exceed limitations under Code Section 415(c) for such calendar year. The limitation on annual additions set forth in Internal Revenue Code 415(c) for any calendar year is the lesser of: (i) Forty Thousand Dollars ($40,000), adjusted for cost-of-living to the extent provided under section 415(d) of the Code; or (ii) one hundred percent (100%) of the Participant's Includible Compensation.

(C) For purposes of this Section, "annual addition" has the meaning provided in section 415(c) of the Code, as modified by sections 415(l)(1) and 419A(d)(2) of the Code. In general, section 415(c) of the Code defines the annual addition as the sum of the following amounts credited to a member's accounts for any calendar year under this Program and to any section 403(b) plan (or, if required by section 415 of the Code and the Income Tax Regulations thereunder, to any other defined contribution plan): (1) employer contributions; (2) employee contributions; and (3) forfeitures. Annual additions shall not include: (1) any elective deferrals made by a member who is age fifty (50) or older in accordance with, and subject to, section 414(v) of the Code; (2) excess elective deferrals distributed in accordance with section 1.402(g)-1(e)(2) of the Income Tax Regulations; or (3) rollover contributions.

(D) "Includible compensation" means a member's compensation received from the employer that is includible in the member's gross income for federal income tax purposes (computed without regard to Internal Revenue Code Section 911) for the most recent period that is a year of service. Includible compensation also includes any amount contributed or deferred by the employer at the election of the member that would be includible in the gross income of the member but for the rules of section 125, 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the Code. The amount of Includible compensation is determined without regard to any community property laws. Includible compensation does not include any amounts "picked-up" by the employer within the meaning of Internal Revenue Code 414(h). Includible compensation includes differential pay as defined in Internal Revenue Code Section 414(u). Includible compensation includes any compensation described in paragraphs (E) or (F), provided the compensation is paid by the later of two and one-half

(2 $\frac{1}{2}$) months after the member's severance from employment with the employer or the end of the calendar year in which the member has a severance from employment with the employer.

(E) Any payment that would have been paid to the member prior to a severance from employment if the member had continued in employment with the employer and that is regular compensation for services outside the member's regular working hours (such as overtime or other similar payments).

(F) A payment for unused accrued bona fide sick, vacation, or other leave, but only if the member would have been able to use the leave if employment had continued and the payment would have been included in the definition of compensation if it was paid prior to the member's severance from employment.

(3) Each ~~employee~~member shall specify in the salary reduction agreement the dollar amount or percentage by which the ~~employee's~~member's salary is to be reduced by the employer. Each such agreement shall be legally binding and irrevocable as to the amounts earned while it is in effect. A member may change the salary reduction agreement during the member's taxable year. A member may terminate the agreement with respect to amounts not yet earned. Any member who wishes to change the amount contributed to the ~~tax sheltered program~~Program must complete a new amended contract. Contributions can be stopped at any time.

(4) Employers are required to report ~~403(b) information~~salary reduction contributions made to the Program on the federal Form W-2. Employers should mark the "deferred compensation" block in the correct box of the W-2 and should put the amount of the contribution and the appropriate code in the specified box of the Form W-2.

(5) Employers should not withhold federal and state income taxes on ~~tax sheltered~~salary reduction contributions~~.~~ made to the Program. No other withholdings, including regular contributions to TRS and FICA taxes, should be ~~lowered by the tax sheltered~~affected or decreased by salary reduction contributions to the Program.

(6) Any active or retired member may roll over ~~or transfer funds from other 403(b) tax sheltered annuity programs~~to the Program an eligible rollover distribution as defined in section 402(c)(4) of the Internal Revenue Code from other section 403(b) plans or eligible retirement plans within the meaning of section 402(c)(8)(B) of the Internal Revenue Code subject to limitations in the Internal Revenue Code and/or pertinent sections of the ~~U.S. Treasury Regulations.~~ Income Tax Regulations. An eligible rollover distribution means any distribution of all or any portion of a member's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Internal Revenue Code. An eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution. Written verification that the ~~roll over or transfer is from a 403(b) plan or other allowable~~rollover is an eligible rollover distribution from an eligible retirement plan must be received by TRS before any such monies will be accepted. Such rollover contributions shall be made in the form of cash only, not in-kind. A separate rollover account will be established for these rollovers.

(7) The minimum allowable salary reduction contribution is ~~two hundred dollars~~Two Hundred Dollars ($200) per taxable year of the member.

(8) The Internal Revenue Code has set limits on the amount a member can exclude from his or her income for tax purposes. It is each ~~employee's~~member's and ~~the employing school's~~his or her employer's responsibility to ensure that contributions do not exceed the maximum limitations set forth in the Internal Revenue Code. TRS does not compute the maximum allowable contribution for ~~the 403(b)~~Program participants and TRS is prohibited from entering into hold harmless agreements with participating ~~employees~~members or employers.

(9) If TRS ~~will distribute~~is notified of any excess deferral (within the meaning of Internal Revenue Code Section 402(g)), the excess deferral plus attributable income ~~to the employee~~will be accounted for separately under Code Section 403(c) and if instructed will distribute the excess deferral plus interest to the member on or before April 15 of the year following ~~April 15.~~the year of deferral. In the event of such a distribution, TRS will furnish the ~~employee~~member with a Form 1099R ~~form~~ with respect to the distribution of the excess deferral and attributable income. ~~The employee~~ If distributed by April 15, the member should include the excess deferral refund in the ~~employee's~~member's gross income for the year the excess ~~contribution~~deferral was made~~.~~ and refund of the attributable income in the year distributed. The employee may have to file an amended income tax return for the year the excess contribution was made. If the excess contribution is not distributed ~~as provided in this subsection,~~by April 15, the distribution may not occur until a regular distribution would occur, and the employee must ~~also~~ include the refund in the employee's gross income for the year of deferral and the year of distribution. In this case the excess ~~contribution~~deferral is taxed twice.

(10) A plan-to-plan transfer from another section 403(b) plan to this Program may be made on behalf of an active member if the following conditions are satisfied:

(A) The member is an employee of the employer for the transferring plan;

(B) The transferor plan provides for transfers; and

(C) The member whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that member immediately before the transfer.

(11) To the extent any amount transferred is subject to any distribution restrictions under section 1.403(b)-6 of the Treasury Regulations, the Program shall impose restrictions on distributions to the member whose assets are being transferred that are not less stringent than those imposed on the transferor plan. In addition, if the transfer does not constitute a complete transfer of the member's interest in the section 403(b) plan, the Program shall treat the amount transferred as a continuation of a pro rata portion of the member's interest in the section 403(b) plan.

(12) Notwithstanding any provisions of this subchapter, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, and section 414(u) of the Internal Revenue Code. For this purpose, a member whose employment is interrupted by qualified military service under section 414(u) of the Internal Revenue Code or who is on a leave of absence for qualified military service under section 414(u) of the Internal Revenue Code may elect to make additional salary reduction contributions upon resumption of employment with the employer up to the maximum amount of salary reduction contributions that the member could have elected during that period if the member's employment with the employer had continued (at the same level of compensation) without the interruption or leave, reduced by the salary reduction contributions, if any, actually made for the member during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Internal Revenue Code, this right applies for five (5) years following the resumption of employment (or, if sooner, for a period equal to three (3) times the period of the interruption or leave).

715:10-19-7. Methods of computing maximum ~~TSA~~Program contribution

(a) ~~The elective deferral limit for 403(b) plans for Calendar Year 2008 is $15,500. Elective deferral limits for future years will be set by the Internal Revenue Service.~~The maximum amount salary reduction contributions to the Program for any calendar year shall not exceed the applicable dollar amount in Internal Revenue Code Section 402(g)(1) for the year. The applicable dollar amount is Sixteen Thousand Five Hundred Dollars ($16,500) for 2009 for all elective deferrals made by a member. The applicable dollar amount limit is adjusted for cost-of-living after 2009 to the extent provided under Internal Revenue Code Section 402(g).

(b) ~~These contribution levels replace the 20% of compensation limitation with 100% of taxable compensation, not to exceed the applicable dollar limit. For persons age 50 or older, increased contribution amounts above the applicable deferral limits for Calendar Year 2008 is $20,500. The applicable deferral limits for future years will be set by the Internal Revenue Service.~~A member who will attain age fifty (50) or older by the end of the calendar year may elect to make an additional amount of salary reduction contributions to the Program in excess of the applicable dollar amount under Internal Revenue Code Section 402(g)(1). The maximum dollar amount of the age fifty (50) catch-up salary reduction contributions for a calendar year is Five Thousand Five Hundred Dollars ($5,500) for 2009 for all elective deferrals made by a member. The maximum dollar amount of age fifty (50) catch-up salary reduction contributions is adjusted for cost-of-living after 2009 to the extent provided under Internal Revenue Code Section 414(v).

(c) A special catch-up provision allows members who have more than fifteen years of service with their employer to make additional contributions up to Three Thousand Dollars ($3,000) per year. However, aggregate contributions of all years above the limits may not exceed Fifteen Thousand Dollars ($15,000). In addition a member can no longer make catch-up contributions under this special catch-up provision once his or her prior years' contributions to any tax-sheltered annuity exceed Five Thousand Dollars ($5,000) multiplied by the years of service (as defined in section 403(b)(4) of the Internal Revenue Code) with the employer.

(d) Salary reduction contributions in excess of the applicable dollar amount in Internal Revenue Code Section 402(g)(1) for the year shall be allocated first to the special catch-up provision under subparagraph (c) (if applicable) and next as an age fifty (50) catch-up contribution under subparagraph (b).

715:10-19-8. Distributions

(a) Distributions from members' accounts must be made in accordance with the Internal Revenue Code. TRS will distinguish pre-'87 and post-'86 account balances. Both account balances will be distributed in accordance with the applicable Internal Revenue Code provisions as they pertain to individual retirement accounts or annuities. The post-'86 account balance will include earnings after 1986 on the pre-'87 account balance. TRS will adjust each balance as required under IRS rules and regulations.

(b) Distribution of deposits made, or income earned, after December 31, 1988, will not be made to members except under one of the following circumstances:

(1) Attainment of age fifty-nine and one-half (59 1/2).

(2) Death.

(3) ~~Disability. For the purpose of this section, a member is considered disabled if the member is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long continued and indefinite duration.~~Disability within the meaning of section 72(m)(7) of the Internal Revenue Code.

(4) ~~Separation from service (termination of employment).~~Severance from employment (with the member's employer). However, a severance from employment also occurs on any date on which a member ceases to be an employee of an educational organization, even though the member may continue to be employed by a related employer that is another unit of the State or local government

that is not an educational organization or in a capacity that is not employment with an educational organization (e.g., ceasing to be an employee performing services for an educational organization but continuing to work for the same state or local government employer).

(5) Retirement.

(6) Financial hardship (this distribution does not include accumulated earnings).

(7) Transfer to another ~~tax sheltered annuity program~~section 403(b) plan in accordance with subsection (n) of this section.

(8) Qualified reservist distribution under Code Section 72(t).

(9) Pursuant to a qualified domestic relations order.

(c) Distributions from this tax-sheltered annuity program are subject to federal and state income taxes. Certain distributions may also be subject to penalties and/or excise taxes under the Internal Revenue Code. Members should seek tax advice prior to requesting distributions.

(d) Upon filing a properly executed distribution request application, a portion or all of a member's tax-sheltered annuity balance that qualifies under Internal Revenue Code regulations, may be distributed. Distributions, other than required minimum distributions and hardship withdrawals, are subject to a mandatory federal withholding of twenty percent (20%). (Distribution of these deposits shall not affect membership status.)

(e) Members who have attained age ~~59 1/2~~fifty-nine and one-half (59 $\frac{1}{2}$) are eligible to withdraw all or any portion of their deposits, subject to the provisions of subsection ~~(i)~~(h) of this section.

(f) Members who have not attained age ~~59 1/2~~fifty-nine and one-half (59 $\frac{1}{2}$) and who have not ~~separated~~had a severance from ~~service~~employment (retired or terminated employment) may withdraw only contributions made prior to January 1, 1989, unless a financial hardship ~~exist~~exists. (See OAC 715:10-19-9.) Notwithstanding the foregoing sentence, a member may transfer his or her Program account to another section 403(b) plan subject to and in accordance with subsection (n) of this section. In addition, the restrictions of this section do not apply to amounts held in a separate rollover account.

~~(g) Members eligible to take a distribution may take up to 80% of their account balance at any time. For those desiring to close their accounts, they may do so after earnings from the previous month have been posted. No earnings will be paid during the month in which an account is closed.~~

(~~h~~g) Members who roll- over their ~~tax sheltered annuity~~Program accounts to another ~~tax sheltered annuity program may return~~section 403(b) plan may transfer these funds back to the ~~Teachers' Retirement System's program~~Program at a later time~~.~~ subject to and in accordance with paragraph 6 of OAC 715:10-19-5.

(~~i~~h) ~~At termination or retirement~~Upon severance from employment, a member may elect one of the following annuity distribution options subject to Internal Revenue ~~Service~~Code requirements, including Code Section 403(b)(10), Code Section 401(a)(9), and the incidental death benefit requirements of Code Section 401(a)~~;~~:

(1) Minimum distribution option under Code Section 401(a)(9), with the post-1986 deferrals and all post-1986 earnings subject to the current Internal Revenue Service distribution rules and the pre-1987 account balance subject to the prior applicable Internal Revenue Service distribution rules.

(2) Lump sum surrender option, payable only to the member.

(3) Partial lump sum, where the member selects a specified lump sum payable to the member.

(4) A nontransferable fixed or variable annuity issued by an insurance company providing for periodic payments to a member and his/her beneficiary.

~~(j) Earnings on Teachers' Retirement System tax sheltered annuity accounts are calculated each month-end, based on accumulated deposits as of the first day of the month.~~

(~~k~~i) The beneficiary(ies) designated on a member's regular retirement account also shall serve as beneficiary(ies) for the ~~tax sheltered annuity~~Program account, unless otherwise designated by the member.

(j) In the calendar year following the calendar year of the member's death, if the member dies before distribution of the member's account, the member's account shall be paid to his or her designated beneficiary in a lump sum. Alternatively, if the designated beneficiary with respect to the member's account is a natural person, at the designated beneficiary's election, distribution can be made in annual installments with the distribution period determined under this paragraph.

(~~l~~k) ~~In the event the member dies, and if the member's sole beneficiary is his or her spouse, the surviving spouse has the same privileges to the account as the member. In order to satisfy minimum distribution rules, if the sole designated beneficiary is the member's surviving spouse, distributions must commence on or before the later of:~~If the designated beneficiary is the member's surviving spouse, the distribution period is equal to the beneficiary's life expectancy using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year. If the designated beneficiary is not the member's surviving spouse, the distribution period is the beneficiary's life expectancy determined in the year following the year of the member's death using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the beneficiary's age on the beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year.

~~(1) the end of the calendar year immediately following the calendar year in which the member died; or~~

~~(2) the end of the calendar year in which the member would have attained age 70 1/2.~~

(~~m~~l) ~~Non-spousal beneficiaries (individuals or trusts) must begin taking a required minimum distribution no later than December 31 of the year following the year of the member's death.~~ In the event there is no designated beneficiary, or if the member's estate or trust or a charitable organization is the designated beneficiary, the entire account balance must

be distributed by the fifth year following the member's death. For any year, a beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining account balance) in lieu of the amount calculated under this paragraph.

(m) In no event shall any distribution begin later than the later of (i) April 1 of the year following the calendar year in which the member attains age seventy and one-half (70 $\frac{1}{2}$) or (ii) April 1 of the year following the year in which the member retires or otherwise has a severance from employment. If distributions commence in the calendar year following the later of the calendar year in which the member attains age seventy and one-half (70 $\frac{1}{2}$) or the calendar year in which the severance from employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the member has a severance from employment and an amount equal to the annual installment payment for the year after severance from employment must also be paid before the end of the calendar year of commencement. For purposes of this paragraph, annual installment payments through the year of the member's death are calculated as the amount payable each year equal to a fraction of the member's account balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the member's age on the member's birthday for that year. If the member's age is less than age seventy (70), the distribution period is twenty-seven and four-tenths (27.4) plus the number of years that the member's age is less than age seventy (70). At the member's election, this annual payment can be made in monthly or quarterly installments. The account balance for this calculation (other than the final installment payment) is the account balance as of the end of the year prior to the year for which the distribution is being calculated. For any year, the member can elect distribution of a greater amount (not to exceed the amount of the remaining account balance) in lieu of the amount calculated using this formula. Notwithstanding anything to the contrary in this Section, distribution of elective deferrals made prior to January 1, 1987 (but not any interest accumulated with respect thereto) need not commence until April 1 of the calendar year following the calendar year in which the Participant attains age seventy-five (75).

(n) ~~In all cases, distribution of a termination or retirement benefit must begin no later than April 1 of the calendar year following the later of the calendar year in which the member attains age 70 1/2 or retires.~~A plan-to-plan transfer from the Program to another section 403(b) plan may be made on behalf of an active member if the following conditions are satisfied:

(1) The member is an employee of the employer for the receiving plan;

(2) The receiving plan provides for the receipt of transfers;

(3) The member whose assets are being transferred has an accumulated benefit immediately after the transfer that is at least equal to the accumulated benefit of that member immediately before the transfer;

(4) The receiving plan provides that, to the extent any amount transferred is subject to any distribution restrictions under section 1.403(b)-6 of the Income Tax Regulations, the receiving plan shall impose restrictions on distributions to the member whose assets are being transferred that are not less stringent than those imposed on the Program; and

(5) If the transfer does not constitute a complete transfer of the member's interest in the Program, the receiving plan shall treat the amount transferred as a continuation of a pro rata portion of the member's interest in the Program.

(o) Permissive Service Credit Transfers.

(1) If a member is also a member in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the member, then the member may elect to have any portion of the member's account transferred to the defined benefit governmental plan. A transfer under this section may be made before the member has had a severance from employment.

(2) A transfer may be made under this section only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(3) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the member's or Beneficiary's interest in the transferor plan, the Program shall treat the amount transferred as a continuation of a pro rata portion of the member's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the member's or Beneficiary's interest in any after-tax employee contributions).

715:10-19-9. Withdrawals for financial hardship

(a) Financial hardship is defined as an immediate and heavy financial need experienced by the ~~participant~~member, resulting from a sudden and unexpected illness or accident of the ~~participant~~member or of a dependent of the ~~participant~~member, loss of the ~~participant's~~member's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the ~~participant.~~member. The circumstances that constitute a financial hardship will depend upon the relevant facts and circumstances of each case, but, in any case, payment may not be made to the extent that such financial hardship is or may be relieved:

(1) through reimbursement or compensation by insurance or otherwise~~, or~~;

(2) by liquidation of the ~~participant's~~member's assets, to the extent the liquidation of these assets would not itself cause severe financial hardship~~,~~;

(3) by cessation of ~~deferrals~~salary reduction contributions under the ~~plan,~~Program; or

(4) by other distributions ~~or~~and nontaxable (at the time of the loan) loans from plans maintained by the employer, by any other employer, the employer(s) of the ~~participant's~~member's spouse, or by borrowing from commercial

sources on reasonable commercial terms, in an amount sufficient to satisfy the need.

(b) Specific needs that are deemed to satisfy the requirements of a hardship withdrawal include, but are not limited to:

(1) Medical expenses incurred by the ~~participant~~member, the ~~participant's~~member's spouse or dependents which are not covered by insurance or other reimbursement;

(2) Costs directly related to the purchase of a principal residence for the ~~participant~~member (excluding mortgage payments);

(3) Payment of tuition, related educational fees, and room and board expenses, for the next twelve (12) months of post-secondary education for the ~~participant~~member, or the ~~participant's~~member's spouse or dependents; or

(4) Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage of that residence.

(c) Withdrawal amounts are permitted only to the extent reasonably necessary to satisfy the financial hardship. Withdrawal of credited earnings in the member's account is not permitted.

~~(d) Once a member has satisfactorily completed a hardship application for withdraw, an administrative review will be conducted by a committee consisting of the Secretary-Treasurer, Director of Operations and the administrative assistant responsible for the Tax-Sheltered Annuity Program. The review committee will recommend to the Executive Secretary those applications that meet the requirement of a financial hardship.~~

(~~e~~d) ~~The Executive Secretary will have the authority to approve payment of qualifying requests. The Executive Secretary will also report all approved requests and denials to the Board of Trustees each month.~~The participating employer is responsible for the determination of hardship, in accordance with procedures established under the employer's plan.

(~~f~~e) Distributions made via a hardship withdrawal request may be subject to an early distribution penalty of ten percent (10%).

(f) A member who receives a hardship withdrawal is required to cease salary reduction contributions for six (6) months following the withdrawal.

(g) In lieu of the provisions of this section, an employer may prescribe hardship withdrawal requirements.

715:10-19-11. Rollovers from ~~OTRS 403(b) program~~Program 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, may elect at the time and in the manner prescribed by ~~the Board of Trustees~~TRS, to have all or a portion of an eligible rollover distribution (as defined in Internal Revenue Code 402(c)(4) from the Program paid directly to another eligible retirement plan as ~~required~~defined under Internal Revenue Code ~~Section 403(b)(10~~402(c)(8)(B) and the regulations thereto. In addition, a designated beneficiary other than a surviving spouse may elect to roll over an eligible rollover distribution directly from the Program to an individual retirement plan that has been established on behalf of the beneficiary as an inherited individual retirement plan, subject to and in accordance with section 408(d)(3)(C) of the Internal Revenue Code.

(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 tax-sheltered annuity benefit to the credit of 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, or a deceased member's designated beneficiary 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 or the member and the member's spouse.

(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(a)(9).

~~(D) the portion of any distribution that is not includable in the gross income.~~

(~~E~~D) any distributions during a year that are reasonably expected to total less than $200.

(2) an "eligible retirement plan" includes an individual retirement account or annuity described in Internal Revenue Code Sections 408(a) or (b)~~ or another~~, a qualified trust described in Internal Revenue Code 401(a), an annuity program described in Internal Revenue Code ~~Section 403~~Sections 403(a) or 403(b), or an eligible governmental plan described in Internal Revenue Code 457(b) that is willing to accept the distributee's eligible rollover distribution. In addition, an eligible retirement plan includes a Roth IRA under Internal Revenue Code Section 408A. However, in the case of ~~an eligible rollover~~a distribution to a beneficiary who at the time of the member's ~~spouse, an eligible retirement plan only includes~~ death was neither the spouse of the member nor the spouse or former spouse of the member who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or ~~an~~ individual retirement annuity ~~described in Internal Revenue Code Sections 408(a) or (b)~~that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(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.

715:10-19-12. The Oklahoma Teachers' Deferred Savings Incentive Plan Fund

(a) The Oklahoma Teachers' Deferred Savings Incentive Plan Fund, established and funded pursuant to Enrolled House Bill 1428 of the first session of the 47th Oklahoma State Legislature, shall be used for payment by ~~the Teachers' Retirement System of Oklahoma (TRS)~~TRS of matching contributions into the ~~TRS Tax Sheltered Annuity~~Program accounts of active, contributing TRS members. Accounts eligible to receive matching contributions are those maintained by TRS in accordance with ~~Section~~section 403(b) of ~~Title 26 of the United States~~the Internal Revenue Code.

(b) ~~The Teachers' Retirement System~~TRS shall hold and invest funds in the Oklahoma Teachers' Deferred Savings Incentive Plan Fund in the same manner ~~as funds managed in accounts of members contributing to an account established pursuant to Section 403(b) of the Internal Revenue Code of 1986, as amended~~determined by the Board of Trustees.

(c) If the Oklahoma Teachers' Deferred Savings Incentive Plan Fund is insufficiently funded to fully pay such contributions in any month, payments shall be suspended until sufficient monies are available.

715:10-19-13. Contributions from the Oklahoma Teachers' Deferred Savings Incentive Plan Fund into ~~Tax Sheltered Annuity~~Program accounts of active contributing TRS members

Provided funds in the Oklahoma Teachers' Deferred Savings Incentive Plan Fund are sufficient to fully fund such contributions, ~~the Teachers' Retirement System of Oklahoma (TRS)~~TRS shall contribute $25.00 per month into the ~~Tax Sheltered Annuity~~Program account of each active contributing TRS member who contributes at least $25.00 per month into his or her ~~TRS Tax Sheltered Annuity~~Program account maintained pursuant to ~~Section~~section 403(b) of ~~Title 26 of the United States~~Internal Revenue Code.

SUBCHAPTER 21. INVESTMENT POLICY [REVOKED]

715:10-21-1. Investment of funds [REVOKED]

~~The Board of Trustees of the Teachers' Retirement System shall be the trustees of several funds created by the Teachers' Retirement Act and shall have full power to invest and reinvest such funds:~~

~~(1) The Board of Trustees shall employ an Executive Secretary who shall be the administrative officer of the Teachers' Retirement System and shall be responsible for the general administration of the Retirement System.~~

~~(2) The Chief Investment Officer of the Retirement System shall be an employee of the Teachers' Retirement System.~~

~~(3) The in-house investment staff shall be under the supervision of the Chief Investment Officer, under the authority of the Board of Trustees. The Executive Secretary will designate those persons who are authorized to trade the short-term investment fund.~~

715:10-21-2. Statement of investment policy [REVOKED]

~~(a) The purpose of the investment policy is to identify various policies and procedures that enhance opportunities for a prudent and systematic investment process. The purpose of the Oklahoma Teachers' Retirement System Fund is to provide for an orderly means whereby employees of the educational systems of the State of Oklahoma who have attained retirement age may be retired from active service, to enable such employees to accumulate reserves for themselves and their dependents, to provide for termination of employment and retirement and death benefits.~~

~~(b) The Standard of Investment for the Board of Trustees in making investments shall be to exercise the judgment and care in the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable safety of their capital.~~

~~(c) The Board of Trustees of the Oklahoma Teachers' Retirement System shall invest the Retirement Fund solely in the interest of the membership and their beneficiaries, and for the exclusive purpose of providing benefits to such membership and their beneficiaries and defraying reasonable expenses of administering the Oklahoma Teachers' Retirement System. Investing shall be handled with the care, skill, prudence and diligence, under the circumstances then prevailing, that a prudent man, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims.~~

~~(d) The Board will diversify the investments of the funds so as to minimize the risks of large losses. The Board shall be responsive to the financial needs and objectives of the Fund. The investment objectives of the Board, as fiduciaries, are long-term rather than short-term.~~

~~(e) The Board, in maintaining its investment policy, takes into consideration the actuarial assumptions of the retirement program and its unfunded liabilities.~~

~~(f) The Board of Trustees may appoint investment advisors to assist in the investment of the retirement funds.~~

~~(g) The proxy policy statement of the Board of Trustees reflects the fiduciary duty to vote proxies in a manner that most benefits its members. The advisors are to first consider the economic impact on the System, and should the economic impact be neutral, then the advisors should give consideration to acceptable efforts made on behalf of special interests of social conscience. The Board of Trustees retains the right to vote all proxies should it so choose. Special interest proxy voting decisions will be brought before the Board of Trustees at the earliest possible date prior to the voting of the proxy for possible direction by the Board. In addition, the advisors will comply~~

~~with any supplemental proxy voting criteria which the Board may promulgate.~~

[OAR Docket #10-588; filed ??-??-??]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 5. FEES

[OAR Docket #10-663]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:5-1-6. Stream water permit application and administration fees [AMENDED]
785:5-1-9. Dam safety and inspection fees [AMENDED]
785:5-1-10. Groundwater application and administration fees [AMENDED]
785:5-1-11. Well driller and pump installer licensing fees [AMENDED]
785:5-1-14. Stream water and groundwater petition fees [AMENDED]
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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended Oklahoma Administrative Code ("OAC") Title 785, Chapter 5 as follows:

OAC 785:5-1-6, Stream water permit application and administration fees, prescribes fees to be filed with applications for stream water permits and annual reports of water use (see 82 O.S. §§ 105.9, 1085.2 and 1085.4, and OAC Section 785:20-9-5). OAC 785:5-1-6 has been amended to increase application fees by $5.00 and to increase the late filing fee from $30 to $50 for annual water use reports submitted later than 30 days after the due date set forth in the report mailed to the water right holder.

OAC 785: 5-1-9, Dam safety and inspection fees, prescribes fees to be filed in connection with applications to construct, enlarge, alter, or repair a dam; and has been amended by changing the fee schedule for filing fees submitted with such applications, and by adding a new fee for inspection report review and administration, as follows:

"(a) Filing fees which must be submitted with each application to construct, enlarge, alter, or repair a dam (based on estimated cost of construction, enlargement, etc.) are as follows:

(1) ~~$20,000 or less estimated cost - $ 100.00 filing fee~~

~~(2) $20,001 through 99,999~~$99,999 or less estimated cost - $200.00 ~~filing fee~~

~~(3)~~(2) $100,000 through ~~499,999~~19,999,999 estimated cost - ~~$300.00 filing fee~~ One-half of one percent (0.5%) of estimated cost; not to exceed $3,000.

~~(4) $500,000 through 999,999~~(3) $20,000,000 or greater estimated cost - ~~$500.00 filing fee~~$10,000.

~~(5) $1,000,000 or more estimated cost - $1000.00 filing fee~~

* * *

"(e) Inspection report review and administration fees are due with submittal of the inspection reports as follows:

(1) Significant hazard dams - $300 once every three (3) years

(2) High hazard dams - $350 each year;

provided that if the inspection report and fee is not submitted by the date specified, an additional fee of $50.00 will be due." (See 82 O.S. §§ 110.5, 1085.2 and 1085.4, and OAC Sections 785:25-5-1, 785:25-7-1, 785:25-7-2, 785:25-9-1, 785:25-9-6 and 785:25-9-7.)

OAC 785:5-1-10, Groundwater application and administration fees, prescribes fees to be filed with applications for permits to use groundwater and annual reports of groundwater use (see 82 O.S. §§ 1020.7, 1020.12, 1085.2 and 1085.4, and OAC Section 785:30-5-9). OAC 785:5-1-10 has been amended to increase amounts for each category of application fee by $5.00; to add a new water right administration fee of $50.00 effective January 1, 2011, to be submitted with each annual water use report for water rights administration, with a maximum of $500 per any one water right holder with multiple water rights; and to add a late filing fee of $50 for annual water use reports submitted later than 30 days after the due date set forth in the report mailed to the water right holder.

OAC 785:5-1-11, Well Driller and pump installer licensing fees, prescribes fees to be filed in connection with well driller licenses and operator certifications (see 82 O.S. §§ 1020.16, 1085.2 and 1085.4, and OAC Sections 785:35-3-1 and 785:35-3-2). OAC 785:5-1-11 has been amended by deleting language that provides a reduced fee amount for early submittal of license and operator certification renewal applications; and moving the grace period within which an application to renew must be filed to avoid a late fee from July 1 to May 31.

OAC 785:5-1-14, Stream water and groundwater petition fees, prescribes fees to be filed with petitions to amend permits to use stream water and groundwater (see 82 O.S. §§ 105.10, 105.22 and following, 1085.2 and 1085.4, and OAC Sections 785:20-9-1 and 785:20-9-4, and OAC 785:30 Subchapter 7). OAC 785:5-1-14 has been amended to increase all fees by $5.00 and delete language which provides a fee exception for petitions between relatives (or family owned corporations or partnerships for ownership transfer or record assignment of a permit of water right or Information Sheet regarding domestic use of stream water from federal reservoirs).
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

785:5-1-6. Stream water permit application and administration fees

(a) A filing fee based on amount requested in the application must be submitted with each application for a permit to appropriate stream water as follows:

(1) 1 through 320 acre-feet - ~~$190.00~~$195.00

(2) 321 through 640 acre-feet - ~~$300.00~~$305.00

(3) 641 through 1,500 acre-feet - ~~$375.00~~$380.00

(4) More than 1,500 acre-feet - ~~$375.00~~$380.00, plus an additional ~~$150.00~~$155.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Three Thousand Dollars ($3,000.00) per application.

(5) If the applicant proposes to divert or use stream water from a scenic river or an area designated as an outstanding water resource by the State, the applicant must submit an additional fee of ~~$200.00~~$205.00 (see also Chapter 45 of this Title).

(b) Applications for provisional temporary permits to appropriate stream water except expedited applications require a fee of ~~$150.00~~$155.00.

(c) Expedited applications for provisional temporary permits to appropriate stream water require a fee of ~~$200.00~~$205.00.

(d) Annual water right administration fee for the submittal of water use reports shall be $50.00 for each permit or vested right, provided that the cumulative maximum water right administration fees imposed on any one permit or vested right holder shall not be more than $500.00 per year.

(e) If the annual water use report is filed later than 30 days after the due date as set forth in the report form mailed to the water right holder, an additional amount of ~~$30.00~~ $50.00 for each permit shall be due (see also 785:20-9-5).

785:5-1-9. Dam safety and inspection fees

(a) Filing fees which must be submitted with each application to construct, enlarge, alter, or repair a dam (based on estimated cost of construction, enlargement, etc.) are as follows:

(1) ~~$20,000 or less estimated cost - $ 100.00 filing fee~~

~~(2) $20,001 through 99,999~~$99,999 or less estimated cost - $200.00 ~~filing fee~~

(~~3~~2) $100,000 through ~~499,999~~19,999,999 estimated cost - ~~$300.00 filing fee~~One-half of one percent (0.5%) of estimated cost; not to exceed $3,000.

~~(4) $500,000 through 999,999~~(3) $20,000,000 or greater estimated cost - ~~$500.00 filing fee~~$10,000.

~~(5) $1,000,000 or more estimated cost - $1000.00 filing fee~~

(b) Fees for inspections of dams classified as low or significant hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel are as follows:

~~Size classification of dam Fee for each~~
~~(see 785:25-3-3) inspection visit~~
~~Small $250.00~~
~~Intermediate $500.00~~
~~Large $1000.00~~

(1) Small (see 785:25-3-3) - $250.00 for each inspection visit.

(2) Intermediate (see 785:25-3-3) - $500.00 for each inspection visit.

(3) Large (see 785:25-3-3) - $1000.00 for each inspection visit.

(c) Fees for inspections of dams classified as high hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel shall be the actual cost of such inspection.

(d) The fee required for issuance of a certificate of completion is $25.00 plus if applicable, the inspection fee set out in subsection (b) or (c) of this Section.

(e) Inspection report review and administration fees are due with submittal of the inspection reports as follows:

(1) Significant hazard dams - $300 once every three (3) years

(2) High hazard dams - $350 each year; provided that if the inspection report and fee is not submitted by the date specified, an additional fee of $50.00 will be due.

785:5-1-10. Groundwater application and administration fees

(a) A filing and application fee based on amount requested must be submitted with each application for a permit for the withdrawal of groundwater as follows:

(1) 1 through 320 acre-feet - ~~$ 190.00~~$195.00

(2) 321 through 640 acre-feet - ~~$ 300.00~~$305.00

(3) 641 through 1,500 acre-feet - ~~$ 375.00~~$380.00

(4) More than 1,500 acre-feet - ~~$ 375.00~~$380.00, plus an additional ~~$150.00~~$155.00 for each increment of 500 acre-feet above 1,500 acre-feet requested, provided that no person shall be charged a total amount in excess of Three Thousand Dollars ($3,000.00) per application.

(b) Applications for provisional temporary permits except expedited applications require a fee of ~~$150.00~~155.00.

(c) Expedited applications for provisional temporary permits require a fee of ~~$200.00~~$205.00.

(d) Annual water right administration fee for the submittal of water use reports shall be $50.00 for each permit or prior right, provided that the cumulative maximum water right administration fees imposed on any one permit or prior right holder shall not be more than $500.00 per year.

(e) If the annual water use report is filed later than thirty (30) days after the due date as set forth in the report form mailed to the water right holder, an additional amount of $50.00 for each permit shall be due.

785:5-1-11. Well driller and pump installer licensing fees

(a) The filing application and license fee for issuance of individual, partnership, or corporation well driller licenses for one activity to be certified under 785:35-3-1 which shall include the operator certification for the individual license or, in the case of a partnership or corporation, one operator certification for such activity shall be $300.00 for two years.

(b) The license application fee for each additional activity shall be $40.00 for two years.

(c) The application fee for each additional operator certificate which includes certification to conduct one activity shall be $60.00 for two years.

(d) The application fee for each additional activity under an operator certificate shall be $30.00.

(e) The renewal fee for each license for one certified activity, which shall include the operator certification shall be ~~$200.00, if the application to renew is filed by May 31, and~~ $250.00 if the application to renew is filed ~~after~~by May 31; provided that a late fee of $150.00 shall be due for the completed license renewal application if received by the Board after ~~July 1~~May 31

of the year to be renewed, but before the end of the applicable grace period.

(f) The license renewal fee for each additional activity shall be $40.00 for a two (2) year period.

(g) The fee for each additional operator certification renewal which includes certification to conduct the authorized activities shall be $40.00 for a two (2) year period.

(h) The fee for examination of any operator shall be $50.00.

(i) The fee for transfer of individual licensee designation to partnership, corporation or other entity or certified operator from one firm or corporation to another shall be $50.00.

(j) The license fee for a nonresident shall be the amount charged in the state of the nonresident but in no case less than $500.00 for two years.

(k) The initial fee for the Indemnity Fund for one activity certified under 785:35-3-1 shall be $200.00 for a two (2) year period.

(l) The initial fee for the Indemnity Fund for each additional activity certified under 785:35-3-1 shall be $75.00 for a two (2) year period.

(m) The renewal fee for the Indemnity Fund for each activity certified under 785:35-3-1 shall be $75.00 for a two (2) year period.

(n) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for groundwater wells, fresh water observation wells, heat exchange wells or test holes in Chapter 35 in this Title shall be $50.00.

(o) The fee to file a request for a variance or exception from any construction, completion, plugging or other requirement set forth for monitoring wells or geotechnical borings in Chapter 35 shall be $150.00.

785:5-1-14. Stream Water and Groundwater petition fees

Stream water and groundwater petition fees are as follows:

(1) For the filing of a petition to amend a permit or water right which does not require notice to be given - ~~$50.00~~$55.00

(2) For the filing of a petition to transfer ownership or record assignment of a permit or water right or Information Sheet regarding domestic use of stream water from federal reservoirs~~, except a transfer between the permittee or water right holder to any person related to him by affinity or consanguinity within the third degree or to a family owned corporation or partnership~~ - ~~$50.00~~ $55.00

(3) For the filing of a petition to subdivide the ownership or record partial assignment of a permit or water right~~, except a subdivision or partial assignment between a permittee or water right holder to any person related to him by affinity or consanguinity within the third degree~~ - ~~$50.00~~$55.00

(4) For filing a petition for extension of time for commencement of any works for the taking of stream water - ~~$50.00~~$55.00

(5) For filing of a petition regarding addition or deletion of land from an irrigation district - ~~$50.00~~$55.00

(6) For filing of all other petitions to amend a permit or water right for which notice must be given - ~~$150.00~~$155.00.

[OAR Docket #10-663; filed ??-??-??]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 20. APPROPRIATION AND USE OF STREAM WATER

[OAR Docket #10-664]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:20-1-6. Who should file an application [AMENDED]
Subchapter 3. Application Requirements and Processing
785:20-3-2. General application requirements [AMENDED]
Appendix A. Application for a Permit to Use Surface or Stream Water [REVOKED]
Appendix A. Application for a Permit to Use Surface or Stream Water [NEW]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. §§ 105.1 et seq. and 1085.2
DATES:
Comment period:
November 16, 2009 through January 12, 2010
Public hearing:
January 12, 2010
Adoption:
February 9, 2010
Submitted to Governor:
February 19, 2010
Submitted to House:
February 19, 2010
Submitted to Senate:
February 19, 2010
Gubernatorial approval:
February 26, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2010.
Final adoption:
April 15, 2010
Effective:
May 27, 2010
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

The Oklahoma Water Resources Board ("OWRB") has amended Oklahoma Administrative Code ("OAC") Title 785, Chapter 20 as follows:

OAC Section 785:20-1-6, Who should file an application, addresses requirements for filing an application for a permit to use stream water (see 82 O.S. §§ 105.9, 105.20 and 1085.2, and OAC Title 785 Chapter 20 Subchapters 1 and 3). OAC 785:20-1-6 has been amended by adding language to provide that if an application is filed after use of the water has begun, the application filing fee will be doubled. The circumstance creating the need for the amendment is to provide more strict enforcement of the law that requires persons to obtain a permit before using water, instead of simply filing the application after use begins and even sometimes after use has ended. This amendment will affect all permit applications, including provisional temporary permit applications.

OAC Section 785:20-3-2, General application requirements, addresses the prescribed form for filing an application to use stream water (see 82 O.S. §§ 105.9 and following, and OAC 785:20 Appendix A). OAC 785:20-3-2 has been amended to allow new applications to be submitted by electronic

mail, and clarifies that the application fee must be submitted to the OWRB before processing can commence. The circumstance creating the need for the amendment is to provide greater flexibility to the public on methods to file applications.

OAC 785:20 Appendix A containing the application form (see 82 O.S. §§ 105.9 and following) has been revoked and reenacted to streamline, eliminate redundant and unnecessary requirements, and clarify the information elicited for an application. Among other things, a section has been added to the form for an individual applicant to state, if and as required by 56 O.S. § 71, whether (s)he is a U.S. citizen or in the alternative is an alien lawfully present in the U.S. The circumstances creating the need for the amendments include comments about the length and complexity of the application that requests information that may not be pertinent and helpful to analyze the application for compliance with the law and rules.

CONTACT PERSON:

Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

785:20-1-6. Who should file an application

(a) *Any person, firm, corporation, state or federal governmental agency, or subdivision thereof, intending to acquire the right to beneficial use of any water shall, before commencing any construction for such purposes or before taking the same from any constructed works, make an application to the Board* [82:105.9] for a permit to appropriate such water.

(b) Water for domestic use, as defined herein, is exempt from such filing: however, where domestic use of water from a federal reservoir operated by the Corps of Engineers, U.S. Army, is desired, an application must be on file with the Board before the Federal Government through the Corps of Engineers will grant an easement to cross government property.

(c) Unless otherwise determined by the Board, a permit to use water for hydroelectric power generation, navigation, recreation fish and wildlife, and other nonconsumptive in-stream uses is required only where the water used for such purpose is taken from reservoir storage.

(d) If an application is filed after non-domestic use of the water has begun, the application filing fee due for the type of permit requested as set forth in Chapter 5 of the Oklahoma Administrative Code, title 785, shall be doubled.

SUBCHAPTER 3. APPLICATION REQUIREMENTS AND PROCESSING

785:20-3-2. General application requirements

(a) **Application form to be used.** The applicant shall complete all applications for a regular, term, seasonal or provisional temporary stream water permit on the approved form set out in Appendix A, or on an electronic or other form provided by the Board, and in the manner described by the form. The application form may be presented to the Board in person, by mail, e-mail,~~or by~~ readable facsimile transmittal, or through the Board's online application service. The filing fee must be submitted to the Board before application review and processing commences. With copies of the application form, the Board will provide copies of a sample plat on which information as required by the application form must be indicated.

(b) **Right of access to diversion point and to cross lands of another.** If at the time the application is filed, the applicant has evidence regarding right of access to the diversion point and authority to cross lands of another with pipelines or other appurtenances related to the use of the water, such evidence shall be submitted with the application.

APPENDIX A. APPLICATION FOR A PERMIT TO USE SURFACE OR STREAM WATER [REVOKED]

APPENDIX A. APPLICATION FOR A PERMIT TO USE SURFACE OR STREAM WATER [NEW]

OFFICE USE ONLY
Application No._____
Type of Permit_____
Stream System Code_____
Reservoir Code_____
Hydrologic Unit Code_____

Application for a Permit to Use Surface or Stream Water

OKLAHOMA WATER RESOURCES BOARD
PLANNING & MANAGEMENT DIVISION
3800 North Classen Blvd.
Oklahoma City, OK 73118
Phone: (405) 530-8800
Fax: (405) 530-8900
Website: www.owrb.ok.gov

APPLICATION FILING FEE

Amount of Water Requested	Fee
0 – 320 acre-feet	$_____
321 – 640 acre-feet	$_____
641 – 1500 acre-feet	$_____
Over 1500 acre-feet	$_____*

*Plus $_____ for each 500 acre-feet (or any increment thereof) over 1500 acre-feet. (Maximum Fee $3,000.00)

1. NAME & ADDRESS *(Print the applicant's full name, as listed on the ownership documentation, and mailing address)*

Applicant Name_____ Phone (____)_____-_____ Fax (_____)_____-_____
Address_____City_____State_____Zip_____

Contact Name (**if applicable**)_____ Phone (_____)_____-_____ Fax (_____)_____-_____
Address_____City_____State_____Zip_____

2. TYPE OF SURFACE WATER PERMIT REQUESTED *(Check One)*

O Regular Permit – authorizes diversion and use of water on a year-round basis
O Seasonal Permit – authorizes diversion and use of water for specific time periods during a calendar year.
O Term Permit – valid for a term of years and does not vest the holder with any permanent right.
(Provide ending date for term permit: _____day of_____, 20_____)

3. PURPOSE(S) FOR WHICH WATER WILL BE USED *(List the purpose(s) for which the water will be used and the number of acre-feet for each purpose. Note: one acre-foot of water will cover one acre of land one foot deep and is equal to 325,851 gallons)*

AMOUNT PURPOSE

_____acre-feet of water will be used for_____
_____acre-feet of water will be used for_____

OFFICE USE ONLY
SIC Codes
_____ | _____
_____ | _____

Total Amount Requested _____acre-feet; Pumping Rate not to Exceed _____gallons per minute

Irrigation Only: _____acres will be irrigated. Proposed Crops_____

4. DIVERSION(S) OF WATER: Source, Location and Method of Diversion *(For each diversion point, state the amount of water in acre-feet to be diverted annually and give the legal description to the nearest ten (10)-acre tract.* ***Legal description of the diversion point must match the area drawn on the attached plat.*** *If additional space is needed, list on a separate sheet of paper.)*

Will the water be used as a non-consumptive use in a pond, lake or reservoir and will not be pumped or moved from one location to another? O Yes O No *(If yes, use the location of the dam or spillway as the point of diversion below.)*

_____acre-feet of water will be diverted from:

_____1/4 of _____1/4 of _____1/4 of Section ____Twp.____ O N / O S Rng.____ O EIM / O WIM / O ECM in _____ County

Source of Water: *(Check one and provide the requested information showing the source of water to be diverted.)*

O Direct Diversion from a Stream or River– Name of Stream:_____

O Natural Resources Conservation Service Flood Control Site – N.R.C.S Site No._____

Watershed Name_____

O Reservoir or Pond – Name of Reservoir:_____

River or Stream Name Reservoir is Located on:_____

Reservoir is *(Check one)*: O Existing (Date Completed_____) O Under Construction O Planned

Storage: _____acre-feet; Average Depth: _____feet; Surface Area: _____acres

Method of Diversion: *(Check one and provide description of the system to be used)*

O Gravity:_____

O Pump:_____

Do you own or lease the land on which the point of diversion will be located? O Yes O No *(If available, attach a copy of the deed, lease agreement, etc. showing the right o use the point of diversion.)*

Will water lines cross public right-of-ways or another landowner's property? O Yes O No *(If yes and available, attach a copy of the easement.)*

(Note: If the deed, lease agreement, etc. and/or the easement is not submitted, the permit, if issued, will contain a condition requiring submittal of the information before water use begins.)

5. LEGAL DESCRIPTION OF AREA OF USE *(List the legal description of the area of use. Please do not use city lot and block numbers or metes and bounds. If additional space is needed, list on a separate sheet of paper.* ***Legal description must be drawn on the attached plat and must match the area of use described below. Municipal and rural water entities refer to #6 below.)***

_____acres in_____1/4 of _____1/4 of _____1/4 of Section____Twp.____ O N / O S Rng.____ O EIM / O WIM / O ECM in _____ County

_____acres in_____1/4 of _____1/4 of _____1/4 of Section____Twp.____ O N / O S Rng.____ O EIM / O WIM / O ECM in _____ County

_____acres in_____1/4 of _____1/4 of _____1/4 of Section____Twp.____ O N / O S Rng.____ O EIM / O WIM / O ECM in _____ County

FOR IRRIGATION ONLY: Do you own or lease the land to be irrigated? O Yes O No *(If available, attach a copy of the deed or lease. If not available, the permit, if issued, will require that a deed or lease be submitted before water use begins.)*

6. JUSTIFICATION OF PRESENT AND FUTURE NEED

IRRIGATION: Completion of #3 serves as justification of need for amounts requested for irrigation for common crops grown in Oklahoma. The Board will use appropriate publications and information the applicant submits in determining the amount of water needed.

MUNICIPAL AND RURAL WATER ENTITIES: Submit population projection figures and all other methodologies, calculations, and additional information used to determine amount of water requested. Submit a map of the service areas and the water line locations. The map must show points of reference or scale. A schedule of use based on population growth may also be submitted.

INDUSTRIAL, COMMERCIAL AND AGRICULTURE (NON-IRRIGATION): Submit methodology, calculations, and additional information used to determine amount of water requested.

7. CITIZENSHIP AFFIDAVIT

Are you a citizen of the United States of America? O Yes O No

If no, are you a qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States? O Yes O No. My A-number is _____ and a true and correct copy of my immigration document, including my date of birth, user case number, and immigration document type and its expiration date, must be attached.

(PLEASE NOTE: Each natural individual listed as an applicant must provide a citizenship affidavit. If the land is owned by more than one person, a copy of this page will need to be filled out, signed, notarized and filed with the completed application.)

8. SIGNATURES

Upon my oath or affirmation, I swear or affirm (1) that all information submitted to the Oklahoma Water Resources Board in connection with this application is true and accurate to the best of my knowledge; and (2) that I or the person or entity I represent will comply with all applicable laws and regulations contained in Chapter 20 of the Oklahoma Water Resources Board rules and all other applicable regulations of the State of Oklahoma or its agencies, and any lawful conditions imposed by the Oklahoma Water Resources Board, which apply or pertain to the use of fresh stream water.

_____
SIGNATURE OF APPLICANT

_____
PRINT NAME

_____
TITLE (IF APPLICABLE)

NOTARY

STATE OF_____)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this _____day of _____, 20_____.

_____
Notary Public
My commission expires:_____
(SEAL)

APPLICATION SUBMISSION AND PROCESSING

To be deemed complete, the submitted application m

a. The appropriate filing fee;
b. The original application, typed or printed in ink, signed and notarized;
c. One copy of the plat(s) showing the information requested in items #4 and #5 above and as otherwise instructed on this form; and
e. If available, Deed(s), lease(s), and / or letter(s) of consent as required.

If you believe that within the first seven (7) years after issuance of your permit you will not be able to use the full amount of water applied for, please contact Board staff.

Please note: Any incomplete or unresponsive answers may cause a delay in the processing of your application.
In addition, Oklahoma Administrative Code (OAC) 785:20-3-9 states: (a) "Upon filing of an application that is defective as to form or unsatisfactory as to feasibility or safety of the plan or as to the showing of the ability of the applicant to carry the construction to completion, the Board shall advise applicant of the correction, amendments, or changes required, and sixty (60) days from the date the Board so advises shall be allowed for the filing thereof. {82:105.10]" (b) "Any corrected application filed after the time allowed in (a) of this Section shall be treated in all respects as a new application on the date of its refilling [82:105.10] and the original priority date of filing shall be lost." (c) "If an application does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn."

Oklahoma Water Resources Board
STREAM WATER Application Plat

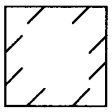
Applicant Name_____Application #_____

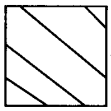
Note: Drawings must match the legal descriptions provided in questions #4 and #5 in the application and one copy of the plat must be filed with the application.

NW NW NW	NE NW NW	NW NE NW	NE NE NW	NW NW NE	NE NW NE	NW NE NE	NE NE NE
SW NW NW	SE NW NW	SW NE NW	SE NE NW	SW NW NE	SE NW NE	SW NE NE	SE NE NE
NW SW NW	NE SW NW	NW SE NW	NE SE NW	NW SW NE	NE SW NE	NW SE NE	NE SE NE
SW SW NW	SE SW NW	SW SE NW	SE SE NW	SW SW NE	SE SW NE	SW SE NE	SE SE NE
NW NW SW	NE NW SW	NW NE SW	NE NE SW	NW NW SE	NE NW SE	NW NE SE	NE NE SE
SW NW SW	SE NW SW	SW NE SW	SE NE SW	SW NW SE	SE NW SE	SW NE SE	SE NE SE
NW SW SW	NE SW SW	NW SE SW	NE SE SW	NW SW SE	NE SW SE	NW SE SE	NE SE SE
SW SW SW	SE SW SW	SW SE SW	SE SE SW	SW SW SE	SE SW SE	SW SE SE	SE SE SE

_____ Section – Township – Range

_____ County


Land Owned or Leased


Area of Use

Point of Diversion

[OAR Docket #10-664; filed ??-??-??]

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

[OAR Docket #10-665]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:25-1-2. Definitions [AMENDED]
785:25-1-4. Variances and waivers [AMENDED]
Subchapter 3. Responsibility, Classification and Design Standards
785:25-3-3. Classification of size and hazard potential [AMENDED]
785:25-3-5. Minimum design standards (other than spillway) [AMENDED]
785:25-3-10. Prohibited vegetation and erosion [AMENDED]
Subchapter 5. Applications and Approval of Construction
785:25-5-3. Content of plans and specifications [AMENDED]
785:25-5-5. Notice of application [AMENDED]
785:25-5-6. Affidavit of notice publication and mailing [AMENDED]
785:25-5-7. ~~Protest~~Public comment [AMENDED]
Subchapter 7. Post Approval Actions
785:25-7-5. Changes to plans and specifications after approval [AMENDED]
785:25-7-7. ~~Warning and evacuation~~Emergency action plans [AMENDED]
Subchapter 9. Actions after Construction
785:25-9-1. Inspections of dams [AMENDED]
785:25-9-9. Breach analysis for existing dams [NEW]
785:25-9-10. Reclassification of the hazard-potential class of a dam [NEW]
785:25-9-11. Upgrading dams due to downstream development [NEW]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. §§ 105.27, 110.1 and following, and 1085.2
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n/a
INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB", see 82 O.S. § 1085.2) has amended Oklahoma Administrative Code ("OAC") Title 785, Chapter 25 relating to dam safety, based on a review and report submitted to the Study Group on Dam Safety created by House Bill 1884 enacted by the Legislature in 2009. The Study Group focused on dams owned and operated by local Conservation Districts and the statewide issue of development that may occur downstream with the resulting re-classification and often very expensive upgrades to design and construction costs. The adopted amendments and new rules provide some limited relief to the requirement to immediately upgrade based on newly stated factors.

More specifically, the amendments and new rules clarify the intent and interpretations of the OWRB relating to the Oklahoma Dam Safety Act (82 O.S. § 110.1 and following) by amending existing rules or promulgating new rules in Chapter 25 as follows:

Add a definition of "Breach analysis", "Failure", and "Loss of human life" in OAC 785:25-1-2;

In OAC 785:25-1-4, clarify for applicants for a variance or waiver of the rules that they must show that the variance will not compromise the safety of the dam and imperil the health, safety, or property of the people of the State;

Clarify the classification for low, significant and high hazard-potential dams in OAC 785:25-3-3;

Add the technical specifications for slope grade as minimum design criteria for new dams in OAC 785:25-3-5;

Add the requirement in OAC 785:25-3-10 that dams must be maintained so that internal and external erosion be prevented and that any erosion that occurs shall be repaired;

Add a requirement in OAC 785:25-5-3 for a breach analysis and map showing breach inundation area for plans and specifications submitted as part of the application process for high hazard dams;

Clarify the requirements in OAC 785:25-5-5, 785:25-5-6, 785:25-5-7 and 785:25-7-5 for notice of application for significant and high hazard dam construction applicants and clarify public participation in the application process;

Clarify the minimum requirements for emergency action plans submitted to OWRB by dam owners pursuant to OAC 785:25-7-7;

Clarify requirements in OAC 785:25-9-1 for information regarding review of emergency action plans and operation and maintenance manuals as part of the inspections conducted for significant and high hazard dam owners;

Add a requirement in OAC 785:25-9-1 for owners of low hazard dams to conduct a review of down-stream development below their dam once every five years and notify the OWRB if development has occurred;

Add a requirement in OAC 785:25-9-1 for requiring dam owners to conduct an unscheduled inspection, at their expense, under certain specified conditions;

Add a new section 785:25-9-9 for the requirement of dam owners with a dam that is high hazard to conduct a dam breach analysis and inundation mapping if one has not been completed;

Add a new section 785:25-9-10 describing the process and procedures for reclassifying a dam's hazard potential; and

Add a new section 785:25-9-11 describing options a dam owner may take instead of structurally upgrading a dam whose hazard potential has been increased.

CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

785:25-1-2. Definitions

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

"Alteration" means only such alteration as may affect the safety of a dam or reservoir.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means and refers to the Oklahoma Water Resources Board or any employee or agent or staff member thereof.

"Breach analysis" means an engineering analysis to determine the area that would be inundated by the failure of a dam.

"Dam" means any artificial barrier, together with appurtenant works, which does or may impound or divert water.

"Enlargement" means any change in or addition to an existing dam or reservoir which raises or may raise the water storage elevation of the water impounded by the dam or reservoir.

"Failure" with respect to a dam means any uncontrolled release of water.

"Gully plug" means any grade stabilization structure that has less than five acre-feet of water storage available below the principal spillway elevation and less than 50 acre-feet of storage volume below the emergency spillway elevation.

"Interested party" means party.

"Loss of human life" means the human fatalities that would result from a failure of the dam, excluding the occasional passer-by or recreationist and without considering evacuation or other emergency actions.

"Notice by publication" means unless otherwise specifically provided, publication in a daily or weekly newspaper of general circulation once a week or two (2) consecutive weeks (minimum seven day interval).

*"**Owner**" means any person who, jointly or severally, owns, controls, maintains, manages, or proposes to construct a dam or reservoir, and includes those shown by records of the county registrar of deeds to have some interest, fee, easement, or otherwise, in the land on which the dam and lake lie and may also include those persons who may derive a direct pecuniary benefit from the existence of the lake* [82:110.3].

"Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in hearings other than hearings on Board rules, regulations and standards.

*"**Person**"means any individual, firm, partnership, association, corporation, any trust formed for the benefit of an individual, business or any public entity, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other legal entity* [82:110.3].

"Repairs" means only such repairs as may affect the safety of a dam or reservoir.

"Reservoir" means any surface depression which contains or will contain the water impounded by a dam.

"Statistical twenty-four (24) hour, fifty (50) year storm" means a storm of twenty-four (24) hour duration with a probable recurrence interval of once in fifty (50) years as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

"Water storage elevation" means that elevation of water surface which may be obtained by the temporary or permanent storage of water. This elevation is normally the lowest point on the top of the dam.

785:25-1-4. Variances and waivers

~~A~~Applicants who request a variance or waiver to rules specified in this chapter must demonstrate, and shall bear the burden of demonstrating that operations under the variance will equal or exceed the protections accorded by the particular rule for which the variance is sought. The variance may also be granted if the Board finds that the cost of compliance with the rule without a variance would impose significant expense without providing for additional safety of the construction for which the variance or waiver is sought, and integrity of the dam will not be adversely affected~~; provided, however, that if the rule for which the variance or waiver is requested relates to design criteria or otherwise calls for professional engineering judgment, the~~. The Board may require that a registered professional engineer certify that the variance or waiver being requested will not adversely affect the integrity of the dam.

SUBCHAPTER 3. RESPONSIBILITY, CLASSIFICATION AND DESIGN STANDARDS

785:25-3-3. Classification of size and hazard potential

(a) All dams shall be classified as to size and for potential hazards as follows:

(1) **Size Classification of Dams.** The size classification shall be based on the following ~~chart~~:

~~SIZE MAXIMUM MAXIMUM~~
~~CLASSIFICATION STORAGE (Ac-Ft) HEIGHT (Ft)~~
~~Small less than 10,000 less than 50~~
~~Intermediate between 10,000 and 50,000 between 50 and 100~~
~~Large over 50,000 over 100~~

(A) **Small.** Small size dams are those which have a maximum storage of less than 10,000 acre feet and have a maximum height of less than 50 feet.

(B) **Intermediate.** Intermediate size dams are those which have a maximum storage of between 10,000 and 50,000 acre feet and have a maximum height of between 50 and 100 feet.

(C) **Large.** Large size dams are those which have a maximum storage of over 50,000 acre feet and have a maximum height of over 100 feet.

(2) ~~**Classification of**~~ **Hazard-Potential Classification of Dams.** The hazard-potential classification ~~shall be based on the following chart.~~of a dam is determined by the downstream risk in the event of a failure, without regard to the physical condition of the dam, as follows:

(A) **Low.** Dams assigned the low hazard-potential classification are those where failure would result in no probable loss of human life and low economic losses.

(B) **Significant.** Dams assigned the significant hazard-potential classification are those dams where failure would result in no probable loss of human life but can cause economic loss or disruption of lifeline facilities.

(C) **High.** Dams assigned the high hazard-potential classification are those where failure will probably cause loss of human life.

~~EXTENT OF POTENTIAL DOWNSTREAM DEVELOPMENT LOSSES~~

~~CATEGORY LOSS OF LIFE ECONOMIC LOSS (Property)~~
~~Low None (No probable future development, may be zoned Minimal (Undeveloped~~
~~to prevent future development. to occasional structure or agriculture)~~
~~Significant None (Potential for future development exists, Appreciable (Notable~~
~~habitable structures may exist in inflow design flood agriculture, industrial or~~
~~floodplain, however, dam failure would not endanger structural)~~
~~lives that would not be endangered if structure did not exist.~~
~~High Yes (One of more habitable structures with loss of life Excessive (Extensive~~
~~due to dam failure likely) community, industrial or agriculture)~~

~~(3)~~

(b) **Hazard-potential classification subject to regulation and change.**

(~~A~~1) For dams which were inventoried in the National Safety of Dams program authorized under 33 U.S.C. 467 et seq., and for which "Phase I" reports pursuant to said inventory were prepared, the hazard classifications set forth in such "Phase I" reports shall be presumed accurate. If the owner of the dam disagrees with the hazard classification, ~~he~~the owner shall have the burden to show that such hazard classification is inaccurate and should be changed.

(~~B~~2) At the discretion of the Board, any proposed or existing dam considered to have classification of a high hazard-potential may be subject to regulation regardless of size or impounding capacity.

(~~C~~3) The hazard-potential classification may change as the area downstream from a dam develops and the dam may be reclassified from time to time under the provisions of 785:25-9-10 and 785:25-9-11.

~~(i) If, due to changed conditions or presentation of more accurate data, the hazard potential classification changes which results in more stringent minimum requirements, the Board shall, after notice and hearing, order such modifications necessary to meet the more stringent requirements.~~

~~(ii) If the hazards potential classification changes which results in less stringent requirements, the Board shall notify the owner of that information and note the same in its records.~~

~~(4) **Determining hazard potential classification.** The extent of potential downstream development loss, and thereby the category of hazard classification, shall be determined through the use of acceptable mathematical computations applied to the downstream area from the dam to a point where the necessary design flood and breach is contained within the 100 year floodplain.~~

785:25-3-5. Minimum design standards (other than spillway)

(a) The construction of the downstream embankment slope shall not be steeper than 3 horizontal units to each 1 vertical unit (3:1) to provide adequate factors of safety against sliding, sloughing or rotation in the embankment and foundation, unless a stability analysis is performed which shows a steeper slope provides an adequate factor of safety.

(b) Except as otherwise provided in this Chapter, all dams must be designed by methods, procedures and criteria that meet or exceed acceptable dam safety engineering practices, including those found in the federal agency publications referenced in 785:25-3-4.

785:25-3-10. Prohibited vegetation and erosion

Trees and heavy vegetation shall be removed from the slopes and crest of earthen embankments and emergency spillway area. Trees and heavy vegetation shall also be removed from an area a minimum distance from the toe of the embankment of 30 feet. Dams shall be maintained such that internal or external erosion is prevented. If erosion is present it shall be repaired utilizing appropriate engineering practices.

SUBCHAPTER 5. APPLICATIONS AND APPROVAL OF CONSTRUCTION

785:25-5-3. Content of plans and specifications

(a) The plans and specifications shall, as a minimum, include the following:

(1) A topographic map of the dam site showing the location of spillway and outlet works. The map shall also show all contiguous property and the owners thereof. The topographic maps for low hazard dams are not required to show test borings, test pits and borrow pits.

(2) A profile along the dam axis showing the location, elevation, depth of borings or test pits including logs or bore holes and/or test pits, provided that plans and specifications for low hazard dams are not required to contain such a profile.

(3) A maximum cross-section of the dam showing elevation and width of crest, slopes of upstream and downstream faces, thickness of riprap, zoning of earth embankment, location of cutoff and bonding trenches, elevations, size and type of outlet conduit, valves and operating mechanism.

(4) Area and capacity curves of the proposed reservoir.

(5) Detailed drawings showing plans, cross and longitudinal sections of the outlet conduits, valves and controls for operating the same, and trash racks.

(6) The discharge capacity in cubic feet per second of the spillway for each foot in water depth above the spillway crest up to the maximum high water level and the formula used in making such determinations.

(7) Detailed plans of spillway structures, cross-section of the channel leading to and from the spillway, spillway

profile, and procedures for operation of the spillway structure.

(8) For high hazard potential classified dams, a breach analysis, and a map showing the breach inundation area utilizing guidelines provide by the Board.

(9) A requirement, during the period of construction, for supervision by an engineer as required in 785:25-7-2.

(~~9~~10) A provision that the plans and specifications may not be substantially changed or changed in any material respect without prior written consent of the Board.

(~~10~~11) A provision stating in detail all matters necessary to ensure that construction is accomplished in a responsible manner and that needed control is exercised by an engineer as required in 785:25-7-2 to ensure construction of a safe structure.

(b) The size of all plans and maps filed shall not be more than 11" x 17" and shall be drawn with an adequate number of views, in proper dimensions, and to a sufficiently large scale so that the plans and maps may be readily interpreted and studied. In addition to the plans and maps required to be filed, if plans and maps larger than 11" x 17" are submitted for review purposes, the larger plans and maps will not be retained by the Board.

785:25-5-5. Notice of application

(a) **Notice preparation.**

(1) After an application has been duly filed and accepted, the Board may require that applicants for permits involving significant and high hazard-potential dams publish notice ~~be published and mailed~~ as it instructs. If such notice is required, a notice will be prepared by the Board~~. The notice shall set forth~~and include information describing the application,~~and~~ the name and address of the applicant and opportunities for public comment.

(2) The notice will be mailed to the applicant with a letter of instructions as to the publication ~~and mailing~~. Prior to publication ~~and mailing as instructed by the Board~~, ~~it will be the responsibility of~~ the applicant ~~to~~shall check the notice ~~as prepared by the Board~~ for any errors.

(b) **~~Notice by publication~~Publication in newspaper~~; mailing~~.**

(1) The notice of application, if required, shall be published once a week for two (2) consecutive weeks on the dates designated by the Board in a newspaper having general circulation in the county ~~of the proposed~~where the dam ~~construction, enlargement, alteration, or repair~~is located.

(2) The last notice shall be published at least ten (10) days prior to the hearing date.

(3) The applicant shall bear the cost of publication and shall see that the notice is reproduced accurately in the newspaper.

(4) If the Board instructs the applicant to mail notice, such mailing shall be by certified mail, return receipt requested.

785:25-5-6. Affidavit of notice publication and mailing

(a) **Affidavit of publication required.**

~~(1)~~ ~~The~~If the Board has required publication of notice, then the applicant shall file the sworn statement of the publisher ~~of the published notice shall be attached to a copy of the notice and shall be filed~~ with the Board ~~on or~~ before the application is considered by the Board ~~or the hearing date, if a hearing is scheduled~~.

~~(2)~~ ~~Such~~The affidavit shall state the dates on which ~~said~~the notice was published in the newspaper.

(b) **Failure to furnish affidavit.** Failure to furnish evidence of publication or of mailing of the notice in the manner required on or before the date the Board considers the application or ~~before the hearing date~~ may be deemed evidence of abandonment of the application.

785:25-5-7. ~~Protest~~ Public comment

(a) Any interested person may ~~protest~~submit written comments on any application.

(b) If ~~no hearing on the application has been scheduled, a hearing will be scheduled after a protest complying with the requirements of 785:4-5-4(b) is received. The hearing shall be held at least five (5) days after the protest is received by the Board~~the Board determines there is significant public interest in an application, it may schedule a public meeting to receive oral comments.

~~(c) During the hearing any~~Any interested ~~party~~person may appear and present ~~evidence and testimony in support of such protest~~comments.

~~(d) All hearings shall be conducted in accordance with Chapter 4 of this Title.~~

(c) The Board shall consider the public comments when evaluating the application, and shall respond or prepare and publish a response to those comments, and may direct the applicant to respond.

SUBCHAPTER 7. POST APPROVAL ACTIONS

785:25-7-5. Changes to plans and specifications after approval

(a) If during construction, enlargement, repair, alteration, or removal of any dam or reservoir, it is found that amendments, modifications, or changes that increase the normal or maximum water elevations, increase spillway releases or discharges, or that increase potential damages downstream will need to be made to the plans and specifications as previously approved by the Board, an amended application including maps, plans, drawings, and specifications shall be submitted to the Board for approval.

(b) ~~Notice~~The owner may be required to publish notice of the date, place and time when the Board will consider the matter ~~shall be given to those interested parties who appeared at the initial proceedings~~as was done for the original application.

(c) Other amendments, modifications or changes shown in as-built plans and specifications may be accepted by Board staff.

785:25-7-7. ~~Warning and evacuation~~Emergency action plans

(a) Owners of existing or proposed dams classified as high hazard-potential, regardless of the size of such dams, and any other dam as determined by the Board, shall ~~provide an adequate warning system and written evacuation plan to protect downstream lives and property, with a written description of said system and written evacuation plan to be approved by and filed with the local Civil Defense authorities~~create and maintain an EAP that utilizes the recommendations, as determined by the Board, of the "Federal Guidelines for Dam Safety, Emergency Action Planning for Dam Owners," published August 2004 by the Federal Emergency Management Agency. The owner shall submit a copy of the EAP to the Board.

(b) ~~Additionally, the written description of the warning system and approved evacuation plan shall be filed with the Board~~Owners shall annually review their EAPs to assure they are still accurate and applicable, and submit any updates to the EAPs to the Board.

SUBCHAPTER 9. ACTIONS AFTER CONSTRUCTION

785:25-9-1. Inspections of dams

(a) **Oversight vested in Board.** Oversight of the maintenance and operation of constructed dams and reservoirs insofar as necessary to safeguard life and property from injury by reason of the failure thereof is vested in the Board.

(b) **Periodic inspections.** Except for low hazard-potential dams, owners are required to have their dams inspected by qualified persons periodically according to a schedule prepared by the Board to meet the requirements of paragraphs (1) and (2) of this subsection and shall include review of the Emergency Action Plan and of the operation and maintenance manual to assure they are still accurate and applicable. Periodic inspections of dams shall be scheduled according to hazard-potential classifications as follows:

(1) High hazard. High hazard-potential dams shall be inspected at least once annually.

(2) Significant hazard. Significant hazard-potential dams shall be inspected at least once every three years.

(3) Low hazard. Low hazard-potential dams shall be inspected at least once every five years, which inspection shall be conducted by the ~~Board without charge to the~~ owner and shall consist of a review of the hazard classification on forms provided by the Board.

(c) **Expense of periodic inspections.** Periodic inspections shall be at the owner's expense (except for low hazard-potential periodic inspections) and shall be conducted by a Registered Professional Engineer hired by the owner who shall have training and/or construction of dams and reservoirs, or by an engineer of any United States governmental agency acting in his official capacity. Provided that inspections of low hazard classification dams may be conducted by persons who are not Registered Professional Engineers but who are trained in inspecting dams. If a periodic inspection is conducted by the owner or his representative, a written inspection report shall be submitted to the Board not later than 30 days after the inspection and shall contain, ~~at a minimum,~~ information as set forth in a Board's ~~inspection~~hazard verification report ~~and in a format substantially similar to a Board's inspection report~~.

(d) **Unscheduled inspections.** Unscheduled (non-periodic) inspections, such as those conducted in response to complaints, after major heavy precipitation events, or in emergency situations, ~~shall~~may be conducted by Board staff, or the Board may require the owner to conduct an unscheduled inspection at the owner's expense. No fee for such inspection shall be due, provided that a request for inspection by other parties ~~and fees therefor~~ shall be governed by 785:25-9-6.

(e) **United States dams not subject to inspection.** Any dam *constructed by the United States or its duly authorized agencies shall not be subject to inspection while under the supervision of officers or the United States.* [82:105.27]

(f) **Board to notify when inspection due; violation.** The Board shall notify persons shown by its records to own the dam of the date the periodic inspection of the dam is due. Such notice shall require the owner to advise the Board by a date specified when an engineer retained by the owner will conduct the inspection. Failure to so notify the Board or to have the inspection completed shall constitute a violation of Board rules.

785:25-9-9. Breach analysis for existing dams

If an existing dam does not have a breach analysis, and a failure might put lives at risk downstream, then after the next regularly scheduled inspection the Board's Engineer may direct the owner to provide a breach analysis and breach inundation map, utilizing modeling and analysis guidelines provided by the Board, and according to a reasonable schedule of compliance.

785:25-9-10. Reclassification of the hazard-potential class of a dam

(a) The Board may reclassify the hazard-potential classification of a dam at any time based on an inspection and downstream hazard evaluation.

(b) If the Board determines that the hazard-potential class of a dam should be increased to a greater hazard-potential classification, then the Board shall notify the owner of that finding and of the upgrade options that are available, and set a reasonable deadline, based on the circumstances, for the owner to:

(1) file an application to upgrade the dam to meet the requirements for a greater hazard-potential classification; or

(2) seek an individual proceeding to contest the finding; or

(3) perform a breach analysis and inundation mapping or, for existing dams that lack a breach analysis, through the use of acceptable mathematical computations applied to the downstream area from the dam to a point where the

necessary design flood and breach is contained within the main stream channel, utilize modeling and analysis guidelines provided by the Board to show the dam should not be reclassified to the greater hazard-potential classification.

785:25-9-11. Upgrading dams due to downstream development

(a) **Alternatives.** Instead of upgrading the dam using structural methods, an owner may seek to implement alternative methods. Such alternative methods shall include but is not limited to the following:

(1) a current breach analysis and hydrologic study that demonstrates a lesser hazard-potential classification is correct; or

(2) a current breach analysis and design flood analyses that demonstrate existing downstream developments would not be adversely affected by more than one foot difference between breach and non-breach simulations in the affected area, or records showing the downstream development has been dedicated to non-residential and non-commercial use; or

(3) a plan to permanently remove the dam.

(b) **Schedule of Compliance.** An owner may seek a compliance schedule with the Board that sets the timeframes for various stages of work to be performed. In considering such applications to upgrade on a compliance schedule the Board shall evaluate whether the current dam will not significantly affect the public safety during the compliance period.

[OAR Docket #10-665; filed ??-??-??]

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

[OAR Docket #10-666]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:30-1-4. Requirement for water right [AMENDED]
Subchapter 3. Permit Application Requirements and Processing
785:30-3-6. Well spacing [AMENDED]
Appendix A. Application for a Permit to Use Groundwater [REVOKED]
Appendix A. Application for a Permit to Use Groundwater [NEW]
AUTHORITY:
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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended Oklahoma Administrative Code ("OAC") Title 785, Chapter 30 as follows:

OAC Section 785:30-1-4, Requirement for a water right, addresses requirements for filing an application for a permit to use groundwater (see 82 O.S. §§ 1020.1 and following and 1085.2, and OAC Title 785 Chapter 30 Subchapters 1 and 3). OAC 785:30-1-4 has been amended by adding language to provide that if an application is filed after use of the water has begun, the application filing fee will be doubled. The circumstance creating the need for the amendment is to provide an incentive to encourage compliance with the law that requires persons to obtain a permit before using water. This amendment will affect all permit applications, including provisional temporary permit applications.

OAC Section 785:30-3-6, Well spacing (see 82 O.S. §§ 1020.17 and 1020.18), has been amended in two ways. The first amendment is to provide that the existing spacing of 1,320 feet will apply in bedrock aquifers, and to add a new spacing provision of 660 feet for wells in alluvium or terrace deposit aquifers. The circumstance creating the need for these amendments is to acknowledge that well pumping effects are different for wells located in bedrock aquifers and alluvium aquifers. The second amendment simplifies well spacing location exceptions by deleting limits on the exception justification criteria (by changing them to "examples" so other justifications can be brought as evidence).

OAC 785:30 Appendix A containing the application form (see 82 O.S. §§ 1020.7 and following and 1085.2, and OAC 785:30 Subchapters 1 and 3) has been revoked and reenacted to streamline, eliminate redundant and unnecessary requirements, and clarify the information elicited for an application. Among other things, a section has been added to the form for an individual applicant to state, if and as required by 56 O.S. § 71, whether (s)he is a U.S. citizen or in the alternative is an alien lawfully present in the U.S. The circumstances creating the need for the amendments include comments about the length and complexity of the application that requests information that may not be pertinent and helpful to analyze the application for compliance with the law and rules.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

785:30-1-4. Requirement for water right

(a) **Who should file.** *Any person intending to* [82:1020.7] initiate a use of groundwater for beneficial use as defined herein, other than domestic use as defined herein, shall make application and obtain an appropriate permit before completing any fresh water well for such purposes. An application for a permit to use groundwater is not required to be filed for testing. For purposes of this section, testing shall be considered the conducting of a pump, well acceptance, drawdown or aquifer

test that will require the continuous pumping of the well for twenty-four (24) hours or less, or the cumulative pumping for seventy-two (72) hours or less within a five (5) day period. If pumping for longer periods occurs or is intended, an application must be filed.

(b) **Forms to be furnished by the Board.** The Board will furnish, without charge, blank application forms and instructions for filing for a groundwater permit. Each blank on the application shall be filled in by the applicant as accurately and completely as the circumstances permit with all the relevant data. Supplements may be attached if space on the form is insufficient. If a supplement is used, the data entered thereon should be segregated into paragraphs with numbers corresponding to the paragraph numbers of the forms and properly cross-referenced thereto.

(c) **Applications to be amended by applicant.** Groundwater applications will be altered, corrected, amended or revised by the Board only upon written request signed by the applicant or his duly authorized agent. Changes may also be made directly on the application, or filed through the Board's online application service, by the applicant or his duly authorized agent or by telephone instructions to the Board from the applicant or his duly authorized agent to be followed by written confirmation. All changes must meet the requirements of 82 O.S. §§1020.1 et seq. and these rules and regulations.

(d) **Corrections, changes, or amendments to defective applications.** If the application is defective as to form, the Board shall advise the applicant of the corrections, amendments, or changes required and sixty (60) days shall be allowed for the refiling thereof. If the application is not corrected, amended, or changed within the time required, the Board may inactivate the application.

(e) **Corrected applications not filed in time allowed.** Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refiling.

(f) If an application is filed after non-domestic use of the water has begun, the application filing fee due for the type of permit requested as set forth in Chapter 5 of the Oklahoma Administrative Code, title 785, shall be doubled.

SUBCHAPTER 3. PERMIT APPLICATION REQUIREMENTS AND PROCESSING

785:30-3-6. Well spacing

(a) **Spacing.** Within bedrock groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within one thousand three hundred twenty feet (1320') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin. Within alluvium and terrace groundwater basins where the maximum annual yield has been determined, no new or proposed well(s) shall be drilled and completed within six hundred sixty feet (660') of an authorized existing well or proposed well location on lands of another, provided that the well on lands of another is capable of taking water from the same basin.~~This~~ These well spacing ~~provision~~provisions shall not be applicable to plugged or abandoned wells or wells authorized pursuant to a provisional temporary permit if no regular, temporary, special or limited quantity permit application requesting authorization to use the same wells is filed.

(b) **Location exceptions.** A location exception shall be granted if the person requesting the exception shows and the Board determines in an individual proceeding that drilling or completing the new or proposed well at the location required to comply with the established well spacing set forth in subsection (a) of this section would be inequitable or unreasonable, and that notice, as set forth in 785:30-3-4, of the location exception request is provided ~~and that one of the following conditions is met~~. The following situations are examples to show that compliance with well spacing would be inequitable or unreasonable:

(1) No objection is received from any landowner having a well located within the established well spacing distance of the proposed well requested to be authorized.

(2) ~~There is presented substantial, competent evidence to the Board and the Board determines that the well requested to be authorized will not be pumped at a rate and/or duration that creates a cone of depression which will cause an excessive drawdown in the existing wells located within the established well spacing distance of the well proposed to be authorized.~~

~~(3)~~ The amount or dimensions of the land dedicated to the permit precludes the drilling of a well in compliance with the spacing requirement set forth in (a) of this section.

(~~4~~3) The well requested to be authorized is a well which was drilled, completed and used prior to the date of the maximum annual yield determination and which does not meet the spacing requirements of (a) of this section.

(~~5~~4) The applicant presents substantial, competent evidence to the Board and the Board determines that the amount of groundwater available in locations that would meet spacing requirements is insufficient for the purposes to be authorized.

APPENDIX A. APPLICATION FOR A PERMIT TO USE GROUNDWATER [REVOKED]

APPENDIX A. APPLICATION FOR A PERMIT TO USE GROUNDWATER [NEW]

OFFICE USE ONLY

Application No._____
Type of Permit_____
Groundwater Basin_____
Equal Proportionate Share_____

APPLICATION FILING FEE

Amount of Water Requested	Fee
0 – 320 acre-feet	$_____
321 – 640 acre-feet	$_____
641 – 1500 acre-feet	$_____
Over 1500 acre-feet	$_____*

*Plus $_____ for each 500 acre-feet (or any increment thereof) over 1500 acre-feet. (Maximum Fee $3,000.00)

APPLICATION FOR PERMIT TO USE GROUNDWATER
OKLAHOMA WATER RESOURCES BOARD
PLANNING & MANAGEMENT DIVISION
3800 North Classen Blvd., Oklahoma City, OK 73118
Phone: (405) 530-8800 Fax: (405) 530-8900
Website: www.owrb.ok.gov

1. NAME & ADDRESS *(Print the applicant's full name, as listed on the ownership documentation, and mailing address)*

Applicant Name_____ Phone (_____)_____-_____
Fax (_____)_____-_____
Address_____City_____State_____Zip_____

Contact Name (**if applicable**)_____ Phone (_____)_____-_____
Fax (_____)_____-_____
Address_____City_____State_____Zip_____

2. PURPOSE(S) FOR WHICH WATER WILL BE USED *(List the purpose(s) for which the water will be used and the number of acre-feet for each purpose. Note: one acre-foot of water will cover one acre of land one foot deep and is equal to 325,851 gallons)*

AMOUNT PURPOSE

_____acre-feet of water will be used for_____
_____acre-feet of water will be used for_____

OFFICE USE ONLY
SIC Codes
_____
_____

Irrigation Only: _____acres will be irrigated. Proposed Crops_____

3. OWNERSHIP & LEGAL DESCRIPTION OF LAND DEDICATED *(List the legal description of all the lands to be dedicated. Please do not use city lot and block numbers or metes and bounds. Legal description must match the description on ownership documents. If additional space is needed, list on a separate sheet of paper.)*

_____acres owned; _____acres leased; _____acres platted **(municipal only)** and dedicated to the application.

_____acres in_____1/4 of _____1/4 of _____1/4 of Section____Twp.____ O N O S Rng.___ O EIM O WIM O ECM in _____ County

_____acres in_____1/4 of _____1/4 of _____1/4 of Section____Twp.____ O N O S Rng.___ O EIM O WIM O ECM in _____ County

_____acres in_____1/4 of _____1/4 of _____1/4 of Section____Twp.____ O N O S Rng.___ O EIM O WIM O ECM in _____ County

Water will be used in _____County, Oklahoma

4. WELL INFORMATION *(Please specify the number of wells requested and the legal description of either the 10-acre tract of land where the well will be located. If the 10-acre tract is not known, please describe the potential well area where wells may be drilled. If additional space is needed, list on a separate sheet of paper.)*

Water is to be withdrawn from _____well(s) located in:

____1/4 of ____1/4 of ____1/4 of Section____Twp.____ O N O S Rge.___ O EIM O WIM O ECM in _____ County Existing Well? O Yes O No

____1/4 of ____1/4 of ____1/4 of Section____Twp.____ O N O S Rge.___ O EIM O WIM O ECM in _____ County Existing Well? O Yes O No

____1/4 of ____1/4 of ____1/4 of Section____Twp.____ O N O S Rge.___ O EIM O WIM O ECM in _____ County Existing Well? O Yes O No

For wells that are existing: Depth of Well(s)_____feet; Pumping Rate(s)_____ gallons per minute

5. MUNICIPALITIES AND RURAL WATER DISTRICTS **ONLY**

If platted lands within the municipal boundaries are dedicated:

Will the municipality make water available to the platted lands area? O Yes O No

Will the well(s) be located not less than 600 feet within the boundaries of the municipal limits? O Yes O No

Will the well(s) be drilled on the platted lands dedicated? O Yes O No

6. CITIZENSHIP AFFIDAVIT

Are you a citizen of the United States of America? O Yes O No

If no, are you a qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States? O Yes O No. My A-number is _____ and a true and correct copy of my immigration document, including my date of birth, user case number, and immigration document type and its expiration date, must be attached.

(PLEASE NOTE: Each individual listed as an applicant must provide a citizenship affidavit. If the land is owned by more than one person, a copy of this page will need to be filled out, signed, notarized and filed with the completed application.)

7. SIGNATURES

Upon my oath or affirmation, I swear or affirm (1) that all information submitted to the Oklahoma Water Resources Board in connection with this application is true and accurate to the best of my knowledge; and (2) that I or the person or entity I represent will comply with all applicable laws and regulations contained in Chapters 30 and 35 of the Oklahoma Water Resources Board rules and all other applicable regulations of the State of Oklahoma or its agencies, and any lawful conditions imposed by the Oklahoma Water Resources Board, which apply or pertain to the use of fresh groundwater.

_____
SIGNATURE OF APPLICANT

_____
PRINT NAME

_____
TITLE (IF APPLICABLE)

NOTARY

STATE OF_____)
) ss.
COUNTY OF_____)

The foregoing instrument was acknowledged before me this _____day of _____, 20_____.

_____
Notary Public
My commission expires:_____
(SEAL)

8. APPLICATION SUBMISSION AND PROCESSING

The submitted application must include:

a. The appropriate filing fee;

b. The original application, typed or printed in ink, signed and notarized; and

c. Deed(s), lease(s), and / or letter (s) of consent as required.

d. Other documentation may be requested as needed to complete the application review.

Please note: Any incomplete or unresponsive answers may cause a delay in the processing of your application.
In addition, Oklahoma Administrative Code (OAC) 785:30-1-4(d) states: "If the application is defective to as to form, the Board shall advise the applicant of the corrections, amendments, or changes required and sixty (60) days shall be allowed for the refilling thereof. If the application is not corrected, amended, or changed within the time required, the Board may inactivate the application. Furthermore, OAC 785:30-3-3(b), states: "If an applicant does not correct an application or publish notice as instructed by the Board, and no further proceedings are initiated by the applicant for six months or more after last contact with the Board, the application shall be deemed withdrawn. The Board shall provide notice to the applicant that the application has been deemed withdrawn.

Application #_____

Oklahoma Water Resources Board Application Plat

Applicant Name_____

Note: Drawings must match the legal descriptions provided in questions #3 and #4 in the application and one copy of the plat must be filed with the application.

NW NW NW	NE NW NW	NW NE NW	NE NE NW	NW NW NE	NE NW NE	NW NE NE	NE NE NE
SW NW NW	SE NW NW	SW NE NW	SE NE NW	SW NW NE	SE NW NE	SW NE NE	SE NE NE
NW SW NW	NE SW NW	NW SE NW	NE SE NW	NW SW NE	NE SW NE	NW SE NE	NE SE NE
SW SW NW	SE SW NW	SW SE NW	SE SE NW	SW SW NE	SE SW NE	SW SE NE	SE SE NE
NW NW SW	NE NW SW	NW NE SW	NE NE SW	NW NW SE	NE NW SE	NW NE SE	NE NE SE
SW NW SW	SE NW SW	SW NE SW	SE NE SW	SW NW SE	SE NW SE	SW NE SE	SE NE SE
NW SW SW	NE SW SW	NW SE SW	NE SE SW	NW SW SE	NE SW SE	NW SE SE	NE SE SE
SW SW SW	SE SW SW	SW SE SW	SE SE SW	SW SW SE	SE SW SE	SW SE SE	SE SE SE

_____ Section – Township – Range

_____ County

Land Dedicated

Area of Use

Potential Well Location Area on Dedicated Lands

(If exact proposed well location is not known)

● Proposed well locations *(if known)*

○ Other existing wells *(not part of application)*

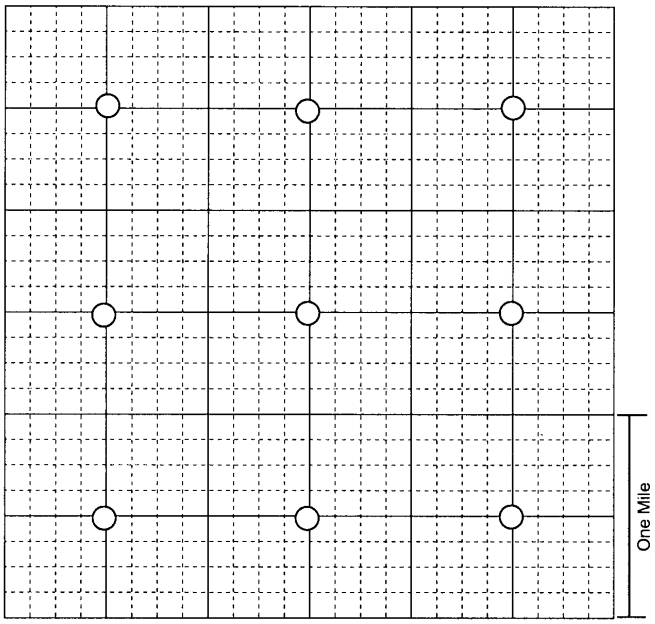
Application #_____

Oklahoma Water Resources Board Surface Estate Owners Map

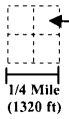
Applicant Name_____

The applicant must furnish names and mailing addresses of all surface estate owners of land located within one-thousand three hundred twenty (1320') from the actual location of existing or proposed wells and/or from the outside boundaries of all potential well location areas subject of this application, unless otherwise directed by the Board. Mark the actual location of existing and proposed wells and shade all potential well location areas subject of the application.

One copy of this form must be filed with the Groundwater application.



Plat Scale



Each smaller square represents a ten (10) acre tract. (or 660 ft x 660 ft)

SURFACE ESTATE OWNERS OF LANDS LOCATED WITHIN 1320 FEET OF WELL LOCATIONS OR AREAS

	Name	Address
A.	_____	_____
B.	_____	_____
C.	_____	_____
D.	_____	_____
E.	_____	_____
F.	_____	_____
G.	_____	_____
H.	_____	_____
I.	_____	_____

[OAR Docket #10-666; filed ??-??-??]

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

[OAR Docket #10-667]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:35-1-2. Definitions [AMENDED]
Subchapter 3. Licensing and Certifications
785:35-3-2. Expiration and renewal of licenses and certifications [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
Subchapter 11. Plugging and Capping Requirements for Wells and Test Holes
785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. §§ 1020.1 et seq., 1020.16 and 1085.2
DATES:
Comment period:
November 16, 2009 through January 12, 2010
Public hearing:
January 12, 2010
Adoption:
February 9, 2010
Submitted to Governor:
February 19, 2010
Submitted to House:
February 19, 2010
Submitted to Senate:
February 19, 2010
Gubernatorial approval:
February 26, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 15, 2010.
Final adoption:
April 15, 2010
Effective:
May 27, 2010
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended Oklahoma Administrative Code ("OAC") Title 785, Chapter 35 as follows:

OAC Section 785:35-1-2, containing definitions, has been amended by adding the definition of "Direct Push Monitoring Well" to specifically describe the well and its purpose;

Subchapter 3 on licensing requirements has been amended by adding provisions to streamline the renewal process by establishing a grace period to extend from June 1 to June 30 of each year. After the grace period, the application will be treated as a new application;

Subchapter 3 has also been revised to allow pre-approved online courses to meet the continuing education requirement for drillers and installers and to establish that not more than 4 units hours of the required 8 units may be completed online;

Subchapter 7 prescribing the minimum standards for construction of water wells has been revised to require an additional annular seal to be used by the well driller when flowing sand is encountered near the surface and conductor/surface casing is used;

Subchapter 7 has also been revised to amend the minimum standards to provide construction standards for monitoring wells and piezometers that are completed using direct push (DP) technology; and

Subchapter 11 prescribing the plugging and capping requirements for wells and test holes has been revised to include plugging standards for monitoring wells and piezometers that are completed using direct push (DP) technology.

The circumstances creating the need for these amendments include comments received from the Well Drillers and Pump Installers Advisory Council, and issues arising in the implementation of the program by OWRB staff during the preceding year. See 82 O.S. §§ 1020.1 and following, 1020.16 and 1085.2.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 27, 2010:

SUBCHAPTER 1. GENERAL PROVISIONS

785:35-1-2. Definitions

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

"Abandoned well" means a well that has been permanently taken out of use, or is in such a state of disrepair that using it is impracticable or threatens to contaminate the groundwaters of the State.

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§250 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Commercial drilling" means *drilling and installation as a business, trade, or occupation for compensation.* [82:1010.1]

"Commercial installation" means *installation as a business, trade or occupation for compensation.* [82:1020.1]

"Commercial plugging" means plugging wells or borings *as a business, trade or occupation for compensation.* [82:1020.1]

"Direct push geological boring" means a geological boring in which tools and sensors are pushed into the ground using static weight combined with percussion as the energy to remove soil or make a path for the tool to obtain geotechnical, soil, water, and/or vapor information.

"Direct push monitoring well" means a well installed by direct push technology and used to obtain a representative groundwater sample for determining groundwater chemistry

or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Drilling water" means water that is used in the drilling of a well which is of a quality suitable for drinking or is uncontaminated water with a residual chlorine content equal to or greater than one hundred (100) milligrams per liter.

"Firm" means an individual or any kind of legal entity, such as a sole proprietorship, partnership or corporation that holds a license to conduct any well drilling or pump installation activity.

"Fresh water" means water which has less than five thousand (5000) parts per million total dissolved solids. All other water is salt water. [82:1020.1(7)]

"Fresh water observation well" means any well used to measure the depth to the water table or parameters of fresh water aquifer performance.

"Geotechnical boring" means any excavation deeper than four feet (4'), that is drilled, augured, bored, cored, washed, driven, jetted or otherwise constructed and which is used or capable of being used to obtain soil or geological formation samples or information, or for the determination of groundwater quality or remediation.

"Geothermal well" means heat pump well.

"Groundwater well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used for the production of groundwater.

"Heat exchange well" means the same as, and includes, the terms "geothermal well", "heat pump well", and "heat sink well".

"Heat pump well" means a boring or cased hole that uses or is capable of using the thermal characteristics of the geologic formations or groundwater if encountered, and includes but is not limited to an open or closed loop groundwater heat pump system.

"Heat sink well" means a well utilized for heat exchange purposes, including but not limited to, a heat pump well and a geothermal well.

"License" means a certification issued by the Board to qualified persons making application therefor authorizing such persons to engage in weather modification and control operations or the business of drilling or plugging wells or borings and installing water well pumps.

"Monitoring well" means a well used to obtain a representative groundwater sample for determining groundwater chemistry or quality; for detecting, recovering, or remediation of actual or potential contamination; or for monitoring the unsaturated zone above a water table or confined aquifer, and includes site assessment observation wells and unsaturated zone monitoring wells.

"Open-loop heat pump water supply well" means a well drilled to supply water for the purpose of heat transfer.

"Operator" means the individual person engaging in the actual operation and use of the well drilling equipment and facilities and who performs and supervises the actual on-site construction, completion and handling of wells or well test holes, and conducts tests, and obtains and records well or well test hole data.

"Piezometer" means cased holes that monitor or are capable of monitoring water pressures or soil moisture tensions, primarily located at dam sites or other man-made water retention structures.

"Pump" means mechanical equipment or device used to remove water from wells and shall include, but is not limited to pumps, seals, tanks, fittings, pipes from wells to pressure tanks, pressure switches, shut off valves for pressure tanks, related equipment and controls.

"Pump installer" means a person who is qualified to engage in the installation, removal, alteration, or repair of water well pumps and pumping equipment used in connection with a water well and breaking of the water well seal.

"Sand point well" means a groundwater well with a borehole constructed by means of driving a small diameter pipe having perforations downward into a loose sandy soil or by means of forcing uncontaminated groundwater through a small diameter pipe having perforations with sufficient pressure to displace loose sandy soil with the pipe.

"Site assessment observation well" means a well used to measure the depth to the water when used for evaluation, classification or determination of the groundwater flow direction at a site that is or might be contaminated.

"Sleeve" means well casing that is installed at the surface surrounding the production casing and used solely for the purpose of attaching a pitless adapter unit and is separate from surface casing and conductor pipe.

"Unsaturated zone monitoring well" means any well used for the characterization, evaluation or monitoring of the unsaturated area above the water table or zone.

"Vertical closed-loop heat pump well" means the borehole perpendicular to the natural grade of the earth surface drilled deeper than ten (10) feet into which a closed-loop pipe is placed for the purpose of heat transfer.

"Water return well" means a well constructed for the purpose of returning water that has passed through the heat pump system to the same aquifer from which the water was produced by the open-loop water supply well.

"Water well test hole" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed which is used or is capable of being used to determine the location of fresh groundwater and/or the capacity of the geologic formation to yield groundwater.

"Well" means any type of excavation for the purpose of obtaining groundwater, to monitor, to remediate, or observe conditions under the surface of the earth, but does not include oil and gas wells.

"Well driller" means and refers to the individual owner-proprietor or partnership, firm or corporation engaged in the business of the commercial drilling, plugging or reconstruction and the test drilling of wells in the State of Oklahoma.

SUBCHAPTER 3. LICENSING AND CERTIFICATIONS

785:35-3-2. Expiration and renewal of licenses and certifications

(a) **Expiration.** All licenses and operator certifications issued by the Board shall expire on June 30 of the first or second year following issuance of the license or operators certification. New licenses or operator certifications shall be issued for a one or two year period, so that all odd license numbers and associated operators certifications shall expire in odd numbered years and all even numbered licenses and associated operator certifications shall expire in even numbered years.

(b) **Renewal.** All licenses and certifications may be renewed for a period of two years, subject to the rules in this Chapter. On or before May 31 of the year the license or certification is to be renewed, except as specified in this subsection, each licensee and certified operator shall submit the following:

(1) A completed application for renewal on forms furnished by the Board with the affidavit executed by the listed contact person for the licensee, and

(2) The license or operator certification renewal fee as provided for in these rules, provided that renewal fees shall not be due for licenses and certifications issued after January 1 of the year in which the first renewal is due, and

(3) The indemnity fund fee for those activities for which the license or operator certification is valid, and

(4) The late fee if the renewal application is submitted after ~~June 30~~May 31.

(c) **Grace period.** Any licensee or operator who allows his or her license or certification to lapse will be given until ~~July 31~~June 30 of the year in which they are scheduled to renew their license or operator certification in which to renew his or her license or certification without an examination; provided however, a late fee shall be due after ~~June 30~~May 31 as set forth in 785:5-1-11. After the grace period, the application will be treated as a new application. Provided however, any licensee or operator fulfilling a military obligation shall be granted an indefinite grace period as determined by the Board.

(d) **Board action.** The Board may grant the renewal application or deny the application as provided in this subchapter of these rules.

(e) **Continuing education requirement.**

(1) Beginning July 1, 2004, completing annual continuing education shall be required before any license or operator certification will be renewed, unless otherwise specifically determined by the Board or as set forth in paragraph (8) of this subsection. Information concerning the continuing education attended must be submitted with the application for renewal form.

(2) All licensees and all certified operators shall be required to attend at least four (4) units of approved continuing education during each year period (from July 1 through June 30) or a total of eight (8) units for each two-year period of renewal of which one unit must be comprised of an approved Oklahoma Rules and Regulations unit.

(3) Continuing education shall be required during the first full year that the license or operator certification is active and during each year the license or operator certification is renewed.

(4) One unit of continuing education shall equal fifty (50) minutes of approved instruction.

(5) Approved trade shows and exhibitions attended shall be counted as one unit.

(6) Continuing education instruction relating to well drilling and plugging and pump installation which are provided by or approved by another state's well drilling program are pre-approved for the Oklahoma continuing education requirement if the other state's well drilling program offers reciprocity by accepting Oklahoma's pre-approved continuing education instruction.

(7) Other continuing education instruction and trade shows and exhibitions will be considered for approval by the Board after information concerning the continuing education or trade show and exhibition is submitted to the Board for review. Pre-approval of continuing education, trade shows and exhibitions may be requested for any licensee or certified operator.

(8) Online continuing education that has been designated as pre-approved by the Board shall be accepted for no more than four (4) units of the required eight (8) units for the two-year renewal period.

(9) If a licensee or certified operator fails to attend four (4) or eight (8) units as the case may be during the renewal period, the application for renewal may be approved after payment of $250.00 in penalty and double the continuing education requirements (eight (8) or sixteen (16) units as the case may be).

SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells and water well test holes whether constructed by a person having a valid license or by any other person. More stringent construction standards may be required for areas of known contamination as identified in Chapter 45, Appendix H.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(b) **Minimum location standards.**

(1) Every new groundwater well, fresh water observation well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) 10 feet from a closed or tight sanitary sewer line, 15 feet from aerobic (above ground) sprinkler spray, and 50 feet from an aerobic sprinkler head,

(B) 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, and

(C) 50 feet from all other pollution sources, provided however, if the well is 50 feet to 75 feet and located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed, and

(D) 75 feet from all other pollution sources if the well is level with the pollution source and 100 feet from all other pollution sources if the well is located down-gradient from the pollution source.

(2) If not prohibited by the owner of the well or other governmental agency requirements, groundwater wells which will not be used for drinking water may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon, and not a subsurface septic system,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or pitless adaptor connection.

(3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.

(c) **Casing of groundwater and fresh water observation wells.** Except for sand point wells, requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

(1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt water zone.

(2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least twelve (12) inches above the natural ground level or eight (8) inches above the floor surface for surface pad completions. In areas where known flooding occurs, the casing shall extend twenty-four (24) inches above the maximum level of such flooding.

(E) Casing meeting or exceeding the following:

(i) new or clean and sanitary used carbon or stainless steel, or

(ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or

(iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) **Cement grouting and concreting.** Except for sand point wells, cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.

(1) All new groundwater wells and fresh water observation wells shall be made water-tight around the

outside of the production casing by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:

(A) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and

(B) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, extend a minimum of eight feet (8') below ground level in the borehole, and the surface seal shall be a minimum of one and one-half inch ($1\frac{1}{2}$") thick.

(C) If the surface casing does not extend twelve inches (12") above natural ground level and a pitless cap or sanitary seal is not installed, then a ten foot (10') cement grout/bentonite surface seal shall be installed in the area between the surface and production casings terminating within four feet (4') of land surface.

(D) When deemed necessary to utilize conductor or surface casing to control flowing material near surface, an additional cement/bentonite seal shall originate ten feet (10') below the base of the conductor/surface casing and shall terminate ten feet (10') above the base of the conductor/surface casing between the conductor/surface casing and production casing.

(2) The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate no deeper than four feet (4') from the natural land surface for a minimum total length of ten feet (10') after all settling of the cement or bentonite/cement has occured, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of twenty percent (20%) percent bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency. Prehydration requires that the bentonite be properly mixed with the recommended amount of water before the mixture is installed.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout or cement/bentonite to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(8) If a high solids bentonite grout is used for the bentonite seal portion below the cement grout portion of the surface seal, the grout shall contain a minimum, twenty percent (20%) solids by dry weight.

(9) It is not an acceptable installation method to install dry cement around the casing and then add water.

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of drawdown tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 100 parts per million chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

(h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:

(1) The sand point well shall be drilled to a total depth of no more than thirty feet (30'); and

(2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3') around surface casing, then the remaining bore hole can be installed then production casing installed.

785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings

(a) **General requirements.**

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all monitoring wells, including site assessment observation wells and unsaturated zone monitoring wells, and geotechnical borings, whether constructed by a person having a valid license or by any other person.

(2) **Construction.** Monitoring wells and geotechnical borings shall be constructed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the ground around the casing or boring, by entering the wells or boring, or by entering the fresh groundwater from pollution sources below the ground.

(A) **Drilling equipment.** Drilling equipment shall be decontaminated if contamination is encountered in the well or borehole.

(B) **Drilling procedures.** Drilling procedures shall be carried out in such a manner that will prevent or minimize contamination.

(C) **Construction material.** All construction material shall be in a condition that will prevent or minimize contamination.

(3) **Proper maintenance and plugging.** The driller and the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources and to see that unused wells and boring are properly plugged.

(4) **Other regulations.** These rules are minimum standards and other laws and regulations which are more stringent may be applicable.

(b) **Minimum standards for construction of monitoring wells.**

(1) **Diameter of borehole.**

(A) The diameter of boreholes for monitoring wells, with the exception of boreholes for unsaturated zone monitoring wells, shall be at least three inches greater than the nominal diameter of the well casing and screen for the entire length of the casing.

(B) The diameter of boreholes for unsaturated zone monitoring wells shall be at least one and one-half (1 1/2") inches greater than the nominal diameter of the well casing for the entire length of the casing.

(2) **Casing selection and casing joints.**

(A) All wells shall be cased. Casing material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations.

(B) When PVC casing is used, the casing shall meet or exceed the standard dimension ratio (SDR) of twenty-one (21).

(C) The minimum diameter for monitoring well casing shall be a nominal two (2) inches, with the exception of casing for unsaturated zone monitoring wells. The minimum diameter for unsaturated zone monitoring well casing shall be a nominal one-half inch. Methane gas probes at solid waste management sites shall be exempt from minimum casing diameter requirements.

(D) The casing shall be connected by flush threaded joints or have the ability to be connected by another mechanical method that does not introduce pollutants into the well. Glued joint casing shall not be used when monitoring organics.

(E) The casing joints shall be made water tight by a method that does not introduce pollutants into the well (e.g. wrapping the casing joint with Teflon tape or placing an o-ring or gasket in the joint).

(3) **Bottom cap required.** A bottom cap shall be installed on each monitoring well.

(4) **Screen selection and setting.**

(A) All wells shall be screened and screen material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations, provided that the minimum screen depth shall be two and one-half feet (2 $\frac{1}{2}$') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission.

(B) The well screen shall be factory wire wrapped or factory slotted. Well screens shall not be field slotted.

(C) Slot size shall be selected to prevent or minimize infiltration of the filter pack through the well screen.

(D) Screens shall be of sufficient length to detect, monitor or otherwise describe the contaminant plume according to site specific conditions (e.g. seasonal water level fluctuations). Screen length shall be determined so that commingling of fluids from separate groundwater zones does not occur.

(E) Screen joints shall be placed in the well in such a manner as not to interfere with the accurate investigation of the groundwater quality.

(5) **Filter pack selection and placement.**

(A) All wells shall be have a filter pack and aggregates used for filter pack shall consist of uncontaminated quartz sand, silica or other material that will not affect the groundwater quality.

(B) Filter pack shall be selected to prevent or minimize infiltration of the geologic formation (e.g. fines migration or sand buildup).

(C) Filter pack shall extend two (2) feet above the top of the screen unless such extension would allow vertical communication of pollution through the filter pack.

(D) Filter pack shall be placed in the annulus of the well in such a manner that bridging of the filter pack material will not occur.

(E) When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the filter pack shall extend a minimum of 0.5 feet above the top of the screen.

(6) **Sealing requirements.** Requirements for proper filter pack sealing, annular sealing and surface sealing for monitoring wells shall be as follows:

(A) **Sealing material.** All sealing materials shall be compatible with ambient geological, hydrogeological and climatic conditions, as well as any man-induced conditions anticipated to occur during the life of the monitoring well. Any cement used as a sealant shall be equivalent to or have the same properties as ASTM C-150 cement types I-V (commonly known as Portland cement).

(B) **Filter pack seal.** A minimum of two (2) feet of uniformly sized particles of sodium bentonite pellets or granules of no less than 0.25 inches and no more than 0.75 inches in size shall be placed immediately over the filter pack in each site assessment observation well or monitoring well.

(C) **Annular seal.** The annular space above the filter pack seal shall be filled with a cement grout, bentonite grout, bentonite chips or a cement/bentonite grout mixture to within two (2) feet of the surface. The cement grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of twenty percent (20%) bentonite by dry weight may be added to the cement grout to form the cement/bentonite grout mixture. The bentonite shall be prehydrated to the manufacturer's recommended consistency. The bentonite grout shall be a high solids bentonite grout with at least twenty percent (20%) bentonite by dry weight. The bentonite shall be mixed according to the manufacturer's recommended consistency.

(D) **Surface seal.** A concrete or cement grout surface seal shall be placed around the casing immediately above the annular seal from a depth of two (2) feet to land surface.

(E) **Tremie requirements for grout.** When the placement of grout will exceed twenty (20) feet, the grout shall be placed in the annulus of the well through a tremie pipe and filled or pumped from the bottom upward.

(F) **Multiple cased or screened wells.** No adjacent or collinear casings in the same borehole shall be allowed. No multiple screened intervals in the same casing shall be allowed. Wells shall be drilled with sufficient distances between them so as to prevent the commingling of aquifer zones.

(G) **Special annular, filter pack, and surface seal conditions.** When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the required depths set forth in C and D above for the filter pack and annular seals shall be reduced to fill the annular space from the top of the filter pack materials to the bottom of the cement surface seal, provided that the minimum screen depth shall be two and one-half feet (2 $\frac{1}{2}$') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission. The surface seal shall extend a minimum of one (1) foot below land surface.

(7) **Surface pad requirements.**

(A) A concrete or cement surface pad shall be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick.

(B) The surface pad shall be sloped so to insure that all surface water flows away from the well.

(C) The surface pad is not required if the well is completed in competent concrete or asphalt paving, or if the well is an unsaturated zone monitoring well or a site assessment well that is located in a proposed solid waste disposal site and neither is used for a period exceeding one (1) year.

(8) **Top cap requirements.**

(A) A threaded or flange cap or compression seal shall be installed upon completion of the well to prevent unauthorized use of the well (e.g. tampering with the well or the entrance of foreign material into the well).

(B) The cap or seal shall have the capability of being locked if the well is flush mounted and the well protector is not capable of being locked.

(9) **Monitoring well and site assessment observation well protection.** Protection shall be provided for the casing of monitoring wells or site assessment observation wells by either of the following methods:

(A) An aluminum or steel surface casing shall be set a minimum of 12 inches through the cement or concrete surface pad and shall extend a minimum of 24 inches above the pad or ground. The top of the protective casing shall be fitted with a locking cap and shall be marked to clearly identify the well as a monitoring well or site assessment observation well; or

(B) If flush mounting is required, then the well shall be completed with a well protector that is capable of supporting vehicular traffic, provided that flush mounting of the casing of monitoring wells installed at concentrated animal feeding operations after July 1, 2006, shall be prohibited. The well protector shall be raised a minimum of one-half (1/2) inch above the surface pad or paving and shall be clearly marked to identify the well as a monitoring well or site assessment observation well. The surface seal shall be sloped so that surface water flows away from the well protector and the bond between the well protector and the removable cover shall be made watertight.

(10) **Direct Push (DP) Monitoring Wells and Piezometers.**

(A) Monitoring wells and piezometers that are installed using direct push (DP) technology shall comply with the applicable standards in 785:35-7-2 for reporting, casing, screening, filter pack, filter pack placement, filter pack seal, development, decontamination, surface seal, cleaning, protection, marking, and completion.

(B) DP monitoring wells and piezometers shall be authorized as applicable at the discretion of the state or federal agency having jurisdiction over a specific site.

(C) DP monitoring wells and piezometers shall also comply with the following additional standards:

(i) DP monitoring wells and piezometers shall only be authorized for a one (1) year term; and

(ii) The outside diameter of the borehole shall be at least three inches (3") greater than the nominal diameter of the well casing and screen; and

(iii) Granular bentonite shall not be used in the sealed interval below the static water level; and

(iv) Casing diameter shall be a minimum one inch (1") and shall meet or exceed schedule 40 standards; and

(v) Wells and piezometers shall not be constructed through more than one water bearing formation and shall not be greater than 50 feet in depth unless a variance is obtained.

SUBCHAPTER 11. PLUGGING AND CAPPING REQUIREMENTS FOR WELLS AND TEST HOLES

785:35-11-2. Plugging requirements for site assessment observation wells, monitoring wells and geotechnical borings

(a) **Monitoring wells, direct push monitoring wells and site assessment observation wells.** Monitoring wells, direct push monitoring wells and site assessment observation wells shall be plugged to prevent pollution of groundwater within three (3) days after completion of use or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging monitoring wells and site assessment observation wells, and the owner of such wells or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil or contaminated groundwater is present in the well, cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom of the well to an elevation four (4) feet below the land surface. In the alternative, bentonite pellets, granules or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout shall be placed from the bottom of the well to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface, unless contaminated soil or contaminated groundwater is present in the well. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil. If the depth of the well is fourteen (14) feet or less, cement grout shall be placed from the bottom of well to land surface.

(2) If contaminated soil or contaminated groundwater is present or was previously present in the well and the top of the screen is less than 20 feet below land surface, overdrilling of the well is required. The casing shall be removed or drilled out and the same size auger or direct push tool used to drill the borehole or larger shall be used to drill out the casing and associated seals, annular space and filter pack. Cement grout shall be placed from the bottom of the well to an elevation four (4) feet below land surface effectively grouting a minimum of 95% of the original drilled borehole depth. If the total depth of the well is in excess of twenty feet (20') below land surface, the cement grout shall be placed by pumping from the bottom of the hole to the land surface. If the top of the well screen is 20 feet or more below land surface and the well meets current minimum construction standards, then the casing need not be removed and cement grout shall be placed in the well through a tremie pipe and filled or pumped from the bottom upward to within four (4) feet of land surface or to land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(b) **Geotechnical borings except direct push geotechnical borings.** Geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter. The following are minimum requirements for plugging geotechnical borings, and the owner of the boring or other federal or state agency may specify more stringent requirements:

(1) If no contaminated soil and groundwater is encountered in the boring, uncontaminated drill cuttings, uncontaminated surface clay, cement, and/or high solids (a minimum of twenty percent (20%) solids by dry weight) bentonite grout, pellets, or granules shall be placed from the bottom of the boring to an elevation fourteen (14) feet below land surface and a minimum of ten (10) feet shall be filled with cement grout to an elevation four (4) feet below land surface. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(2) If contaminated soil or contaminated groundwater is encountered in the boring, or if the boring is located at an underground storage tank site or within 300 feet of the outside perimeter of an existing wastewater lagoon or is located on a tract of land where a wastewater lagoon is proposed, cement grout shall be placed from the bottom of the borehole to an elevation four (4) feet below land surface. Cement grout shall be placed in the borehole

through a tremie pipe and filled or pumped from the bottom upward. The remaining four (4) feet to land surface shall be backfilled with compacted uncontaminated soil.

(3) If the boring is twenty (20) feet or less in total depth and groundwater has not been encountered, the boring shall, at a minimum, be filled with compacted uncontaminated cuttings from the bottom of the boring to land surface.

(c) **Direct push geotechnical borings.** Direct push geotechnical borings shall be plugged to prevent pollution of groundwater within thirty (30) days after completion of drilling or immediately if drilled by an unlicensed or uncertified person or if the Board determines that the well does not meet the minimum construction standards set forth in this Chapter as follows:

(1) Bentonite chips shall be placed and effectively compressed within the annulus space from the bottom of the borehole to within ten (10) feet of the land surface.

(2) Cement grout shall be installed through a tremie pipe in the remaining annulus space from ten (10) feet to land surface, provided that no cement grout shall be required if the boring is less than ten feet (10') in total depth and no groundwater and no contaminated soil was encountered.

(d) **Cement grout requirements.** If cement grout is used, the grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water.

(e) **Abandonment after equipment removed.** If a site assessment observation well, monitoring well or geotechnical boring is abandoned after the drilling equipment has been removed from the site, responsibility for proper plugging within the applicable time period specified in this section shall lie with the owner of the land where the well or boring is located.

[OAR Docket #10-667; filed ??-??-??]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #10-668]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures
785:50-8-6. Disbursement of funds [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 1. General Provisions
785:50-9-9. Definitions [AMENDED]
Part 3. General Program Requirements
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-35. Loan closing [AMENDED]
785:50-9-45. Compliance with federal authorities [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-60. Requirement of environmental review [AMENDED]
785:50-9-61. Environmental information required by the Board [AMENDED]
785:50-9-62. Environmental review by the Board [AMENDED]

AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. §§ 1085.2 and 1085.31 et seq.; and 62 O.S. § 2003

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n/a

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n/a

ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended Oklahoma Administrative Code ("OAC") Title 785, Chapter 50 as follows:

OAC Section 785:50-8-6 has been amended to include language that would allow for applicants who have received a Rural Economic Action Plan ("REAP"; see 62 O.S. § 2003) grant to be able to request an extension of time for circumstances outside to their control that prevent them from completing the construction process. The intended effect of the amendments is to accommodate REAP grant applicants that have an unexpected delay with construction requirements to be able to request an extension in order to still receive the REAP grant funding.

OAC Sections 785:50-9-9 and 785:50-9-23 have been amended to change the definition of Urban Storm Water Activities to Brownfield Activities; see 82 O.S. § 1085.51 and following. This change has been made to accurately reflect the differences in the two activities and remove redundancy in the rules. This amendment is needed to clarify the different activities in accordance with the U.S. Environmental Protection Agency ("EPA") guidelines. The intended effect of the amendment is to clarify the distinction between Urban Storm Water Activities and Brownfield Activities consistent with state and federal guidelines.

OAC 785:50-9-23 has also been amended to include priority points for projects that address specific programmatic priorities set forth by the EPA or the OWRB; see 82 O.S. § 1085.51 and following. The intended effect of the amendment is to allow flexibility in the scoring criteria to reflect the current priorities of the EPA or the OWRB.

OAC 785:50-9-35 has been amended to allow those borrowers who have provided the necessary documentation and been approved by the OWRB staff to close a loan prior to receiving bids. This amendment is needed to allow borrowers that have a multi phase project to have access to full loan funds for the project and to allow those borrowers who have the necessary financial capability to fund costs exceeding the estimated loan amount to close the loan prior to receiving all bids. The intended effect of the amendment is to increase the flexibility to close loans in the State Revolving Fund ("SRF") programs; see 82 O.S. § 1085.51 and following.

OAC 785:50-9-45 has been amended to include those laws that are required to be included in loan agreements and other funding documents under the Clean Water SRF Program; see 82 O.S. § 1085.51 and following. The intended effect of the amendment is to remain current with EPA regulations.

OAC Sections 785:50-9-60, 785:50-9-61 and 785:50-9-62 have been amended to provide for greater flexibility in environmental requirements of loans for the Clean Water State Revolving Fund projects. These amendments will correspond to the changes created by the EPA. The intended effect of the amendments is to make the rules consistent with the environmental process and other loan terms allowed by state and federal law.

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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 MAY 27, 2010:

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-8-6. Disbursement of funds.

(a) **Action following Board approval and prior to disbursement of funding.**

(1) **Notification of approval.** Upon approval of a REAP grant application, the Board shall furnish to the applicant a written notice of grant approval. The notice shall advise the applicant that the grant application has been formally and officially approved by the Board and that the grant funds approved shall be made available to the applicant by the Board for such purposes and upon such other terms and conditions as the Board may require.

(2) **Bid filing.** Within ninety (90) days following the date of the written notice of approval, the applicant shall file with the Board an acceptable bid for completion of the proposed project. Where determined necessary and appropriate, the Board or its staff may permit additional time to file such a bid; provided, notwithstanding any approval of additional time, if such a bid is not filed within one (1) year following the date of Board approval of the application, then the Board's approval shall expire and no funds shall be released provided however, if an acceptable bid for completion has not been filed due to circumstances that lay outside the applicant's control, the applicant may request, and the Board may approve or deny, a one-time extension of time not to exceed six months to file an acceptable bid. Provided further, in the event of such expiration the applicant may file a new application which shall be subject to due consideration on its own merits.

(3) **Additional conditions prior to disbursement of grant funds.**

(A) Applicant shall establish, in such manner as is acceptable to the Board or its staff, a special and separate federally insured fund or account (within applicant's accounting system) in and through which the grant proceeds shall be administered and accounted for by the applicant.

(B) Unless otherwise provided and approved by the Board, applicant shall submit to the Board all plans, specifications and engineering reports, for the project for staff approval, all of which shall be complete and in sufficient detail as would be required for submission of the project to a contractor for bidding or contracting the project. If not previously provided, applicant shall provide Board with a written and verified statement setting forth:

(i) the amount of funds necessary for release and disbursement at closing which funds are needed for initial commencement of the project, and

(ii) information reflecting the reasonable availability of and/or a commitment from all other revenue or funding sources needed to finance and complete the project.

(C) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents, including but not limited to a grant agreement.

(4) **Board action on request for increase in approved amount.** If prior to disbursement of the grant monies to the applicant, the project bids exceed the engineer's estimates or it otherwise develops that the REAP grant amount approved by the Board, when combined with any other sources of funding, will be insufficient to complete the approved project, then the applicant may file a written request:

(A) to amend the scope of the approved project in a manner consistent with (a)(5) of this Section; or

(B) decline funding and withdraw its application for the current fiscal year and request that the Board reconsider the application with an increased REAP grant amount during the following fiscal year. The request for an increased REAP grant amount shall be treated as a new application on its own merits; provided, the original application shall not be counted for purposes of the previous grant assistance portion of the priority point determination.

(5) **Board action on request for change in scope of approved project.** If prior to disbursement of the grant monies to the applicant, it develops that the applicant wishes to change the scope of the project from that approved by the Board, then the applicant may file a written request for approval of such a change. If the Board staff determines that the change is reasonably and in all material aspects within the scope of the project description approved by the Board, then the staff shall be authorized to approve such requested change. If the Board staff determines that the change is not in all material respects within the scope of the project description approved by the Board, then such a request shall be presented to the Board for action. Provided, however, the Board shall not approve a change in scope of project if the change, if considered as part of the original application, would have resulted in a lower priority point determination on the application.

(b) **Disbursement of funding to applicant; action following disbursement.**

(1) **Disbursement contingent on completion of conditions; reduction from approved amount.** At the time and upon compliance by the applicant with the applicable requirements in (a) of this Section, the Board may disburse the approved amount of REAP grant funds to the applicant for the approved project.

(2) **Disbursement in whole or part; timing.** As the Board may direct, grant funds may be disbursed to the applicant in installments or in lump sum, and may be disbursed prior to, during or upon completion of the project, all as deemed appropriate by the Board under the project circumstances presented.

(3) **Post-disbursement requests for increases in funding amount.** If after disbursement of the grant monies to the applicant it develops that the applicant needs more money for the project than the REAP grant amount disbursed by the Board, then any request for additional REAP grant money shall follow the rules in this Subchapter governing, and shall be treated as, a new application on its own merits.

(4) **Post-disbursement requests for changes in scope of approved project.** If after disbursement of the grant monies to the applicant it develops that the applicant wishes to chane the scope of the project from that approved by the board, then the applicant may file a written request for approval of such a change. If the applicant successfully demonstrates reasonably unforeseeable or extraordinary circumstances that in the Board's judgment and sound discretion represent a better utilization of REAP grant funds by the applicant to serve the public interest and welfare, then the Board shall approve the change in project scope. If the applicant does not make such a demonstration, then the Board shall deny the request and the applicant shall either proceed with the project as approved or abandon the project and return the grant monies to the Board within thirty days after the date of the Board's action.

(5) **Post-disbursement action regarding unexpended funding.** If following completion of the project it develops that the applicant needed less money for the project than disbursed by the Board, the applicant shall return the unexpended amount to the Board.

(6) **Additional requirements.** The Board may impose additional reasonable and necessary conditions or requirements for the disbursement to the applicant or expenditure by the applicant of REAP grant funds, all as may be deemed appropriate by the Board.

SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

PART 1. GENERAL PROVISIONS

785:50-9-9. Definitions

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

"303(d) List" means the list of impaired waters of the State, or most recent approved revision thereof, developed pursuant to Section 303(d) of the Clean Water Act as amended and maintained on file at the Board.

"Act" means The Federal Clean Water Act, as amended.

"Applicant" means any municipality, as defined, that submits a preapplication/application for financial assistance in accordande with this subchapter.

"Architectural or **engineering services"** means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

"As a result of" means funds in the Clean Water SRF including the capitalization grant, repayments of first round loans, bond proceeds, and the State match.

"Binding commitment" means binding commitments are legal obligations by the State to the local recipient that define the terms and the timing for assistance under Clean Water SRF.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Brownfield"*means an abandoned, idled or underused industrial or commercial facility or other redevelopment of the real property is complicated by environmental contamination caused by regulated substances* [27A:2-15-103(2)].

"Brownfield activities" means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act.

"Brownfield assessment" means any phase I, phase II, phase III or other study required by the Department which is used to assess a brownfield.

"Building" means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

"Capitalization grant" means an agreement between EPA and State whereby federal dollars are made available to partially fund a Clean Water SRF.

"Collector sewer" means the common lateral sewers, within a publicly owned treatment system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(A) Crossover sewers connected more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(B) Pumping units and small diameter lines serving individual structures or groups of structures.

"Combined sewer" means a sewer that is designed as a sanitary sewer and a storm sewer.

"Conservation Commission" means the Oklahoma Conservation Commission.

"Construction" means any one or more of the following: brownfield assessment; preliminary planning to determine feasibility, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other actions or undertakings necessary to a project; erection, building, acquisition, alteration, remodeling, improvement, or extension of a project; or the inspection or supervision of any of the foregoing items.

"Contingency section" means that portion of the planning portion of the priority list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

"Cross-cutting laws and orders" means Federal laws and authorities that apply to all activities supported with funds "directly made available by" capitalization grants.

"DBE" means Disadvantaged Business Enterprises.

"DBE participation" means the federal requirement for negotiation of a "fair share" objective for minority, disadvantaged and women owned businesses applies to assistance in an amount equal to the capitalization grant.

"Department" means the Oklahoma Department of Environmental Quality.

"Enforceable requirements of the Act" means those conditions or limitations of NPDES or other discharge permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action. If a permit has not been issued, the term shall include any requirement which would be included in the permit when issued. Where no permit applies, the term shall include any requirement which is necessary to meet applicable criteria for best practicable wastewater treatment technology (BPWTT).

"Equivalency projects" means project cited by the Board as meeting the requirement of the capitalization grant.

"Excessive infiltration/inflow" means the quantities of infiltration/inflow above 120 gallons per capita per day (GPCD), which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Fundable portion" means that portion of the Project Priority List which includes projects scheduled for financial assistance during the funding year.

"Funding year" means the first year of the planning period represented by a project priority list.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

"In perpetuity" means maintaining the principal amounts of the federal capitalization grants and state matching funds within the CWSRF.

"Intended Use Plan" means a document prepared each year by the State, which identifies the intended uses of the funds in the CWSRF and describes how those uses support the goals of the CWSRF.

"Interceptor sewer" means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

"Loan" means an agreement between the State and the local recipient through which the Clean Water SRF provides funds for eligible assistance on terms consistent with the federal Water Quality Act of 1987 or otherwise approved by the Environmental Protection Agency.

"MGD" means millions of gallons per day.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency consistent with the State Water Quality Management Plan.

"NEPA" means the National Environmental Policy Act.

"Nonexcessive infiltration" means the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

"Nonexcessive inflow" means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows.

"Nonpoint source" means a source of pollution which is diffuse and does not have a single point of origin or is introduced into a receiving stream from a specific outlet.

"Nonpoint source activities" means capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices for the purpose of protecting or improving surface or underground water quality through watershed management or reduction of nonpoint source pollution as authorized by the Act.

"NPDES" means National Pollutant Discharge Elimination System.

"Operable treatment works" means a treatment works that, upon completion, will meet the enforceable requirements of the Act.

"Operation and maintenance" means activities required to assure the dependable and economical function of treatment works.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"OWQS" means the Oklahoma Water Quality Standards promulgated by the Board at Oklahoma Administrative Code Title 785, Chapter 45, as amended.

"Planning" means the process of evaluating alternative solutions to water pollution problems, and through a systematic screening procedure, selecting the most cost effective environmentally sound alternative.

"Planning portion" means that part of the Project Priority List containing all projects outside the fundable portion of the list that may, under anticipated allotment levels, receive funding during the five-year planning period represented by the list.

"Project" means the water quality project for which Clean Water SRF assistance is provided. Water quality projects include:

(A) construction and design, or construction of an operable treatment works or segment thereof the principal purpose of which is for the treatment of domestic users' discharges within the jurisdiction, community, sewer service area, region or district concerned; ~~or~~

(B) urban storm water activities;

(C) nonpoint source activities; or

(D) other water quality projects as defined by 82 O.S. §1085.52, as amended.

"Project completion" means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

"Project Priority List" means a contiguous list of projects in order of priority for which Clean Water SRF assistance is expected during a five-year planning period.

"Project priority points" means the total number of points assigned to a project by using the priority ranking formula.

"Reallotment" means allotment of previously allotted unused funds.

"Recipient" means a municipality or other entity which receives assistance under the Clean Water SRF program.

"Repayment" means principal and interest payments on loans which must be credited directly to the Clean Water SRF.

"Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

"Responsible bidder" means a prospective contractor that currently meets the minimum standards of financial and technical ability to perform the tasks identified in the project specifications.

"Revenue programs" means a formally documented determination of sewer use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

"Sewer System Evaluation Survey (SSES)" means a study which shall identify the location, estimated flow rate, method of rehabilitation, and cost of rehabilitation versus the cost of transportation and treatment for each defined source of infiltration/inflow.

"State match" means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the Clean Water SRF.

"State Revolving Fund" or **"SRF"** means funds for loans or providing other assistance for pollution control projects established through capitalization grants from EPA and State matching funds.

"Storm sewer" means a sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

"Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances. In addition **"treatment works"** means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, including on-site systems and waste in combined storm water and sanitary sewer systems.

~~**"Urban storm water activities"** means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act~~.

"User charge" means a charge levied on users of a treatment works for the user's share of the cost of operation and maintenance (including replacement) of such works.

PART 3. GENERAL PROGRAM REQUIREMENTS

785:50-9-23. Clean Water SRF Project Priority System

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall insure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project. ~~Attenders~~Attendees of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank proposed projects, including treatment works, nonpoint source activities, and urban storm water activities, based on the relative impact of the project in achieving the water quality objectives of the Act. This system consists of criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) **Water Quality Restoration Factor.** The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "Top Ten NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) **Water Quality Protection Factor.** The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that provide maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River or Culturally Significant Water;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area"; or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a

vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) **Programmatic Priority Factor.** The Programmatic Priority Factor provides a maximum of one hundred (100) priority bonus points to projects that address specific programmatic priorities set forth by the Environmental Protection Agency or Board and detailed in the Annual Intended Use Plan.

(5) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have b een submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent 208 Water Quality Management Plan, i.e., the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallotment or deobligation shall be treated in the same manner as the most recent allotment.

(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List, the applicant must submit a request for such placement to the Board. The request must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the request, and if it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **~~Urban storm water~~Brownfield Activities.** Requests received for ~~urban stormwater~~ Brownfield activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

(i) Submit a certification from the Department that the project is a~~urban storm water~~Brownfield project;

(ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and

(iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source activities.** Requests received for nonpoint source activity projects must satisfy the requirements of 82 O.S. §1085.58(G), as amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a non-point project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

(A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or

(B) The change of scope is necessary due to changes in Federal or State requirements

785:50-9-35. Loan closing

(a) **Documentation to be submitted prior to loan closing.** Prior to loan closing the applicant will submit to the Board, the following bid and contract documents:

(1) Bidding documents, including all addenda, approved in accordance with 785:50-9-32.

(2) A tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders.

(3) Contingently executed construction contract to be entered into by the applicant for building of the projects containing the appropriately executed bonds, insurance certificates, act of assurance, and other documents required by this chapter.

(4) Other or additional engineering data and information, if deemed necessary by the Board staff.

(5) A certification that all required acquisitions, leases, easements, rights-of-way, relocations, (both voluntary and involuntary) have been obtained for the project to be built.

(6) Evidence that the applicant has obtained all required permits and financing to build the project.

(7) Information requested by the Board regarding loan closing documents.

(8) A detailed project budget which limits the contingency to the maximum allowable change order amount set forth in Section 121 of the Public Competitive Bidding Act of 1974 as amended.

(9) Copies of all legal, financial, engineering and inspection contracts that will be paid in whole or in part from the loan proceeds.

(10) If an applicant wishes to close a loan prior to receiving bids, it may do so subject to approval from the OWRB. In order to receive approval, documentation must be provided to the OWRB showing the applicant has the financial ability to pay any costs that exceed the estimated loan amount. This documentation shall include but not be limited to financial statements from the applicant.

(b) **General conditions for all loans.**

(1) Under the federal Water Quality Act of 1987 and 82 O.S., §1085.54, the Board is authorized to make available financial assistance from the Clean Water State Revolving Fund Loan Account under the following conditions:

(A) The financial assistance application, project and planning documents have been approved by the Board pursuant to Section 1085.58 of Title 82 or the Oklahoma Conservation Commission pursuant to Section 1085.65 of Title 82 of the Oklahoma Statutes.

(B) The loan is made at or below market interest rates, including interest-free loans, at terms consistent with the federal Water Quality Act of 1987.

(C) Principal and interest payments will begin not later than one year after completion of any project, which completion date shall be determined by the Board, and all loans will be fully amortized consistent with the federal Water Quality Act of 1987.

(D) The applicant demonstrates to the satisfaction of the Board the financial capability to assure sufficient revenues to pay debt service.

(E) The recipient of the loan establishes a dedicated source of revenue for payment of debt service for the loan.

(F) The recipient agrees to maintain financial records in accordance with governmental accounting standards, to conduct an annual audit of the financial records relating to the wastewater project and to submit the audit report to the Board on a scheduled annual basis, and

(G) The project is identified in the Board's current Intended Use Plan.

(2) Financial assistance shall not be made from the Wastewater Revolving Loan Account until the conditions in (1) of this subsection are met.

(c) **Evidence of indebtedness.** The financial assistance loans contemplated within this subchapter shall be provided by the Board for approved projects pursuant to such notes, bonds, revenue bonds or other appropriate form of evidence of indebtedness from the applicant as the Board may require.

(d) **Criteria for determining interest rates.**

(1) The interest rates on loans to be made from the Clean Water State Revolving Fund Loan Account shall be at or below market rates for similar indebtedness by eligible entities.

(A) Interest rates for interim construction loans may be reviewed and determined by the Board every six (6) months.

(B) The percentage of the market interest rate to be utilized for long-term loans is set by the Board based on recommendations made by Board staff.

(2) Factors which may be used to calculate the interest rate for a particular entity or class of entities include without limitation the following:

(A) Guidelines utilized by the United States Environmental Protection Agency and federal Farmers Home Administration or successor agency for similar type financial assistance for facilities that could qualify as Clean Water SRF projects.

(B) Maintenance of the Clean Water State Revolving Fund Loan Account in perpetuity.

(C) Statewide needs for Clean Water SRF project financial assistance.

(D) Five-year demand projections of the Board of Clean Water SRF project financial assistance.

(E) Prevailing market interest rates which shall be the interest rates on long-term bonds maintaining a rating of AA.

(F) Debt service requirements of investment certificates issued by the Board to provide funds for the Clean Water State Revolving Fund Loan Account.

(G) Financial resources of the entity.

(H) The ability of the entity to repay the loan.

(I) Whether the entity discharges municipal wastewater into scenic river areas as defined in Section 1452 of Title 82 of the Oklahoma Statutes.

(e) **Security for loan.**

(1) As security for the assistance loan provided by the Board to an approved applicant, applicant must provide if required by the Board a mortgage on any or all facilities of the project for which application is made.

(2) The Board shall require a pledge and lien on revenues to be derived from the operation of the project.

(3) For purposes of this subsection, the pledge of lien on project revenues shall be a pledge of and lien on such project revenue, as is necessary to secure repayment of the loan obligation of applicant.

(4) Also, for purposes of this subsection, if the specific project for which application is made and approved is not of itself a revenue producing unit, then such pledge of an lien on revenues shall be on the revenues of the revenue producing system of which the specific project is a part and on such other additional revenue sources or systems which may be pledged by the applicant to satisfy the loan security requirements necessary to obtain assistance from the Board.

(5) The Board may require additional security which the Board deems necessary, which such additional security may include such pledges, liens, revenues and/or mortgages on additional facilities or systems of and as may be tendered by the applicant.

(f) **Conditions for disbursement of funds.** At or following the loan closing, the following conditions and requirements must be met prior to the release and disbursement of any financial assistance funds:

(1) Applicant and Board, and all other necessary parties, shall have executed all necessary and incidental instruments and documents for loan closing, including but not limited to all mortgages, notes, financing statements and pledges of project security and revenues where appropriate.

(2) Recipient sends disbursement requests based on costs incurred to the Board, who shall review the requests and approve them as appropriate.

785:50-9-45. Compliance with federal authorities

The recipients who construct equivalency projects must comply with all applicable federal laws, executive orders, and other sources of authority. These include but are not limited to the following:

(1) **Environmental.**

(A) Archeological and Historic Preservation Act of 1974, PL 93-291

(B) Clean Air Act, 42 U.S.C. 7506(c)

(C) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.

(D) Coastal Zone Management Act of 1972, as amended.

(E) Endangered Species Act 16 U.S.C. 1531, et seq.

(F) ~~Executive Order 11593, Protection and Enhancement of the Cultural Environment~~ Executive Order 12898, Environmental Justice

(G) Executive Order 11988, Floodplain Management

(H) Executive Order 11990, Protection of Wetlands

(I) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.

(J) Fish and Wildlife Coordination Act, PL 85-624, as amended

(K) National Historic Preservation Act of 1966, PL 89-665, as amended

(L) Safe Drinking Water Act, section 1424(e), PL 92-523, as amended

(M) Wild and Scenic Rivers Act, PL 90-542, as amended

(N) Magnunson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265

(2) **Economic**

(A) Demonstration Cities and Metropolitan Development Act of 1966, PL 89- 754, as amended

(B) Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

(3) **Social Legislation.**

(A) Age Discrimination Act, PL 94-135

(B) Civil Rights Act of 1964, PL 88-352

(C) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act

(D) Executive Order 11246, Equal Employment Opportunity

(E) Executive Order 11625 and 12138, Women's and Minority Business Enterprise

(F) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)

(G) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

(H) Executive Order 13208, Preservation of Open Competition and Government Neutrality Toward Government Contractors' Labor Relations on Federal Construction Contracts

(4) **Miscellaneous authority.**

(A) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646

(B) Executive Order 12549, Debarment and Suspension

PART 7. SRF ENVIRONMENTAL REVIEW PROCESS

785:50-9-60. Requirement of environmental review

As required by the provisions of Section 602(b) (6) of the Clean Water Act, the Board shall conduct an interdisciplinary environmental review consistent with the National Environmental Policy Act of the project proposed for funding through the Clean Water State Revolving Fund Loan Account. This review will insure that the project will comply with the applicable local, state and federal laws and Board regulations relating to the protection and enhancement of the environment. Based upon the staff's review, the Board will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determination will include mitigative provisions as a condition of financial assistance for building and no financial assistance will be provided until a final environmental determination has been made. Nothing in this Part shall prohibit any public, private or governmental party from seeking administrative or legal relief from the determinations of the Board. Potential applicants to the Clean Water State Revolving Fund Loan Account should obtain guidance from the staff regarding the scope of the environmental review to be conducted by the Board and the environmental information which the applicant will be required to submit in support of the proposed project.

(1) **Basic environmental determination.** There are three (3) basic environmental determinations that will apply to projects proposed to be implemented with assistance from the Clean Water State Revolving Fund Loan Account. These are: a determination to categorically exclude a project from a formal environmental review; a finding of no significant impact (FNSI) based upon a formal environmental review supported by an environmental information document (EID); and a determination to provide or not to provide financial assistance based upon a Record of Decision following the preparation of an environmental impact statement (EIS). The appropriate determination will be based on the following criteria.

(A) The categorical exclusion determination applies to categories of projects that have shown over time not to entail significant impacts on the quality of the human environment.

(i) Projects which meet any of the following criteria may be categorically excluded from formal environmental review requirements.

(I) The project is directed solely toward rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works (i.e. infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures adjacent to or on existing sites).

(II) The project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.

(III) The project is in an unsewered community involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate existing discharge.

(IV) The project involves re-issuance of a NPDES permit for a new source providing the conclusions of the NEPA document are still valid (including the appropriate mitigation), there will be no degradation of the receiving waters, and the permit conditions do not change or are more environmentally protective.

(V) The project is for an award of grants authorized by Congress under EPA's annual Appropriations Act that are solely for the reimbursement of the costs of a project that was completed prior to the date the appropriation was enacted.

(VI) The project relates to existing infrastructure systems(such as sewer systems; and stormwater systems, including combined sewer overflow systems) that involve minor upgrading, or minor expansion of system capacity or rehabilitation (including functional replacement) of the existing system and system components (such as the sewer collection network and treatment system; and stormwater systems, including combined sewer overflow systems) or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include actions that: involve new or relocated discharges to surface or ground water; will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water; will provide capacity to serve

a population 30% greater than the existing population; are not supported by the state, or other regional growth plan or strategy; or directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.

(ii) Categorical exclusions will not be granted for projects that entail:

(I) the construction of new collection lines;

(II) a new discharge or relocation of an existing discharge;

(III) a substantial increase in the volume or loading of pollutants;

(IV) providing capacity for a population thirty (30) percent greater than the existing population;

(V) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; and

(VI) the construction of facilities that are known or expected to be not cost-effective or are likely to cause significant public controversy.

(iii) The responsible official must review actions eligible for categorical exclusion to determine whether any extraordinary circumstances are involved. Extraordinary circumstances are when:

(I) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

(II) The proposed action is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.

(III) The proposed action is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.

(IV) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value, including but not limited to, property listed on or eligible for the National Register of Historic Places.

(V) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

(VI) The proposed action is known or expected to cause significant adverse air quality effects.

(VII) The proposed action is known or expected to have a significant effect on the pattern and type of land use (industrial, commercial, agricultural, recreational, residential) or growth and distribution of population including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized Indian tribe approved land use plans or federal land management plans.

(VIII) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.

(IX) The proposed action is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts

(X) The proposed action is known or expected to conflict with federal, state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

(iv) Categorical exclusions will be granted for the following projects without additional required documentation:

(I) Procedural, ministerial, administrative, financial, personnel, and management actions necessary to support the normal conduct of EPA business.

(II) Acquisition actions (compliant with applicable procedures for "green" or sustainable procurement) and contracting actions necessary to support the normal conduct of EPA business.

(III) Actions involving information collection, dissemination, or exchange; planning; monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs; educational and training programs; literature searches and studies; computer studies and activities; research and analytical activities; development of compliance assistance tools; and architectural and engineering studies. These actions include those conducted directly by EPA and EPA actions relating to contracts or assistance agreements involving such actions.

(IV) Actions relating to or conducted completely within a permanent, existing contained facility, such as a laboratory, or other enclosed building, provided that reliable and scientifically-sound methods are used to appropriately

dispose of wastes and safeguards exist to prevent hazardous, toxic, and radioactive materials in excess of allowable limits from entering the environment. Where such activities are conducted at laboratories, the Lab Director or other appropriate official must certify in writing that the laboratory follows good laboratory practices and adheres to all applicable federal, state, local, and federally-recognized Indian tribal laws and regulations. This category does not include activities related to construction and/or demolition within the facility.

(V) Actions involving emergency preparedness planning and training activities.

(VI) Actions involving the acquisition, transfer, lease, disposition, or closure of existing permanent structures, land, equipment, materials, or personal property provided that the property: has been used solely for office functions; has never been used for laboratory purposes by any party; does not require site remediation; and will be used in essentially the same manner such that the type and magnitude of the impacts will not change substantially. This category does not include activities related to construction and/or demolition of structures on the property.

(VII) Actions involving providing technical advice to federal agencies, state or local governments, federally-recognized Indian tribes, foreign governments, or public or private entities.

(VIII) Actions involving approval of EPA participation in international "umbrella" agreements for cooperation in environmental-related activities that would not commit the United States to any specific projects or actions.

(IX) Actions involving containment or removal and disposal of asbestos-containing material or lead-based paint from EPA owned or operated facilities when undertaken in accordance with applicable regulations.

(X) Actions involving new source NPDES permit modifications that make only technical corrections to the NPDES permit (such as correcting typographical errors) that do not result in a change in environmental impacts or conditions.

(v) The Board may exclude, by amendment to these regulations, other categories of projects for which there is sufficient documentation demonstrating that they are not likely to have significant effects on the quality of the human environment.

(B) The FNSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with 785:50-9-61(2)(A). Based upon its review, the staff will prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for either a categorical exclusion or EIS will be required to prepare an EID. The Board's issuance of a FNSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.

(C) The Record of Decision may only be based upon an EIS in conformance with the format and guidelines described in 785:50-9-61(3). An EIS will be required when the Board determines any of the following:

(i) the project will significantly affect the pattern and type of land use or growth and distribution of the population;

(ii) the effects of the project's construction or operation will conflict with local or state laws or policies;

(iii) the project may have significant adverse impacts upon:

(I) wetlands,

(II) floodplains,

(III) threatened and endangered species or their habitats,

(IV) cultural resources including parklands, reserves, other public lands or areas of recognized scenic, recreational, agricultural, archeological or historic value;

(iv) the project will displace population or significantly alter the characteristics of existing residential areas;

(v) the project may directly or indirectly (i.e., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quality or quantity, fish, shellfish, wildlife or their natural habitats;

(vi) the project may generate significant public controversy;

(vii) the treated effluent will be discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.

(2) **Other determinations that are required of the Board.**

(A) Recognizing that a project may be altered at some time after an environmental determination on the project has been issued, the Board will provide that, prior to approval, the plans and specifications, assistance application, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found, the Board may revoke a categorical exclusion and require the

preparation of an EID or an EIS, consistent with the criteria of this subsection, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the Board will:

(i) reaffirm the original determination through the issuance of a public notice or statement of finding;

(ii) issue a FNSI for a project for which a categorical exclusion has been revoked, or issue a public notice that the preparation of an EIS will be required;

(iii) issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required, or

(iv) issue a supplement to a record of decision, or revoke a record of decision and issue a public notice that financial assistance will not be provided.

(B) When five (5) or more years have elapsed between the last environmental determination and the submittal of an application to the Fund, the Board will re-evaluate the project, environmental conditions and public views, and prior to the approval of application, proceed in accordance with 785:50-9-60(2)(A).

(3) **Other determinations that are available to the Board.**

(A) An applicant may request advance authority to construct part of the proposed wastewater treatment project prior to completion of the necessary environmental review when the part of the project will:

(i) immediately remedy a severe public health, water quality or environmental problem;

(ii) not preclude any reasonable alternatives identified for the complete system;

(iii) not cause significant or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire project; and

(iv) not be highly controversial.

(B) Based upon the review of the information required by Section 785:50-9-61, the Board will issue a FNSI so conditioned as to prohibit construction of the remainder of the project until a complete environmental review has been performed and a subsequent environmental determination has been issued.

(C) The Board may choose to accept determinations made by a federal agency in a previously issued environmental decision in lieu of conducting a formal environmental review when the proposed project will not cause adverse impacts to the environment and is not highly controversial.

(4) **Projects exempt from environmental review.** The Board is not required to perform an environmental review of the following projects:

(A) Nonpoint source projects that

(i) cannot be defined as Section 212 projects; and

(ii) are not funded with funds directly made from a capitalization grant

(B) Projects that consist of design and planning fees only.

785:50-9-61. Environmental information required by the Board

Documentation required in this subsection will be submitted to the Board.

(1) Except as otherwise provided in OAC 785:50-9-60(1)(A)(iii), applicants seeking a categorical exclusion will provide the Board with sufficient documentation to demonstrate compliance with the criteria of Section 785:50-9-60(1)(i) of this Chapter and shall satisfy the provisions of 40 C.F.R. Section 6.204. At a minimum, this will consist of:

(A) a brief, complete description of the proposed project and its costs

(B) ~~a statement indicating that the project is cost-effective and that the applicant is financially capable of constructing, operating and maintaining the facilities; and~~a statement identifying the categorical exclusion that applies to the action;

(C) a statement explaining why no extraordinary circumstances apply to the proposed action; and

(D) a plan map or maps of the proposed project showing:

(i) the location of all construction areas,

(ii) the planning area boundaries, and

(iii) any known environmentally sensitive areas.

(2) An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a categorical exclusion and for which the Board has made a preliminary determination that an EIS will not be required. The Board will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of planning.

(A) At a minimum, the contents of an EID will include:

(i) the purpose and need for the project;

(ii) the environmental setting of the project and the future of the environment without the project;

(iii) the alternatives to the project as proposed and their potential environmental impacts;

(iv) a description of the proposed project;

(v) the potential environmental impacts of the project as proposed including those which cannot be avoided;

(vi) the relationship between the short term uses of man's environment and the maintenance and enhancement of long term productivity;

(vii) any irreversible and irretrievable commitments of resources to the proposed project;

(viii) a description of public participation activities conducted, issues raised, and changes to the project which may be made as a result of public participation process; and

(ix) documentation of coordination with appropriate governmental agencies.

(B) Prior to the applicant's adoption of the planning document, the applicant will hold a public hearing on the proposed project and the EID, and provide the Board with a transcript of the hearing. The Board will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will generally be advertised at least thirty (30) days in advance in a local newspaper of general circulation. Concurrent with the advertisement, a notice of the public hearing and availability of the documents will be sent to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of attenders, and written testimony, and the applicant's responses to the issues raised.

(C) The applicant will make copies of the EID available to all federal, state, and local agencies and others with an interest in the project. The Board will provide guidance to the applicant regarding coordination requirements.

(3) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the selected alternative, and their environmental, economic and social impacts. The following format must be followed by the applicant unless the Board determines there are compelling reasons to do otherwise.

(A) A cover sheet identifying the applicant, the project(s), the program through which financial assistance is requested, and the date of publication.

(B) An executive summary of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:

(i) a description of the existing problem;

(ii) a description of each alternative;

(iii) a listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and

(iv) any major conclusions.

(C) The body of the EIS, which will contain the following information.

(i) A complete and clear description of the purpose and need for the proposed project that clearly identifies its goals and objectives.

(ii) A balanced description of each alternative considered by the applicant. The description will include the size and location of the facilities and pipelines, land requirements, and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that are eliminated from examinations will be presented with the reasons for their elimination.

(iii) A description of the alternatives available to the Board including:

(I) providing financial assistance to the proposed project;

(II) requiring that the proposed project be modified prior to providing financial assistance to reduce adverse impacts, or providing assistance with conditions requiring the implementation of mitigative measures; and

(III) not providing financial assistance.

(iv) A description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance or otherwise affect or have an interest in any of the alternatives.

(v) A description of the affected environment and environmental consequences of each alternative. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomic, land use, and cultural resources of the facilities planning area. The Board will provide guidance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in manner that will facilitate comparison. The effects of the no action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts.

(D) The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process, along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commentors will be identified. If a comment has led to a change in either the project or the EIS, the reason should be given. The Board will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than 45 days.

(E) Material incorporated into an EIS by reference will be organized to the extent possible into a Supplemental Information Document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in 785:50-9-61(3)(D) and 785:50-9-61(3)(G)(ii) and (iii).

(F) When an EIS is prepared by contractors, either in the service of the applicant or the Board, the Board will independently evaluate the EIS prior to issuance of the Record of Decision (ROD) and take responsibility for its scope and contents. The Board staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS.

(G) The public participation required for an EIS is extensive; but should, depending upon the nature and scope of the proposed project, be supplemented by the applicant. The following requirements represent the minimum allowable to the applicant and the Board.

(i) Upon making the determination that an EIS will be required of a proposed project, the Board will publish in the Oklahoma Register and distribute a notice of intent to prepare an EIS.

(ii) As soon as possible after the notice of intent has been issued, the Board will convene a meeting of the affected federal, state and local agencies, the applicant, and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the Notice of Intent or prepared as in (2)(B) of this subsection except that in no case will the notification period be less than forty-five (45) days. As part of the scoping meeting the Board will, at a minimum:

(I) determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;

(II) identify the preliminary range of alternatives to be considered;

(III) identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(IV) discuss the method for EIS preparation and the public participation strategy;

(V) identify consultation requirement of other laws and regulations;

(VI) determine the relationship between the preparation of the EIS and the completion of the facilities plan and any necessary arrangements for coordination of the preparation of both documents.

(iii) Following the scoping process the Board will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this including a list of the significant issues identified will be provided to the applicant and other interested parties. Preparation of the EIS will be done, at the discretion of the Board: directly, by its own staff; by consultants to the Board; or by a consultant, contracted by the applicant subject to approval by the Board. In the latter two cases, the consultant will be required to execute a disclosure statement prepared by the Board signifying they have no financial or other conflicting interest in the outcome of the project. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of (2)(B) of this section except that the advertisement and comment period for the public participation will be no less than forty-five (45) days. The Board will publish, in the Daily Oklahoman and a newspaper(s) of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least forty-five (45) days prior to making any environmental determination.

785:50-9-62. Environmental review by the Board

(a) When the Board has determined that an applicant's proposed project may be excluded from a formal environmental review or has determined that a categorical exclusion is to be rescinded, the Board will prepare a public notice of the determination to categorically exclude the project and stating the availability of supporting documentation for public inspection. ~~The notice will be published in a local newspaper of community-wide circulation by the applicant.~~ The Board, concurrent with the publication, will distribute the notice to all interested parties.

(b) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the Board to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the Board may require the applicant to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the Board will prepare an environmental assessment, describing:

(1) the purpose and need for the proposed project;

(2) the proposed project, including its costs;

(3) the alternatives considered and the reasons for their rejection or acceptance;

(4) the existing environment;

(5) any potential adverse impacts and mitigative measures; and

(6) any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions.

(c) Based upon this environmental assessment, the Board will issue a FNSI or a notice of intent to prepare an EIS. The FNSI will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the FNSI may be submitted for consideration by the Board. The environmental assessment will be attached when mitigative measures are specified by conditions of the financial assistance. The FNSI will be distributed to all parties, governmental entities, and agencies that may have an interest in the

proposed project. No action regarding approval of the facilities plan or the provision of financial assistance will be taken by the Board for at least thirty (30) days after the issuance of a FNSI.

(d) Following the comment period and public hearings on the final EIS and at the time of the decision to approve the facilities plan or to provide or deny financial assistance to the proposed project, the Board will prepare a concise public record of decision. The record of decision will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable.

(e) In accordance with this Part, the Board will conduct environmental reviews and issue public notices or amended determinations, as appropriate.

[OAR Docket #10-668; filed ??-??-??]

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

1:2010-17.

EXECUTIVE ORDER 2010-17

I, Brad Henry, Governor of the State of Oklahoma, designate the American flag as the commemorative flag to be flown in memory of those killed and injured in the bombing of the Alfred P. Murrah Federal Building on April 19, 1995. During the week of April 19, 2010, I encourage all Oklahomans to fly the American flag in commemoration of the fifteen-year anniversary of the Murrah Building bombing.

We shall never forget the one hundred sixty-eight Americans who lost their lives, including nineteen children, on that fateful day. We must never forget the more than eight hundred fifty others who were injured and bravely live on, emblematic of our great state and nation. The people of Oklahoma will never forget the courage and compassion of those from around the world who were involved in the rescue and recovery and who continue to share an outpouring of goodwill.

I hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, April 19, 2010. Further, appropriate steps shall be taken to fly the American flag on each of the fourteen flag poles located at the south plaza entrance to the state capitol building from 8:00 a.m. on Monday, April 19, 2010, until 5:00 p.m. on Sunday, April 25, 2010.

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 16th day of April, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-638; filed ??-??-??]

1:2010-18.

EXECUTIVE ORDER 2010-18

I, Brad Henry, Governor of the State of Oklahoma, by virtue of the Oklahoma Constitution and the laws of the State of Oklahoma, hereby grant a stay of execution of Richard Tandy Smith of the scheduled execution, May 4, 2010, until May 24, 2010. This stay is granted in order for this office to thoroughly evaluate the recommendation of clemency by the Oklahoma Pardon and Parole Board.

On March 25, 2010, the Oklahoma Pardon and Parole Board voted 3-2 to recommend to the Governor that clemency be granted to Richard Tandy Smith and that his sentence of death be commuted to life without the possibility of parole.

In accordance with 22 O.S. Section 1001.1(G), I hereby direct that, in the event clemency is not granted, the sentence of death be carried out on Tuesday, May 25, 2010.

This Executive Order shall be forwarded to the Director of the Oklahoma Department of Corrections and the Oklahoma Attorney General 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 28th day of April, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
Michelle Waddell
Acting Assistant Secretary of State

[OAR Docket #10-718; filed ??-??-??]