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Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #10-1177]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

- Subchapter 2. Incorporation by Reference
- 252:100-2.1. Purpose [AMENDED]
- 252:100-2-2.1. Incorporation by reference [NEW]
- Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
- 252:100-5-2.3. Annual operating fees for toxics emissions [NEW]
- Subchapter 7. Permits for Minor Facilities
- Part 1. General Provisions
- 252:100-7-2.1. Minor permits for greenhouse gas (GHG) emitting facilities [NEW]
- Subchapter 8. Permits for Part 70 Sources
- Part 5. Permits for Part 70 Sources
- 252:100-8-2. Definitions [AMENDED]
- Part 7. Prevention of Significant Deterioration (PSD) Requirements for Attainment Areas
- 252:100-8-31. Definitions [AMENDED]
- 252:100-8-33. Exemptions [AMENDED]
- 252:100-8-35. Air quality impact evaluation [AMENDED]
- 252:100-8-36. Source impacting Class I areas [AMENDED]
- Part 9. Major Sources Affecting Nonattainment Areas
- 252:100-8-50.1. Incorporation by reference [AMENDED]
- 252:100-8-51. Definitions [AMENDED]
- 252:100-8-51.1. Emissions reductions and offsets [AMENDED]
- 252:100-8-52. Applicability determination for sources in attainment areas causing or contributing to NAAQS violation [AMENDED]
- Subchapter 31. Control of Emission of Sulfur Compounds
- Part 1. General Provisions
- 252:100-31-1. Purpose [AMENDED]
- 252:100-31-2. Definitions [AMENDED]
- 252:100-31-4. Excess emission reporting and alternative reporting schedule [NEW]
- Part 2. Ambient Air Concentration Limits or Impacts for New and Existing Equipment, Sources, or Facilities

252:100-31-7. Allowable sulfur dioxide (SO₂) and hydrogen sulfide (H₂S) ambient air concentrations for new and existing sources [AMENDED]

Part 3. Existing Equipment Standards

252:100-31-13. Requirements for existing sulfuric acid plants [AMENDED]

252:100-31-15. Requirements for existing kraft pulp mills [AMENDED]

252:100-31-16. Requirements for existing fuel-fired steam generator units [AMENDED]

Part 5. New Equipment Standards

252:100-31-25. Requirements for new fuel-burning equipment [AMENDED]

252:100-31-26. Requirements for new petroleum and natural gas processes [AMENDED]

252:100-31-27. Requirements for new pulp mill process equipment [AMENDED]

Appendix Q. Incorporation By Reference [REVOKED]

Appendix Q. Incorporation By Reference [NEW]

SUMMARY:

The Department is proposing to clarify language in Subchapter 2, Incorporation By Reference, and to update OAC 252:100, Appendix Q, Incorporation By Reference, to incorporate the latest changes to U.S. Environmental Protection Agency regulations. Included are changes or additions to 40 CFR Part 61, New Source Performance Standards (NSPS), and Part 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP).

The Department is proposing to add a new section OAC 252:100-5-2.3 to Subchapter 5 of the air pollution control rules that will alter the Air Quality Division's current fee structure. The new section would allow the agency to invoice for emissions of hazardous air pollutants, lead, and lead compounds at a rate different from other regulated air pollutants and would require area sources subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) to pay an annual operating fee. The changes are designed to offset legislative budgetary shortfalls and cover current and anticipated staffing requirements in administering the Department's air pollution control programs.

The Department is proposing to modify Subchapters 7 and 8 to assure that State rules affected by recent changes to the U.S. Environmental Protection Agency's (EPA's) policies and programs for greenhouse gas emissions are not more stringent than the corresponding federal requirements. Greenhouse gases (GHGs), an aggregate group of six gases (carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride), will become

Notices of Rulemaking Intent

subject to regulation as an air pollutant on January 2, 2011, when the EPA and the U.S. Department of Transportation joint light-duty vehicle GHG emission standards become effective. At that time and absent any rule change, the PSD construction permit program and Part 70 operating permit program would apply to all stationary sources that emit or have the potential to emit more than 100 or 250 tons of GHG per year. If GHG emission sources are required to obtain PSD and Part 70 permits at the current applicability thresholds, the number of PSD and Part 70 permits would increase to the point that the Department would be unable to deal with them in a timely fashion. These requirements could be interpreted to include commercial and residential sources. In order to relieve this overwhelming permitting burden, EPA promulgated its final GHG Tailoring Rule in the *Federal Register* on June 3, 2010 (75 FR 31514). EPA's rule tailors the applicability criteria that determine which GHG emission sources become subject to the PSD and Part 70 programs by defining the term "subject to regulation" to establish thresholds of 100,000 tpy CO₂ equivalent (CO₂e) for PSD and Part 70 applicability and the new significant level of 75,000 tpy CO₂e for PSD. The Department is proposing to modify Parts 5 and 7 of Subchapter 8 to raise the applicability thresholds for GHG for the PSD permitting program and the Part 70 permitting program to match those contained in the federal GHG Tailoring Rule in order to reduce the number of permits required by the inclusion of GHG emissions as a regulated pollutant to a manageable level and to prevent the State rule from being more stringent than the corresponding federal rule.

The Department is also proposing to add a new section to Subchapter 7 to exclude GHG from the minor facility permitting program except if necessary to set enforceable limits to keep GHG emission levels at a facility below the applicability threshold levels for the PSD construction permit program and/or the Part 70 operating permit program. At this time, EPA does not have a GHG permitting program for minor facilities.

The Department is proposing modifications to Parts 7 and 9 of Subchapter 8 to implement the New Source Review program (PSD and Nonattainment NSR) for the fine particulate matter (PM-2.5) National Ambient Air Quality Standards (NAAQS) which were published on July 18, 1997 (62 FR 38652) and revised on October 17, 2006 (71 FR 61144). In the May 16, 2008 *Federal Register* (73 FR 28321), EPA finalized applicability of NSR to PM-2.5 and its precursors. The proposed rule changes will establish provisions for a major source threshold, significant emissions rate, offset ratios for PM-2.5 NAAQS, and interpollutant trading for offsets that are consistent with those in the federal regulations set forth in 40 CFR §51.166 (b).

The Department also proposes to correct an error in the definition of "major stationary source" in OAC 252:100-8-31. The current definition relating to municipal incinerators is more stringent than the federal definition set forth in 40 CFR.

The Department is proposing changes to Subchapter 31, Control of Emission of Sulfur Compounds, to clarify the

language and to bring the allowable sulfur dioxide (SO₂) ambient air limits set forth in OAC 252:100-31-7 into line with the requirements of the recently-enacted change to the SO₂ NAAQS. In addition, the Department is proposing to add requirements for fuel-burning equipment that use an alternative fuel.

AUTHORITY:

Generally, Environmental Quality Board powers and duties, 27A O.S. § 2-2-101, and 27A O.S. §§ 2-5-106; Air Quality Advisory Council powers and duties, 27A O.S. § 2-2-201 and 27A O.S. §§ 2-5-107; and Oklahoma Clean Air Act, 27A O.S. §§ 2-5-101 through -117, and specifically 27A O.S. §§ 2-5-105 (Subchapter 2, Subchapter 8, Subchapter 31, and Appendix Q), -112 (Subchapter 5, Subchapter 8, and Subchapter 31), -113 (Subchapter 5), and -114 (Appendix Q).

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on October 27, 2010. For comments received at least five (5) business days prior to the Council meeting, staff will post written responses on the Department's web page at least one (1) day prior to the Council meeting. Copies of the written responses will be provided to the Council and the public at that Council meeting. Oral comments may be made at the October 27, 2010 hearing and at the November 16, 2010 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, October 27, 2010, at the DEQ headquarters, 707 N. Robinson, Oklahoma City, Oklahoma.

Before the Environmental Quality Board at 9:30 a.m. on Tuesday, November 16, 2010, at the OSU Alumni Center, 201 ConocoPhillips, Oklahoma State University, Stillwater, OK 74078-7043.

These hearings shall also serve as public hearings to receive comments on the proposed revisions to the State Implementation Plan (SIP) under the requirements of 40 C.F.R. § 51.102 of the U.S. Environmental Protection Agency regulations and 27A O.S. § 2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtgts/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

RULE IMPACT STATEMENT:

The rule impact statement is available for review 30 days prior to the hearing on the DEQ Air Quality Division website at http://www.deq.state.ok.us/AQDnew/council_mtg/index.htm. Copies also may be obtained from the Department by calling the contact person listed below.

CONTACT PERSON:

The contact person for this proposal is Cheryl E. Bradley, Environmental Programs Manager, at (405) 702-4100. Please send written comments on the proposed rule changes to Ms. Bradley at cheryl.bradley@deq.ok.gov. Mail should be addressed to Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, ATTN: Cheryl E. Bradley. The Air Quality Division FAX number is (405)702-4101.

PERSONS WITH DISABILITIES:

Should you desire to attend but have a disability and need an accommodation, please notify the Air Quality Division three (3) days in advance at (405)702-4216. For the hearing impaired, the TDD relay number is 1-800-522-8506 or 1-800-722-0353, for TDD machine use only.

[OAR Docket #10-1177; filed 8-20-10]

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 205. HAZARDOUS WASTE MANAGEMENT**

[OAR Docket #10-1180]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 3. Incorporation by Reference
252:205-3-1. [AMENDED]

SUMMARY:

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, 2010. Changes to the federal regulations for this time period include hazardous waste technical corrections and clarifications. These include fixing typographical errors, incorrect or outdated citations, and omissions. These changes are neither more nor less stringent than the existing federal rules. The incorporation by reference will also include changes made to the federal program governing import/export of hazardous waste intended for recovery. Because of the Federal government's role in matters of foreign policy, EPA does not authorize States to administer the Federal import/export functions. Because they are more stringent than the existing regulations, States are required to adopt the provisions; however, for the reason just stated, authorized states will not be implementing the changes. They will continue to be implemented by the Federal government. Therefore these changes will have no substantive

impact on the hazardous waste program implemented by the Department of Environmental Quality.

AUTHORITY:

Environmental Quality Board and Hazardous Waste Management Advisory Council powers and duties, 27A O.S. §§ 2-2-101, 2-2-104, 2-2-201, 2-7-105, and 2-7-106.

COMMENT PERIOD:

Written comments may be made, delivered or mailed to the contact person from September 15, 2010 through October 28, 2010. Oral comments may be made at the meeting of the Hazardous Waste Management Advisory Council, October 28, 2010 and at the meeting of the Environmental Quality Board, November 16, 2010.

PUBLIC HEARINGS:

Before the Hazardous Waste Management Advisory Council on October 28, 2010 at 10:00 a.m. at the Tulsa Technology Center, Riverside Campus, 801 West K place, Jenks, OK 74132.

Before the Environmental Quality Board on November 16, 2010, at 9:30 a.m. in the Regents Room of Oklahoma State University located at 201 Conoco Phillips OSU Alumni Center, Oklahoma State University, Stillwater, OK 74078-7043.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The DEQ requests that business entities affected by this modification provide the DEQ, within the comment period, in dollar amounts if possible, the increase in the level of direct costs such as fees, and the indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other compliance with the proposed rule.

COPY OF PROPOSED RULE:

The proposed rule may be obtained from the contact person, reviewed at the Department of Environmental Quality, 707 N. Robinson, Oklahoma City, Oklahoma, or reviewed online at <http://www.deq.state.ok.us/LPDnew/LPPrules.htm>.

RULE IMPACT STATEMENT:

Copies of the rule impact statement may be obtained from the contact person or may be reviewed online at <http://www.deq.state.ok.us/LPDnew/LPPrules.htm>.

CONTACT PERSON:

Mike Edwards (405) 702-5226, 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 mike.edwards@deq.ok.gov.

ADDITIONAL INFORMATION:

Persons with disabilities who desire to attend the rulemaking hearing and need an accommodation should notify the contact person three days in advance of the hearing. For hearing impaired, the TDD Relay Number is 1-800-722-0353 for TDD machine use only.

[OAR Docket #10-1180; filed 8-25-10]

Notices of Rulemaking Intent

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

[OAR Docket #10-1169]

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULE:

325:25-1-32. Coggins test [NEW]

SUMMARY:

Mr. Constantin A. Rieger, Commission Executive Director, proposes a new racing rule to address testing for Equine Infectious Anemia. The proposed rule would require a negative test result taken 12 months of the date of the race for the horse to be allowed to race in Oklahoma. The negative test record would be attached to the horse's registration papers. Currently, the negative test result requirement is handled by a Commission Directive.

AUTHORITY:

75 O.S., §303; Title 3A O.S. §204(A); Oklahoma Horse Racing Commission.

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m., Monday, October 18, 2010, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

PUBLIC HEARING:

A public hearing will be held between the hours of 9:00 a.m. and 12:00 p.m. and 1:00 p.m. and 4:30 p.m. on Monday,

October 18, 2010, at the following address: Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

The Oklahoma Horse Racing Commission requests that business entities affected by this proposed rule provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rule. Business entities may submit this information in writing to the Commission, at the above address, before the close of the comment period on October 18, 2010.

COPIES OF PROPOSED RULES:

A copy of the proposed new rule may be obtained from the Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. §303(D), a rule impact statement will be prepared by September 30, 2010 and may be obtained from the Oklahoma Horse Racing Commission at the above address.

CONTACT PERSON:

Bonnie Morris, Agency Rulemaking Liaison, (405) 943-6472.

[OAR Docket #10-1169; filed 8-19-10]

Gubernatorial Disapprovals

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

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

TITLE 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #10-1166]

RULEMAKING ACTION:

Gubernatorial disapproval of permanent rules

RULES:

Subchapter 1. General Provisions

268:1-1-2. Description of organization [AMENDED]

268:1-1-3. Methods whereby the public may obtain information or make submissions or requests [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received May 17, 2010

[OAR Docket #10-1166; filed 8-13-10]

TITLE 268. OKLAHOMA COUNCIL ON FIREFIGHTER TRAINING CHAPTER 2. OPERATIONS

[OAR Docket #10-1167]

RULEMAKING ACTION:

Gubernatorial disapproval of permanent rules

RULES:

Subchapter 5. Main Office Operations

268:2-5-3. Description of main office operations [AMENDED]

GUBERNATORIAL DISAPPROVAL:

Written disapproval received May 17, 2010

[OAR Docket #10-1167; filed 8-13-10]

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

[OAR Docket #10-1170]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

317:2-1-2. [AMENDED]

(Reference APA WF # 10-12)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 431.205

DATES:

Adoption:

July 8, 2010

Approved by Governor:

August 13, 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 Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to add the responsibility of hearing a member's grievance when the Oklahoma Health Care Authority has made the eligibility determination. Revisions to the agency's grievance rules are needed to coincide with the Online Enrollment process which will transfer determination of SoonerCare eligibility for some individuals to the Oklahoma Health Care Authority.

ANALYSIS:

In 2007, the OHCA received a Transformation Grant through the Centers for Medicare and Medicaid Services (CMS) to develop a web based online application and eligibility determination system in order to improve the ease and efficiency of enrollment. The Online Enrollment process allows potential members to apply for SoonerCare electronically. Soon, the OHCA will assume responsibility for determining SoonerCare eligibility for certain groups of individuals using this process. As OHCA will now be making eligibility determinations, our appeals' rules are in need of revision to add the responsibility of hearing members' grievances relating to these eligibility determinations.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

**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):**

317:2-1-2. Appeals

(a) Member Process Overview.

(1) The appeals process allows a member to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to file an appeal, the member files a LD-1 form within 20 days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal.

(3) If the LD-1 form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD-1 form is not received within 30 days of written notice sent by OHCA according to Title 68 O.S. § 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out and necessary documentation not included, then the appeal will not be heard.

(5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(6) Upon receipt of the member's appeal, a fair hearing before the Administrative Law Judge (ALJ) will be scheduled. The member will be notified in writing of the date and time for this procedure. The member must appear at this hearing and it is conducted according to OAC 317:2-1-5. The ALJ's decision may be appealed to the Chief Executive Officer of the OHCA, which is a record review at which the parties do not appear (Section OAC 317:2-1-13).

(7) Member appeals are ordinarily decided within 90 days from the date OHCA receives the member's timely request for a fair hearing unless the member waives this requirement. [Title 42 CFR Section 431.244(f)]

Emergency Adoptions

- (8) Tax warrant intercept appeals will be heard directly by the ALJ. A decision is normally rendered by the ALJ within 20 days of the hearing before the ALJ.
- (b) **Provider Process Overview.**
- (1) The proceedings as described in this Section contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(c)(2).
- (2) All provider appeals are initially heard by the OHCA Administrative Law Judge under OAC 317:2-1-2(c)(2).
- (A) The Appellant (Appellant is the provider who files a grievance) files an LD form requesting a grievance hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.)
- (B) If the LD form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.
- (C) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.
- (D) A decision will be rendered by the ALJ ordinarily within 45 days of the close of all evidence in the case.
- (E) The Administrative Law Judge's decision is appealable to OHCA's CEO under OAC 317:2-1-13.
- (c) **ALJ jurisdiction.** The administrative law judge has jurisdiction of the following matters:
- (1) Member Appeals:
- (A) Discrimination complaints regarding the SoonerCare program;
- (B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;
- (C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;
- (D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within 20 days of the hearing before the ALJ;
- (E) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and
- (F) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(G) Appeals which relate to eligibility determinations made by OHCA; and

- (2) Provider Appeals:
- (A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;
- (B) Denial of request to disenroll member from provider's SoonerCare Choice panel;
- (C) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5), (e)(8), and (e)(12);
- (D) Petitions for Rulemaking;
- (E) Appeals of insureds participating in Insure Oklahoma/ O-EPIC which are authorized by OAC 317:45-9-8(a);
- (F) Appeals to the decision made by the Contracts manager related to reports of supplier non-compliance to the Central Purchasing Division, Oklahoma Department of Central Services and other appeal rights granted by contract;
- (G) Drug rebate appeals;
- (H) Nursing home contracts which are terminated, denied, or non-renewed;
- (I) Proposed administrative sanction appeals pursuant to OAC 317:30-3-19. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will normally be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions; and
- (J) Contract award appeals.

[OAR Docket #10-1170; filed 8-20-10]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 25. SOONERCARE CHOICE

[OAR Docket #10-1174]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 7. ~~SoonerCare~~ SoonerCare

Part 1. General Provisions

317:25-7-7. [NEW]

(Reference APA WF # 10-25)

AUTHORITY:

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

DATES:

Adoption:

July 8, 2010

Approved by Governor:

August 13, 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 Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the Agency's SoonerCare Choice rules. Rules are revised to include procedures and guidelines related to primary care provider (PCP) referrals under the current medical home model. These emergency rule revisions will make rules consistent with other OHCA and private insurance medical necessity practices and clarify access to healthcare for Oklahomans, thereby reducing the overall administrative burden(s) on both the agency and the Oklahomans who depend on these services.

ANALYSIS:

SoonerCare Choice rules are revised to include procedures and guidelines related to primary care provider (PCP) referrals under the current medical home model. The PCP referral process is clearly defined, including the appropriate use of OHCA administrative referrals. Rules further explain provider expectations and provide guidelines regarding PCP referrals, medical necessity, medical record documentation, and OHCA administrative referrals. These revisions continue to strengthen the OHCA medical home model and SoonerCare Choice program.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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

SUBCHAPTER 7. SOONERCARE

PART 1. GENERAL PROVISIONS

317:25-7-7. Referrals for specialty services

(a) PCPs are required to assure the delivery of medically necessary preventive and primary care medical services, including securing referrals for specialty services. Some services, as defined in OAC 317:25-7-2(c) and OAC 317:25-7-10(b), do not require a referral from the PCP. A PCP referral does not guarantee payment, as all services authorized by the PCP must be in the scope of coverage of the SoonerCare Choice program to be considered compensable.

(b) Pursuant to OAC 317:30-3-1(f), SoonerCare Choice referrals must always be made on the basis of medical necessity. Referrals from the PCP are required prior to receiving the referred service, except for retrospective referrals as deemed appropriate by the PCP.

(c) Documentation in the medical record must include a copy of each referral to another health care provider. The PCP and specialty provider are responsible for maintaining appropriate documentation of each referral to support the claims for medically necessary services.

(d) As approved and deemed appropriate, the OHCA may provide administrative referrals for specialty services. Administrative referrals are only provided by the OHCA under special and extenuating circumstances. Administrative referrals

should not be requested as a standard business practice. The OHCA will not process retrospective administrative referrals, unless one of the following exceptions applies:

(1) the specialty services are referred from an IHS, tribal, or urban Indian clinic;

(2) the specialty services are referred as the result of an emergency room visit or emergency room follow-up visit;

(3) the specialty services are referred for pre-operative facility services prior to a dental procedure; or

(4) the retrospective administrative referral request for specialty services is requested from the OHCA within 30 calendar days of the specialty care date of service. If the retrospective administrative referral is requested within the 30 calendar days, the request must include appropriate documentation for the OHCA to approve the request.

Appropriate documentation must include:

(A) proof that the specialist has attempted to collect a PCP referral from the member's assigned PCP; and

(B) medical documentation to substantiate that the specialty services are medically necessary pursuant to OAC 317:30-3-1(f).

(e) Nothing in this section is intended to absolve the PCP of their obligations in accordance with the conditions set forth in their PCP SoonerCare Choice contract and the rules delineated in OAC 317:30.

[OAR Docket #10-1174; filed 8-20-10]

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

[OAR Docket #10-1176]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5. [AMENDED]
(Reference APA WF # 10-42)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 447.54

DATES:

Adoption:

July 8, 2010

Approved by Governor:

August 13, 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 Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the Agency's cost-sharing guidelines. These

Emergency Adoptions

emergency rule revisions will ensure rules are consistent and in compliance with current Federal law and Centers for Medicare and Medicaid Services (CMS) regulations.

ANALYSIS:

OHCA cost-sharing rules are revised to correspond with CMS nominal cost share guidelines pertaining to prescription co-pays. Additionally, rules are clarified to state that a member's cost sharing liability is capped at 5% of the member's gross annual income.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-5. Assignment and Cost Sharing

(a) **Definitions.** The following words and terms, when used in subsection (c) of this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Fee-for-service contract"** means the provider agreement specified in OAC 317:30-3-2. This contract is the contract between the Oklahoma Health Care Authority and medical providers which provides for a fee with a specified service involved.

(2) **"Within the scope of services"** means the set of covered services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare Program.

(3) **"Outside of the scope of the services"** means all medical benefits outside the set of services defined at OAC 317:25-7 and the provisions of the SoonerCare Choice contracts in the SoonerCare Program.

(b) **Assignment in fee-for-service.** The OHCA's Medicaid State Plan provides that participation in the medical program is limited to providers who accept, as payment in full, the amounts paid by OHCA plus any deductible, coinsurance, or co-payment required by the State Plan to be paid by the member and make no additional charges to the member or others.

(1) OHCA presumes acceptance of assignment upon receipt of an assigned claim. This assignment, once made, cannot be rescinded, in whole or in part by one party, without the consent of the other party.

(2) Once an assigned claim has been filed, the member must not be billed and the member is not responsible for any balance except the amount indicated by OHCA. The only amount a member may be responsible for is a co-payment, or the member may be responsible for services not covered under the medical programs. In any event, the member should not be billed for charges on an assigned claim until the claim has been adjudicated or other notice

of action received by the provider. Any questions regarding amounts paid should be directed to OHCA, Provider Services.

(3) When potential assignment violations are detected, the OHCA will contact the provider to assure that all provisions of the assignment agreement are understood. When there are repeated or uncorrected violations of the assignment agreement, the OHCA is required to suspend further payment to the provider.

(c) **Assignment in SoonerCare.** Any provider who holds a fee for service contract and also executes a contract with a provider in the SoonerCare Choice program must adhere to the rules of this subsection regarding assignment.

(1) If the service provided to the member is outside of the scope of the services outlined in the SoonerCare Contract, then the provider may bill or seek collection from the member.

(2) In the event there is a disagreement whether the services are in or out of the scope of the contracts referenced in (1) of this subsection, the Oklahoma Health Care Authority shall be the final authority for this decision. The provider seeking payment under the SoonerCare Program may appeal to OHCA under the provisions of OAC 317:2-1-2.1.

(3) Violation of this provision shall be grounds for a contract termination in the fee-for-service and SoonerCare programs.

(d) **Cost Sharing-Copayment.** Section 1902(a)(14) of the Social Security Act permits states to require certain members to share some of the costs of SoonerCare by imposing upon them such payments as enrollment fees, premiums, deductibles, coinsurance, co-payments, or similar cost sharing charges. OHCA requires a co-payment of some SoonerCare members for certain medical services provided through the fee for service program. A co-payment is a charge which must be paid by the member to the service provider when the service is covered by SoonerCare. Section 1916(e) of the Act requires that a provider participating in the SoonerCare program may not deny care or services to an eligible individual based on such individual's inability to pay the co-payment. A person's assertion of their inability to pay the co-payment establishes this inability. This rule does not change the fact that a member is liable for these charges and it does not preclude the provider from attempting to collect the co-payment.

(1) Co-payment is not required of the following members:

(A) Individuals under age 21. Each member's date of birth is available on the REVS system or through a commercial swipe card system.

(B) Members in nursing facilities and intermediate care facilities for the mentally retarded.

(C) Pregnant women.

(D) Home and Community Based Service waiver members except for prescription drugs.

(2) Co-payment is not required for the following services:

(A) Family planning services. Includes all contraceptives and services rendered.

- (B) Emergency services provided in a hospital, clinic, office, or other facility.
- (3) Co-payments are required in an amount not to exceed the federal allowable for the following:
- (A) Inpatient hospital stays.
 - (B) Outpatient hospital visits.
 - (C) Ambulatory surgery visits including free-standing ambulatory surgery centers.
 - (D) Encounters with the following rendering providers:
 - (i) Physicians,
 - (ii) Advanced Practice Nurses,
 - (iii) Physician Assistants,
 - (iv) Optometrists,
 - (v) Home Health Agencies,
 - (vi) Certified Registered Nurse Anesthetists, and
 - (vii) Anesthesiologist Assistants,
 - (viii) Durable Medical Equipment providers, and
 - (ix) Outpatient behavioral health providers.
 - (E) Prescription drugs.
 - (i) Zero for preferred generics.
 - ~~(ii) \$2.00 for prescriptions having a Sooner Care allowable of \$29.99 or less.~~
 - ~~(iii) \$3.00 for prescriptions having a Sooner Care allowable of \$30.00 or more.~~
 - (ii) \$0.65 for prescriptions having a Sooner Care allowable payment of \$0.00-\$10.00.
 - (iii) \$1.20 for prescriptions having a Sooner Care allowable payment of \$10.01-\$25.00.
 - (iv) \$2.40 for prescriptions having a Sooner Care allowable payment of \$25.01-\$50.00.
 - (v) \$3.50 for prescriptions having a Sooner Care allowable payment of \$50.01 or more.
 - (F) Crossover claims. Dually eligible Medicare/SoonerCare members must make a co-payment in an amount that does not exceed the federal allowable per visit/encounter for all Part B covered services. This does not include dually eligible HCBS waiver members.
- (4) Aggregate cost-sharing liabilities in a given calendar year may not exceed 5% of the member's gross annual income.

[OAR Docket #10-1176; filed 8-20-10]

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

[OAR Docket #10-1173]

RULEMAKING ACTION:
EMERGENCY adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers

317:30-5-211.5. [AMENDED]
(Reference APA WF # 10-24)

AUTHORITY:

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

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the Agency's durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) rules. Rules are revised to provide clarification and guidelines for product refills and reorders, including expected utilization patterns, member contact, and timelines. Rules also provide additional guidance in regard to products which are supplied and delivered via mail and the appropriate way for providers to bill for such items. These emergency rule revisions will make rules consistent with other OHCA and Medicare medical necessity practices and clarify access to healthcare for Oklahomans, thereby reducing the overall administrative burden(s) on both the agency and the Oklahomans who depend on these services.

ANALYSIS:

Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) rules are revised to provide guidance regarding the delivery of DMEPOS products. Rules provide clarification and guidelines for product refills and reorders, including expected utilization patterns, member contact, and timelines. Rules also provide additional guidance in regard to products which are supplied and delivered via mail and the appropriate way for providers to bill for such items. Additional revisions include clarification in regard to the provider cost of delivery and additional language to clarify OHCA's intent on DMEPOS supplier maintenance in regard to equipment-related services.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

**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 5. INDIVIDUAL PROVIDERS
AND SPECIALTIES**

PART 17. MEDICAL SUPPLIERS

317:30-5-211.5. Repairs, maintenance, replacement and delivery

- (a) **Repairs.** Repairs to equipment that a member owns are covered when they are necessary to make the equipment usable. The repair charge includes the use of "loaner" equipment as required. If the expense for repairs exceeds the estimated expense of purchasing or renting another item of equipment for the remaining period of medical need, payment can not be made for the amount in excess.

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(b) **Maintenance.** Routine periodic servicing, such as testing, cleaning, regulating, and checking the member's equipment is considered maintenance and not a separate covered service. DMEPOS suppliers must provide equipment-related services consistent with the manufacturer's specifications and in accordance with all federal, state and local laws and regulations. Equipment-related services may include, but are not limited to, checking oxygen system purity levels and flow rates, changing and cleaning filters, and assuring the integrity of equipment alarms and back-up systems. However, more extensive maintenance as recommended by the manufacturer and performed by authorized technicians ~~are~~ is considered repairs. This may include breaking down sealed components and performing tests that require specialized testing equipment not available to the member. The supplier of a capped rental item that supplied the item the 13th month must provide maintenance and service for the item. In very rare circumstances of malicious damage, culpable neglect, or wrongful disposition, the supplier may document the circumstances and be relieved of the obligation to provide maintenance and service.

(c) **Replacement.**

(1) If a capped rental item of equipment has been in continuous use by the member for the equipment's useful life or if the item is irreparably damaged, lost, or stolen, a prior authorization must be submitted to obtain new equipment. The reasonable useful life for capped rental equipment cannot be less than five years. Useful life is determined by the delivery of the equipment to the member, not the age of the equipment.

(2) Replacement parts must be billed with the appropriate HCPCS code that represents the item or part being replaced, along with a pricing modifier and replacement modifier. If a part that has not been assigned a HCPCS code is being replaced, the provider should use a miscellaneous HCPCS code to bill each part. Each claim that contains miscellaneous codes for replacement parts must include a narrative description of the item, the brand name, model name/number of the item and an invoice.

(d) **Delivery.** ~~Delivery costs are included in setting the price for covered items. Delivery costs are not allowed except in rare and unusual circumstances when the delivery is outside the supplier's normal range of operation and cannot be provided by a more local supplier. DMEPOS products are set with usual maximum quantities and frequency limits. Suppliers are not expected to provide these amounts routinely, nor are members required to accept DMEPOS products at frequencies or in quantities that exceed the amount the member would typically use. Suppliers must not dispense a quantity of any DMEPOS product exceeding a member's expected utilization. The re-ordering or refilling of DMEPOS products should always be based on actual member usage. Suppliers should stay attuned to atypical utilization patterns on behalf of their members and verify with the ordering physician that the atypical utilization is warranted. Suppliers must exercise the following guidelines in regard to the delivery of DMEPOS products:~~

(1) For DMEPOS products that are supplied as refills to the original order, suppliers must contact the member prior to dispensing the refill. This shall be done to

ensure that the refilled item is necessary and to confirm any changes/modifications to the order. Contact with the member regarding refills should take place no sooner than 7 days prior to the delivery/shipping date. For subsequent deliveries of refills, the supplier must deliver the DMEPOS product no sooner than 5 days prior to the end of the usage for the current product. This is regardless of which delivery method is utilized. A member must specifically request the refill before a supplier dispenses the product. Suppliers must not automatically dispense a quantity of supplies on a predetermined basis, even if the member has authorized this in advance. The supplier must have member contact documentation on file to substantiate that the DMEPOS product was refilled in accordance with this section.

(2) For DMEPOS products that are supplied via mail order, suppliers must bill using the appropriate modifier which indicates that the DMEPOS product was delivered via the mail. Reimbursement for DMEPOS products supplied and delivered via mail may be at a reduced rate.

(3) For DMEPOS products that are covered in the scope of the SoonerCare program, the cost of delivery is always included in the rate for the covered item(s).

[OAR Docket #10-1173; filed 8-20-10]

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

[OAR Docket #10-1175]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 27. Independent Licensed Physical Therapists

317:30-5-293. [NEW]

Part 28. Occupational Therapy Services

317:30-5-299. [NEW]

Part 77. Speech and Hearing Services

317:30-5-680. [NEW]

(Reference APA WF # 10-27)

AUTHORITY:

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

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency

approval of rule revisions to the Agency's physical, occupational, and speech therapy rules. Rules are revised to clarify that when multiple therapists, or therapy assistants, work together as a team to treat one or more SoonerCare members, each therapist or assistant cannot bill separately for the same or different service provided at the same time to the same member. These emergency rule revisions will make rules consistent with other OHCA and private insurance medical necessity practices and clarify access to healthcare for Oklahomans, thereby reducing the amount of uncompensated care provided by Oklahoma healthcare providers.

ANALYSIS:

Agency rules are revised to provide guidance in regards to team therapy. Physical, occupational, and speech therapy rules will clarify that when multiple therapists, or therapy assistants, work together as a team to treat one or more SoonerCare members, each therapist or assistant cannot bill separately for the same or different service provided at the same time to the same member. Additionally, rules will provide clarification in regards to billing, multiple therapies, delivery of service, and determining the time counted for service units and codes.

CONTACT PERSON:

Tywanda Cox at (405)522-7153

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 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 27. INDEPENDENT LICENSED PHYSICAL THERAPISTS

317:30-5-293. Team therapy (Co-treatment)

Therapists, or therapy assistants, working together as a team to treat one or more members cannot each bill separately for the same or different service provided at the same time to the same member.

(1) CPT codes are used for billing the services of one therapist or therapy assistant. The therapist cannot bill for his/her services and those of another therapist or a therapy assistant, when both provide the same or different services, at the same time, to the same member.

(2) If multiple therapies (physical therapy, occupational therapy, and/or speech therapy) are provided to one member at the same time, only one therapist can bill for the entire service, or each therapist can divide the service units.

(3) Providers must report the CPT code for the time actually spent in the delivery of the modality requiring constant attendance and therapy services. Pre- and post-delivery services are not to be counted in determining the treatment service time. The time counted must begin when the therapist is directly working with the member to deliver treatment services.

(4) The time counted is the time the member is being treated. If the member requires both a therapist and an assistant, or even two therapists, each service unit of time the member is being treated can count as only one unit of each code. The service units billed must equal the total

time the member was receiving actual therapy services. It is not allowable for each therapist or therapy assistant to bill for the entire therapy session. The time the member spends not being treated, for any reason, must not be billed.

PART 28. OCCUPATIONAL THERAPY SERVICES

317:30-5-299. Team therapy (Co-treatment)

Therapists, or therapy assistants, working together as a team to treat one or more members cannot each bill separately for the same or different service provided at the same time to the same member.

(1) CPT codes are used for billing the services of one therapist or therapy assistant. The therapist cannot bill for his/her services and those of another therapist or a therapy assistant, when both provide the same or different services, at the same time, to the same member.

(2) If multiple therapies (physical therapy, occupational therapy, and/or speech therapy) are provided to one member at the same time, only one therapist can bill for the entire service, or each therapist can divide the service units.

(3) Providers must report the CPT code for the time actually spent in the delivery of the modality requiring constant attendance and therapy services. Pre- and post-delivery services are not to be counted in determining the treatment service time. The time counted must begin when the therapist is directly working with the member to deliver treatment services.

(4) The time counted is the time the member is being treated. If the member requires both a therapist and an assistant, or even two therapists, each service unit of time the member is being treated can count as only one unit of each code. The service units billed must equal the total time the member was receiving actual therapy services. It is not allowable for each therapist or therapy assistant to bill for the entire therapy session. The time the member spends not being treated, for any reason, must not be billed.

PART 77. SPEECH AND HEARING SERVICES

317:30-5-680. Team therapy (Co-treatment)

Therapists, or therapy assistants, working together as a team to treat one or more members cannot each bill separately for the same or different service provided at the same time to the same member.

(1) CPT codes are used for billing the services of one therapist or therapy assistant. The therapist cannot bill for his/her services and those of another therapist or a therapy assistant, when both provide the same or different services, at the same time, to the same member.

(2) If multiple therapies (physical therapy, occupational therapy, and/or speech therapy) are provided to one

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member at the same time, only one therapist can bill for the entire service, or each therapist can divide the service units.

(3) Providers must report the CPT code for the time actually spent in the delivery of the modality requiring constant attendance and therapy services. Pre- and post-delivery services are not to be counted in determining the treatment service time. The time counted must begin when the therapist is directly working with the member to deliver treatment services.

(4) The time counted is the time the member is being treated. If the member requires both a therapist and an assistant, or even two therapists, each service unit of time the member is being treated can count as only one unit of each code. The service units billed must equal the total time the member was receiving actual therapy services. It is not allowable for each therapist or therapy assistant to bill for the entire therapy session. The time the member spends not being treated, for any reason, must not be billed.

[OAR Docket #10-1175; filed 8-20-10]

burden(s) on both the agency and the Oklahomans who depend on these services.

ANALYSIS:

Private duty nursing rules are revised to provide additional clarification in regards to prior authorization requests for such services. Revisions clarify that providers should submit the required OHCA forms and documentation along with the treatment plan when requesting the prior authorization for private duty nursing. Revisions also provide additional flexibility for OHCA to conduct a preliminary telephonic interview with members prior to arranging a personal visit. The additional flexibility in allowing the telephonic interview will provide an opportunity for OHCA to ensure medical necessity prior to arranging the personal home visit. Additional revisions include general policy cleanup as it relates to these sections.

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., SECTION 253(D):

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 62. PRIVATE DUTY NURSING

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

[OAR Docket #10-1172]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 62. Private Duty Nursing
317:30-5-555. through 317:30-5-560.1. [AMENDED]
(Reference APA WF # 10-23)

AUTHORITY:

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

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July 8, 2010

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to the Agency's private duty nursing rules. Rules are revised to provide additional flexibility for OHCA to conduct a preliminary telephonic interview with members prior to arranging a personal visit. The additional flexibility in allowing the telephonic interview will provide an opportunity for OHCA to ensure medical necessity prior to arranging the personal home visit. These emergency rule revisions will make rules consistent with other OHCA medical necessity practices and clarify access to healthcare for Oklahomans, thereby reducing the overall administrative

317:30-5-555. Eligible providers

(a) An organization who desires to be paid by ~~Oklahoma Medicaid~~ SoonerCare for private duty nursing must meet the following requirements prior to providing services to eligible ~~Medicaid beneficiaries~~ SoonerCare members:

- (1) an executed contract with OHCA, and
- (2) the organization must meet the requirements of OAC 317:30-5-545 or it must be licensed by the State Health Department as a Home Care Agency.

(b) The provider of services within the organization must be a licensed practical nurse or a registered nurse.

317:30-5-556. Definitions

~~The definition of private~~ Private duty nursing is medically necessary care provided on a regular basis by a Licensed Practical Nurse or Registered Nurse in the member's residence or to assist outside the home during transport to medical appointments and emergency room visits in lieu of transport by ambulance.

317:30-5-557. Coverage by category

(a) **Adults.** ~~Oklahoma Medicaid~~ SoonerCare does not cover adults (~~persons age~~ Age 21 or over) for private duty nursing with the exception of subsection (c).

(b) **Children.** ~~Oklahoma Medicaid~~ SoonerCare does cover children (~~Persons under~~ Under the age of 21) if:

- (1) the child is eligible for ~~Medicaid~~ SoonerCare; and
- (2) the Oklahoma Health Care Authority, in its discretion, deems the services medically necessary. Medical necessity is determined in accordance with OAC 317:30-5-560.1.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the ~~Medicaid—~~SoonerCare allowable for comparable services.

317:30-5-558. Private duty nursing coverage limitations

The following regulations apply to all private duty nursing services and provide coverage limitations:

- (1) All services must be prior authorized to receive payment from the Oklahoma Health Care Authority (OHCA). Prior authorization means authorization in advance of services provided in accordance with OAC 317:30-5-560.1;
- (2) A treatment plan must be completed by the Nursing agency before requesting prior authorization and must be updated at least annually and signed by the physician;
- (3) A telephonic interview and/or personal visit by an OHCA Care Management Nurse is required prior to the authorization for services;
- (4) Care in excess of the designated hours per day granted in the prior authorization is not ~~Medicaid-compensable~~ SoonerCare compensable. Prior-authorized but unused service hours cannot be "banked," "saved," or otherwise "accumulated" for use at a future date or time. If such hours or ~~service services~~ are provided, they are not ~~Medicaid-compensable~~ SoonerCare compensable.
- (5) Any care provided outside of the home is limited to assisting during transport to medical appointments and emergency room visits in lieu of transport by ambulance and is limited to the number of hours requested on the treatment plan and approved by OHCA.
- (6) Private duty nursing services do not include office time or administrative time in providing the service. The time billed is for direct nursing services only.
- (7) Staff must be engaged in purposeful activity that directly benefits the member receiving services. Staff must be physically able and mentally alert to carry out the duties of the job. At no time will OHCA compensate an organization for nursing staff time when sleeping.
- (8) OHCA will not approve Private Duty Nursing service if all health and safety issues cannot be met in the home setting.
- (9) A provider must not misrepresent or omit facts in a treatment plan.
- (10) It is outside the scope of coverage to deliver care in a manner outside the treatment plan or to deliver units over the authorized units of care.
- (11) Private duty nursing is not authorized in excess of 16 hours per day except immediately following a hospital stay or the temporary incapacitation of the primary caregiver. Under these two exceptions, care in excess of 16 hours is authorized for a period up to 30 days. As expressed in this subsection, incapacity means an involuntary ability to provide care.
- (12) Family and/or caregivers and/or guardians are required to provide some of the nursing care to the member without compensation.

317:30-5-559. How services are authorized

An eligible provider may have private duty nursing services authorized by following all the following steps:

- (1) create a treatment plan for the patient as expressed in OAC 317:30-5-560;
- (2) ~~request a home visit by an OHCA Care Management Nurse~~ submit the prior authorization request with the appropriate OHCA required forms, the treatment plan, and request the telephonic interview and/or personal visit by an OHCA Care Management Nurse; and
- (3) have an OHCA Care Management Nurse determine medical necessity of the service by scoring the ~~client's~~ member's needs on the Private Duty Nursing Acuity Grid (Form OHCA-26).

317:30-5-560. Treatment Plan

(a) An eligible organization must create a treatment plan for the member as part of the authorization process for private duty nursing services. The initial treatment plan must be signed by the member's attending physician. It must be updated and signed annually.

(b) The treatment plan must include all of the following medical and social data so that ~~OHCA Care Managers~~ an OHCA Care Management Nurse can appropriately determine medical necessity by the use of the Private Duty Nursing Acuity Grid:

- (1) diagnosis;
- (2) prognosis;
- (3) anticipated length of treatment;
- (4) number of hours of private duty nursing requested per day;
- (5) assessment needs and frequency (e.g., vital signs, glucose checks, neuro checks, respiratory);
- (6) medication method of administration and frequency;
- (7) age-appropriate feeding requirements (diet, method and frequency);
- (8) respiratory needs;
- (9) mobility requirements including need for turning and positioning, and the potential for skin breakdown;
- (10) developmental deficits;
- (11) casting, orthotics, therapies;
- (12) age-appropriate elimination needs;
- (13) seizure activity and precautions;
- (14) age-appropriate sleep patterns;
- (15) disorientation and/or combative issues;
- (16) age-appropriate wound care and/or personal care;
- (17) communication issues;
- (18) social support needs;
- (19) name, skill level, and availability of all caregivers; and
- (20) other pertinent nursing needs such as dialysis, isolation.

317:30-5-560.1. Prior authorization requirements

(a) Authorizations are provided for a maximum period of six months.

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- (b) Authorizations require:
 - (1) a treatment plan for the member; and
 - (2) a telephonic interview and/or personal visit by an OHCA Care Management Nurse to determine medical necessity using the Private Duty Nursing Acuity Grid.
- (c) The number of hours authorized may differ from the hours requested on the treatment plan based on the assessment of the Care Management Nurse.
- (d) If the member's condition necessitates a change in the treatment plan, the provider must request a new prior authorization.
- (e) Changes in the treatment plan may necessitate another telephonic interview and/or personal visit by the OHCA Care Management staff.

[OAR Docket #10-1172; filed 8-20-10]

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

[OAR Docket #10-1171]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 5. Individual Providers and Specialties
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)
317:30-5-1091. [AMENDED]
317:30-5-1098. [AMENDED]
(Reference APA WF # 10-20)

AUTHORITY:

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 and Section 5051.3 of Title 63 of Oklahoma Statutes; 42 CFR § 431.110

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SUPERSEDED EMERGENCY ACTIONS:

N/A

INCORPORATIONS BY REFERENCE:

N/A

FINDING OF EMERGENCY:

The Agency finds that a compelling public interest exists which necessitates promulgation of emergency rules and requests emergency approval of rule revisions to clarify that smoking and tobacco use cessation counseling is a covered SoonerCare service for the Native American population through the Indian Health Service, Tribally Operated Programs and Urban Indian Clinics. The Native American population has a high risk of suffering from tobacco related death and disease as this population has the highest prevalence of smoking and other tobacco use compared to any other population group in the United States. The cost for treatment of smoking related disease is high for this population and will likely continue to climb unless the rate of smoking and tobacco use is dramatically reduced.

ANALYSIS:

Rules are revised to clarify that smoking and tobacco use cessation counseling is a covered SoonerCare service for the Native American population through the Indian Health Service, Tribally Operated Programs

and Urban Indian Clinics. The revision will eliminate any confusion regarding availability of services among I/T/U's providing SoonerCare services.

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., SECTION 253(D):

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 110. INDIAN HEALTH SERVICES, TRIBAL PROGRAMS, AND URBAN INDIAN CLINICS(I/T/US)

317:30-5-1091. Definition of I/T/U services

(a) As described in Title 42 of the Code of Federal Regulations (CFR) 136.11(a), the I/T/U services may include hospital and medical care, dental care, public health nursing and preventive care (including immunizations), and health examination of special groups such as school children.

(b) Further, Title 42 CFR 136.11(c) allows that the scope and availability of I/T/U services will depend upon the resources of the facility.

(c) I/T/U services may be covered when furnished to a patient at the clinic or other location, including a mobile clinic, or the patient's place of residence.

(d) I/T/U outpatient encounters include but are not limited to:

(1) Physicians' services and supplies incidental to a physician's services;

(2) Within limitations as to the specific services furnished, a doctor of dentistry or oral surgery, a doctor of optometry, or a doctor of podiatry [Refer to Section 1861(r) of the Act for specific limitations];

(3) The services of a resident as defined in OAC 317:25-7-5(4) who meets the requirements for payment under SoonerCare and the supplies incidental to a resident's services;

(4) Services of advanced practice nurses (APNs), physician assistants (PAs), certified nurse midwives (CNMs), or specialized advanced practice nurse practitioners;

(5) Services and supplies incidental to the services of APNs and PAs (including services furnished by certified nurse midwives);

(6) Public health nursing services include but are not limited to services in the following areas:

(A) Phlebotomy;

(B) Wound care;

(C) Public health education;

(D) Administration of immunizations;

(E) Administration of medication;

- (F) Child health screenings meeting EPSDT criteria;
 - (G) Smoking and Tobacco Use Cessation Counseling;
 - ~~(GH)~~ Prenatal, newborn and postpartum assessments, including case management services for first time mothers; and
 - ~~(HI)~~ General health assessments and management of conditions such as tuberculosis, diabetes and hypertension.
- (7) Visiting nurse services to the homebound;
 - (8) Behavioral health professional services and services and supplies incidental to the services of LBHPs; and
 - (9) Dental services.

317:30-5-1098. I/T/U outpatient encounters

- (a) I/T/U outpatient encounters that are billed to the OHCA must meet the definition in this Section and are limited to services covered by the OHCA. These services include health services included in the State Plan under Title XIX or Title XXI of the Social Security Act.
- (b) The following words and terms have the following meaning unless the context clearly indicates otherwise:
 - (1) An I/T/U outpatient encounter is a face-to-face contact between a health care professional and a CDIB card eligible SoonerCare member for the provision of Title XIX and Title XXI covered outpatient services in an I/T/U facility within a 24-hour period ending at midnight, as documented in the patient's medical record.
 - (2) An I/T/U encounter means outpatient services that may be covered when furnished to a patient by employees of the I/T/U facility at the I/T/U facility or other location, including the patient's place of residence.
- (c) The following services may be considered reimbursable encounters subject to the limitations of the Oklahoma State Plan and include any related medical supplies provided during the course of the encounter:
 - (1) Medical;
 - (2) Diagnostic;
 - (3) Behavioral Health services [refer to OAC 317:30-5-1094];
 - (4) Dental, Medical and Mental Health Screenings;
 - (5) Vision;
 - (6) Physical Therapy;
 - (7) Occupational Therapy;
 - (8) Podiatry;
 - (9) Speech;
 - (10) Hearing;
 - (11) Visiting Nurse Services;
 - (12) Smoking and Tobacco Use Cessation Counseling
 - ~~(13)~~ Other Title XIX or XXI services as allowed under OHCA's SoonerCare State Plan and OHCA Administrative Rules;
 - ~~(14)~~ Drugs or medication treatments provided during a clinic visit are part of the encounter rate. For example, a member has come into the clinic with high blood pressure and is treated at the clinic with a hypertensive drug or

- drug sample. Drug samples are included in the encounter rate. Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy;
- ~~(15)~~ Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound members; and
- ~~(16)~~ I/T/U Multiple Outpatient Encounters.
 - (A) OHCA will cover one medically necessary outpatient medical encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit with a different diagnosis. Then, a second encounter is allowed.
 - (B) OHCA will cover one dental encounter per member per day regardless of how many procedures are done or how many providers are seen unless if due to an emergency, the same member returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.
 - (C) OHCA will cover one behavioral health professional outpatient encounter per member per day unless if due to an emergency, the same member returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.
 - (D) Each service must have distinctly different diagnoses in order to meet the criteria for multiple I/T/U outpatient encounters. For example, a medical visit and a dental visit on the same day are considered different services with distinctly different diagnoses.
 - (E) Similar services, even when provided by two different I/T/U health care practitioners, are not considered multiple encounters. Situations that would not be considered multiple encounters provided on the same date of service include, but are not limited to:
 - (i) A well child check and an immunization;
 - (ii) A preventive dental screen and fluoride varnish application in a single setting;
 - (iii) A medical encounter with a mental health or addiction diagnosis on the same day as a mental health or addiction encounter;
 - (iv) A mental health and addiction encounter with similar diagnosis;
 - (v) Any time a member receives only a partial service with one provider and partial service from another provider. This would be considered a single encounter.
- (d) More than one outpatient visit with a medical professional within a 24-hour period for distinctly different diagnoses may be reported as two encounters. This does not imply that if a member is seen at a single office visit with multiple problems that multiple encounters can be billed. For example, a member comes to the clinic in the morning for an immunization, and in the afternoon, the member falls and breaks an arm. This would be considered multiple medical encounters and can be billed as two encounters. However, a member who comes to

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the I/T/U facility for a prenatal visit in the morning and delivers in the afternoon would not be considered a distinctly different diagnosis and can only be billed as a single encounter.

(e) The following services may be considered as separate or multiple encounters when two or more services are provided on the same date of service with distinctly different diagnoses:

- (1) Medical Services;
- (2) Dental Services;
- (3) Mental Health and addiction services with similar diagnoses can only be billed as one encounter. In addition, if the member is also seen for a medical office visit with a mental health or addiction diagnosis, then it is considered a single encounter;
- (4) Physical or occupational therapy (PT/OT). If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter;
- (5) Administration of immunizations. If no other medical office visit occurs on the same date of services; and
- (6) Tobacco cessation limited to state plan services. If no other medical or addiction encounter occurs on the same date of service.

(f) I/T/U outpatient encounters for CDIB eligible SoonerCare members whether medical, dental, or behavioral health, are not subject to prior authorization. Other State Plan covered services that the I/T/U facility chooses to provide but which are not part of the I/T/U encounter are subject to all applicable SoonerCare regulations which govern the provision and coverage for that service.

[OAR Docket #10-1171; filed 8-20-10]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 50. INCOME

[OAR Docket #10-1168]

RULEMAKING ACTION:

EMERGENCY adoption

RULES:

Subchapter 15. Oklahoma Taxable Income
Part 7. Credits Against Tax
710:50-15-74 [AMENDED]
710:50-15-76 [AMENDED]
710:50-15-81 [AMENDED]
710:50-15-84 [AMENDED]
710:50-15-85 [AMENDED]
710:50-15-86 [AMENDED]
710:50-15-87 [AMENDED]
710:50-15-91 [AMENDED]
710:50-15-92 [AMENDED]
710:50-15-95 [AMENDED]
710:50-15-97 [AMENDED]
710:50-15-98 [AMENDED]
710:50-15-99 [AMENDED]
710:50-15-101 [AMENDED]
710:50-15-103 [AMENDED]
710:50-15-104 [AMENDED]
710:50-15-105 [AMENDED]
710:50-15-106 [AMENDED]
710:50-15-107 [AMENDED]
710:50-15-108 [AMENDED]

710:50-15-109 [AMENDED]

710:50-15-110 [NEW]

AUTHORITY:

68 O.S. §§ 203, 2357.11, 2357.30, 2357.32A, 2357.32B, 2357.41, 2357.46, 2357.47, 2357.59, 2357.66, 2357.67, 2357.102, 2357.104; Oklahoma Tax Commission

DATES:

Adoption:

June 29, 2010 (Commission Order No. 2010-06-29-13)

Approved by Governor:

August 9, 2010

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2011, unless superseded by another rule or disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

Compelling public interest was found to warrant emergency promulgation of these rules to implement the provisions of Senate Bills 1267, 1590 and House Bill 3024 (52nd Legislature, 2nd Regular Session).

ANALYSIS:

The rule changes reflect the provisions of Senate Bills 1267, 1590 and House Bill 3024 (52nd Legislature, 2nd Regular Session) providing for an income tax credit moratorium.

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. SECTION 253(D):

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 7. CREDITS AGAINST TAX

710:50-15-74. Credit for investment/new jobs

(a) **For tax years 1981 through 1987.** For tax years 1981 through 1987 the Oklahoma Investment/New Jobs Credit is allowed for Oklahoma Income Tax purposes only on investment in qualified depreciable property which directly results in a net increase in the number of employees engaged in manufacturing or processing in this state.

(b) **For 1988, and later years.** For 1988, and later years, the Oklahoma Investment/New Jobs Credit may be calculated on the investment or new employees when other qualifications are met. (See OTC Form 506).

(c) **Examples.** A company engaged in the process of cooking hamburgers for sale to the general public does not qualify for the Investment/New Jobs Credit. The Oklahoma Supreme Court determined, in the case **McDonald's Corp. vs. Oklahoma Tax Commission**, 563 P.2d 635 (Okla. 1977), that a company engaged in retail sales or a service organization (laundry, transportation, oil & gas production, drilling, restaurant, repair services, etc.) does not qualify for Oklahoma Investment/New Jobs Credit. [See: 68 O.S. §§ 2357.4, 2357.5]

(d) **"Processing" defined.** For purposes of this Section, "processing" means the preparation of tangible personal property for market. "Processing" begins when the form, context, or condition of the tangible personal property is changed with the intent of eventually transforming the property into a saleable product. "Processing" ends when the property being processed is in the form in which it is ultimately intended to be sold at retail. A business that has the majority of its emphasis on the retail side of business does not qualify as a processor or a manufacturer for purposes of this credit.

(e) **Leasing of employees by manufacturing or processing entity for purposes of the new jobs credit.** A company that engages in manufacturing or processing may still qualify for the Oklahoma New Jobs Credit pursuant to 68 O.S. § 2357.4 even though they lease their employees through an employee leasing company. The leased employees must still meet the requirements of 68 O.S. § 2357.4 for full-time equivalent employees and there must exist an employer-employee relationship between the leased employees and the employer who seeks the new jobs credit pursuant to 68 O.S. § 2357.4. Whether the employer-employee relationship exists between the employer manufacturing or processing entity and an employee who is leased will be determined on a case by case basis by considering the following factors:

- (1) The right of the employer to control the details of the employees work;
- (2) The employer furnishing the tools and the workplace;
- (3) The employee having taxes, worker's compensation and unemployment insurance funds withheld and the employer being liable for these items;
- (4) The employer's right to discharge the employee; and
- (5) The permanency of the employer-employee relationship.

(f) **Transfer of employees.** The transfer of employees to or from a leasing company cannot generate any additional credit, nor will any transfer of employees extend the period of time in which a current credit may be claimed.

(g) **Carryover.** Any credits allowed based on assets placed into service prior to January 1, 2000, or an increase in employment but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, in order, to each of the fifteen (15) years following the initial five-year period. Credits allowed for assets placed into service after December 31, 1999, but not used may be carried over, in order, to each of the four (4) years following the year of qualification, and to the extent not used in those years, to any year following the initial five-year period.

(h) **Limitations.**

- (1) No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), ~~or~~ Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act) or Section 3911 et seq. of the Oklahoma Statutes (21st Century

Quality Jobs Incentive Act) shall be eligible to receive the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. Effective January 1, 2010, this limitation does not apply to the investment / new jobs credit earned under 68 O.S. § 2357.4 (which requires a \$40 million investment within a three year time period). Further the entity must pay an annualized wage which equals or exceeds the state average wage. The qualifying entity must also obtain a determination letter from the Oklahoma Department of Commerce that the business activity of the entity will result in a positive net benefit rate. [See: 68 O.S. §§ 3607, 3909 and 3919]

(2) Business entities that benefit from proceeds of obligations issued by the Oklahoma Development Finance Authority from the Economic Development Pool may not claim any investment tax credits during the period of time that withholding taxes attributable to the payroll of said entity are being paid to the Community Economic Development Pooled Finance Revolving Fund or in any manner used for the payment of principal, interest or other costs associated with any obligations issued by the Oklahoma Development Finance Authority pursuant to the provisions Oklahoma Community Economic Development Pooled Finance Act.

(i) **Tax credit moratorium.**

(1) Credits based on assets placed in service or jobs created prior to July 1, 2010 are not affected by the tax credit moratorium and may be claimed as provided under 68 O.S. § 2357.4.

(2) No credit may be claimed for assets placed in service or new jobs created on or after July 1, 2010 through June 30, 2012, until July 1, 2012. Credits generated during this time period are deferred, and may be claimed beginning with tax year 2012 returns, subject to the following limitations:

(A) Credits accrued during the period from July 1, 2010 through June 30, 2012, shall be limited to a period of two (2) taxable years.

(B) Only fifty percent (50%) of the total amount of the credit generated between July 1, 2010 and June 30, 2012 may be claimed each taxable year.

(C) Amended returns shall not be filed after July 1, 2012 to claim the credits generated between July 1, 2010 and June 30, 2012 for tax years prior to tax year 2012.

(3) For example, a calendar year taxpayer places qualifying assets of \$150,000 in service in August 2010 which generates \$1,500. of credit for investment/new jobs per tax year for a five (5) year period (tax year 2010 through 2014) for a total of \$7,500. This results in the taxpayer generating \$3,000 of tax credits between July 1, 2010 and June 30, 2012. The taxpayer can initially claim \$1,500 in tax year 2012 and \$1,500 in tax year 2013 of credits generated during the moratorium. Taxpayer may also claim an additional \$1,500 of credits in both tax year 2012 and 2013. Final \$1,500 of credits can be claimed in tax year 2014.

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710:50-15-76. Oklahoma coal credits

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [See: 68 O.S. § 2357.11; *Wyoming v. Oklahoma*, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Two Dollars (\$2.00) per ton of Oklahoma-mined coal purchased. For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2012, the credit shall be Two Dollars and eighty-five cents (\$2.85) per ton of Oklahoma-mined coal purchased.

(2) **Extended basic credit.** For the period July 1, 2006 through December 31, 2006 and for tax years beginning on or after January 1, 2007 and ending on or before December 31, 2012, the credit shall be Two Dollars and fifteen cents (\$2.15) per ton of Oklahoma-mined coal purchased. The extended basic credit may not be claimed or transferred prior to January 1, 2008.

(3) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2005 and for the period beginning January 1, 2006 through June 30, 2006, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars (\$3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Sixty-eight Dollars (\$68.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period beginning January 1, 2006 through June 30, 2006, the credit shall be Ninety-five Cents (\$0.95) per ton and for the period of July 1, 2006 through December 31, 2006, and for tax years beginning on or after January 1, 2007, the credit shall be Five Dollars

(\$5.00) for each ton of coal mined, produced, or extracted in, on, under, or through a permit in this state.

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001 and ending on or before December 31, 2005, and for the period of January 1, 2006 through June 30, 2006, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005 and ending on or before December 31, 2005, for the period of January 1, 2006, through June 30, 2006, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents (\$0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an "eligible transferee" means *any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.* [See: 68 O.S. § 2357.11(G)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable. Coal credits shall not be used to lower the price of any Oklahoma-mined coal sold that is produced by a subsidiary of the person receiving a tax credit under this section to other buyers of the Oklahoma-mined coal.

(e) **Carryover provisions.** Any coal credit, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

(f) **Tax credit moratorium.** No credit may be claimed for coal purchased, mined, produced or extracted during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for Oklahoma-mined coal for qualifying purposes purchased, mined, produced or extracted on or after July 1, 2012.

710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property

(a) **Definitions.** For purposes of the clean-burning motor vehicle fuel property credit, "**motor vehicle**" includes forklifts and other similar self-propelled vehicles. "**Vehicle**" shall not mean conveyor belts or other similar items. An entity that converts property to qualified clean-burning motor vehicle fuel property may lease such property and retain the right to claim the credit. Property on which the credit has previously been claimed is ineligible for the credit.

(b) **Limitations of eligibility.** No qualified establishment, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Program Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible to receive the credit for qualified clean-burning motor vehicle fuel property provided by 68 O.S. §2357.22, in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

(c) **Electric vehicle property.** For vehicles placed in service after December 31, 1995, ~~and before June 30, 2010~~ the credit shall also be available for qualified electric vehicle property. "**Qualified electric vehicle property**" means a motor vehicle originally equipped to be propelled **only** by electricity or one which is also equipped with an internal combustion engine. For "qualified electric vehicle property" propelled only by electricity, the basis for the credit is the full purchase price of the vehicle. For vehicles also equipped with an internal combustion engine, the basis for the credit is limited to the portion of the basis of such motor vehicle which is attributable to the propulsion of the vehicle by electricity. The credit does not apply to vehicles known as "golf carts", "go-carts", or other motor vehicles which are manufactured principally for use off the streets and highways.

(d) **Hydrogen fuel cell.** The credit for equipment installed on a vehicle propelled by a hydrogen fuel cell shall only be eligible for tax year 2010.

(e) **Sunset date.** This credit will only be available through tax years beginning before January 1, 2015.

710:50-15-84. Recycling facility credit

(a) **General provisions.** There shall be allowed a credit against the tax imposed by 68 O.S. § 2355 and 36 O.S. § 624 for investments made in qualified recycling facilities. This is to be a non-refundable credit to offset tax, and is not transferable.

(b) **Definitions.** "**Qualified recycling facilities**" means buildings, land, improvements, machinery, and equipment

located in Oklahoma that manufacture a finished, marketable product or component thereof. The finished product must consist of ninety percent (90%) materials which have been separated from the waste stream and incorporated into the finished product.

(c) **Qualification.** In order to qualify for the credit, the conditions and criteria set out in this subsection must be met.

(1) The entity (person, firm, corporation, partnership, or other legal entity) or its successor claiming the credit must have filed a properly executed application with the Oklahoma Tax Commission on or before July 1, 1993.

(2) Construction or on-site installation of the qualified recycling facility must start on or after July 1, 1996 and before December 31, 1999.

(3) The total cost of the qualified recycling facility must be greater than Twenty Million Dollars (\$20,000,000.00).

(4) The new recycling facility must employ at least Seventy-five (75) new full-time equivalent employees. For purposes of this Section, "**full-time equivalent employees**" means those employees who earn at least Seven Thousand Dollars (\$7,000.00) annually.

(d) **Computation of credit.** Upon qualification, the allowed credit shall be equal to fifteen percent (15%) of the investment in the new recycling facility.

(e) **Limitations.** The credit for investments made in qualified recycling facilities is subject to the limitations described in this subsection.

(1) The credit shall not reduce the income tax liability by more than fifty percent, calculated on the net income of the recycling facility.

(2) The credit shall be allowed in the tax year that the recycling facility is placed in service. If the credit allowed is greater than can be utilized in the initial tax year of qualification, the credit may be carried forward to each of the nine (9) following tax years.

(3) No qualified entity, nor its contractors or subcontractors, that has received or is receiving an incentive payment pursuant to Section 3601 et seq. of the Oklahoma Statutes, (Oklahoma Quality Jobs Act), or Section 3901 et seq. of the Oklahoma Statutes, (Small Employer Quality Jobs Incentive Act), shall be eligible for the credit described in this Section in connection with the activity and establishment for which incentive payments have been, or are being received. [See: 68 O.S. §§3607, 3909]

(f) **Tax credit moratorium.** No credit may be claimed for investments made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for investments in qualified recycling facilities made on or after July 1, 2012.

710:50-15-85. Credit for investment in Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association

(a) **General provisions.** Oklahoma agricultural producers may claim an income tax credit for direct investment in an

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Oklahoma producer-owned agricultural processing entity which is designed to develop and enhance the production, processing, handling, and marketing of Oklahoma agricultural commodities. This credit will be available for the tax year in which the qualified investment is made.

- (1) **For qualified investments made on or after January 1, 1997 but before December 31, 1998.** The credit for qualified investments will be thirty percent (30%).
 - (2) **For qualified investments made on or after January 1, 1999.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than One Million Dollars (\$1,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent (30%) times One Million Dollars (\$1,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.
 - (3) **For qualified investments made on or after January 1, 2006.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than Two Million Dollars (\$2,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent (30%) times Two Million Dollars (\$2,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.
- (b) **Definitions. "Qualified investment"**, for purposes of this Section, means and is limited to, direct investments by Oklahoma agricultural producers in Oklahoma producer-owned agricultural processing cooperatives, Oklahoma producer-owned agricultural processing ventures, Oklahoma producer-owned agricultural processing marketing associations, and Oklahoma owned and based corporations and partnerships. [See: 68 O.S. Section 2357.25(F)]
- (c) **Limitations.** Under no circumstances will the credit percentage exceed thirty percent (30%). If the credit should exceed the amount of income tax due, any unused credit may be carried forward and applied against subsequent income tax liabilities for a period not to exceed six (6) years. In the event of credits being carried forward, the amount of credit, once established, shall not be reduced in the event of credit percentage reduction in subsequent years. This credit shall not be available to any taxpayer in years in which claimant received incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act.
- (d) **Information return required.** Oklahoma producer-owned agricultural processing entities must file an information return, on a form prescribed by the Commission, reporting the amount of direct investment made during the preceding calendar year. The information return must be filed by January 31.
- (e) **Tax credit moratorium.** No credit may be claimed for investments made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for direct investment in certain Oklahoma

producer-owned agricultural processing entity made on or after July 1, 2012.

710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits

- (a) **Qualified Small Business Capital Company.** A qualified Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to companies in this state. The principal place of business of the qualified Small Business Capital Company must be located within Oklahoma. The capitalization of the qualified Small Business Capital Company must be at least One Million Dollars (\$1,000,000.00). [See: 68 O.S. § 2357.61 for further details on capitalization] The qualified Small Business Capital Company cannot invest more than twenty percent (20%) of its funds in any one company.
- (1) **Credit available.** For taxable years beginning after December 31, 1997, and before January 1, 2012, there is a credit available against Oklahoma Income Tax (68 O.S. § 2355) and the tax levied on state and national banking associations and credit unions (68 O.S. §2370) for investments in a qualified Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]
 - (2) **General provisions.** The credit shall be equal to twenty percent (20%) of the qualified investment in a qualified Small Business Capital Company, and may only be claimed in the tax year in which the qualified Small Business Capital Company invests funds in an Oklahoma Small Business Venture. The credit is limited to the amount of the qualified investment which is subsequently invested in an Oklahoma small business venture by the qualified Small Business Capital Company.
 - (3) **Credit non-refundable, nontransferable; carry-over provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward subject to the following limitations:
 - (A) The credit may be carried forward for a period not to exceed three (3) years for investments made on or after November 1, 2006.
 - (B) The credit may be carried forward for a period not to exceed ten (10) years for investments made prior to June 7, 2006.
 - (C) The credit may be carried forward for a period not to exceed ten (10) years for investments made on or after June 7, 2006 and prior to November 1, 2006, provided the following conditions are met:
 - (i) The person or entity claiming the credit obtained a favorable determination letter from the

Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize the tax credits;

(ii) The qualified investment satisfies a legitimate business purpose of the entity receiving the investment;

(iii) The investor's funds were at risk; and

(iv) The investment was not made chiefly for the purpose of generating tax credits.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Small Business Capital Company is used by an Oklahoma Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified small business capital company. Further, the credit is not available for investments in which the Rural Small Business Capital Credit has been claimed.

(b) **Oklahoma Small Business Ventures.** An Oklahoma Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, or must intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further, the Oklahoma Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in conjunction with Qualified Small Business Capital Company Investment.** Investors in a Qualified Small Business Capital Company may also make an investment in an Oklahoma Small Business Venture, in conjunction with the investment by the Qualified Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to twenty percent (20%) of the qualified investment in an Oklahoma Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified small business:

(A) The investment must be made by a shareholder, member or a partner of the qualified Small Business Capital Company that has made a qualified investment in an Oklahoma Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in an Oklahoma Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with Qualified Small Business Capital Companies is limited to the lesser of two hundred percent (200%) of the taxpayer's qualified investment in the qualified Small Business Capital Company or two hundred percent (200%) of the qualified investment made by the qualified Small Business Capital Company in the Oklahoma Small Business Venture.

(d) **Reporting requirements.** Each qualified Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Small Business Capital Company in Oklahoma Small Business Ventures.

(e) **Recordkeeping.** Each qualified Small Business Capital Company shall also make a written information report available to all investors in the qualified Small Business Capital Company. This information report shall show the name of the qualified Small Business Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.62 and 2357.63 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Small Business Capital Formation Incentive Act. [68 O.S. § 2357.63A]*

(g) **Tax credit moratorium.** No credit may be claimed for qualified investments in Oklahoma small business ventures during the period of June 1, 2010, through December 31, 2011. No amount of a qualified investment made in a qualified small business capital company which has not been invested in one or more Oklahoma small business ventures prior to June 1, 2010 is eligible for any credit otherwise authorized, and no investment made during the moratorium is eligible for a credit.

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710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits

(a) **Qualified Rural Small Business Capital Company.** A Qualified Rural Small Business Capital Company can be a C or Subchapter S corporation, as defined in the Internal Revenue Code, incorporated pursuant to the laws of Oklahoma. It may also be a limited liability company or registered business partnership, with a certificate of partnership filed as required by law. The qualified Rural Small Business Capital Company must be organized to provide the direct investment of equity or near equity funds to rural small business entities in this state. The principal place of business of the qualified Rural Small Business Capital Company must be located within Oklahoma and the capitalization must be at least Five Hundred Thousand Dollars (\$500,000.00). The qualified Rural Small Business Capital Company cannot invest more than twenty-five percent (25%) of its funds in any one rural small business entity.

(1) **Credit available.** For taxable years beginning after December 31, 2000, and before January 1, 2008, there is a credit available against the Oklahoma Income Tax levied by 68 O.S. § 2355, and the tax levied on state and national banking associations and credit unions by 68 O.S. § 2370, for investments in a qualified Rural Small Business Capital Company. The credit is also available against the insurance premiums tax. [See: 36 O.S. §§624, 628]

(2) **General provisions.** The credit shall be equal to thirty percent (30%) of the qualified investment in a qualified Rural Small Business Capital Company, and may only be claimed in the tax year in which the capital company invests funds in an Oklahoma Rural Small Business Venture. The credit is limited to the amount of the qualified investment which is subsequently invested in an Oklahoma rural small business venture by the qualified Rural Small Business Capital Company, and is unavailable for investments made in qualified Rural Small Business Capital Companies made **prior** to January 1, 2001.

(3) **Credit non-refundable, nontransferable; carry-over provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds the amount of tax due, any excess credit may be carried forward subject to the following limitations:

(A) The credit may be carried forward for a period not to exceed three (3) years for investments made on or after November 1, 2006.

(B) The credit may be carried forward for a period not to exceed ten (10) years for investments made prior to June 7, 2006.

(C) The credit may be carried forward for a period not to exceed ten (10) years for investments made on or after June 7, 2006 and prior to November 1, 2006, provided the following conditions are met:

(i) The person or entity claiming the credit obtained a favorable determination letter from the Tax Commission prior to March 15, 2006, regarding the ability to claim or otherwise utilize the tax credits;

(ii) The qualified investment satisfies a legitimate business purpose of the entity receiving the investment;

(iii) The investor's funds were at risk; and

(iv) The investment was not made chiefly for the purpose of generating tax credits.

(4) **Limitations on eligible claimants.** The credit is not available if the capital provided by a qualified Rural Small Business Capital Company is used by an Oklahoma Rural Small Business Venture for the acquisition of any other legal entity. Financial lending institutions are not eligible to claim this credit, except with respect to amounts invested in a qualified Rural Small Business Capital Company. Further, the credit is not available for investments in which the Small Business Capital Credit has been claimed.

(b) **Oklahoma Rural Small Business Ventures.** An Oklahoma Rural Small Business Venture can be any business, incorporated or unincorporated, which has, or will have, within one hundred eighty (180) days after a loan or investment by the qualified Rural Small Business Capital Company, fifty percent (50%) of its employees or assets in Oklahoma. Further, the business must need financial assistance to start or expand, and must provide or intend to provide goods and services. The business venture must qualify as a small business as defined by the federal Small Business Administration. Further the Rural Small Business Venture must expend within eighteen (18) months after the qualified investment at least fifty percent (50%) of the proceeds of the qualified investment for the acquisition of tangible or intangible assets which are used in the active conduct of the trade or business or to provide working capital for the active conduct of the trade or business. The Rural Small Business Venture cannot be engaged in oil and gas exploration; real estate development, sales or rentals; wholesale or retail sales; farming; ranching; banking; or lending or investing funds in other businesses. However, businesses that provide or intend to provide goods or services to the aforementioned businesses shall not be considered primarily engaged in those activities.

(c) **Credit for investments made in Oklahoma Rural Small Business Ventures in conjunction with investment by qualified Rural Small Business Capital Company.** Shareholders or partners in a qualified Rural Small Business Capital Company may also make an investment in an Oklahoma Rural Small Business Venture, in conjunction with the investment by the qualified Rural Small Business Capital Company.

(1) **General provisions.** The credit shall be equal to thirty percent (30%) of the qualified investment in an Oklahoma Rural Small Business Venture and may only be claimed in the tax year the qualified investment is made in the Oklahoma Rural Small Business Venture.

(2) **Credit non-refundable, nontransferable; carry-over provision.** This is a non-refundable credit and may not be transferred. If the credit exceeds the amount of tax due, any excess credit is eligible for carry forward for a period not to exceed three (3) taxable years.

(3) **Qualification.** To qualify for the credit made in conjunction with an investment made by the qualified Rural Small Business Capital Company:

(A) The investment must be made by a shareholder, member or a partner of the qualified Rural Small Business Capital Company that has made a qualified investment in an Oklahoma Rural Small Business Venture.

(B) Funds must be invested to purchase equity or near equity in the Rural Small Business Venture.

(C) The qualified investment must be made under the same terms and conditions as the qualified investment made by the qualified Rural Small Business Capital Company. The same terms and conditions do not apply to the dollar amount invested.

(D) The qualified investment made in conjunction with qualified Rural Small Business Capital Companies is limited to the lesser of two hundred percent (200%) of the taxpayer's qualified investment in the qualified Rural Small Business Capital Company, or two hundred percent (200%) of the qualified investment made by the qualified Rural Small Business Capital Company in the Rural Small Business Venture.

(d) **Reporting requirements.** Each qualified Rural Small Business Capital Company shall file an annual report to the Oklahoma Tax Commission by April 30 of each year. This report is to contain a list of all funds invested in, or in conjunction with, the company which may qualify for the tax credit. The report is also to contain the amount of funds invested in, or in conjunction with, the qualified Rural Small Business Capital Company, during the tax year, along with the names of the entity making the investment and appropriate federal identification numbers. This report is also to contain information regarding the type and amount of investments made by the qualified Rural Small Business Capital Company in Oklahoma Rural Small Business Ventures.

(e) **Recordkeeping.** Each qualified Rural Venture Capital Company shall also make a written information report available to all investors in the qualified Rural Venture Capital Company. This information report shall show the name of the qualified Rural Venture Capital Company, the name of the investor, and the total amount of the investments made. This report shall be attached to the filed Oklahoma income tax return of the taxpayer claiming the credit.

(f) **Recapture.** *The Tax Commission shall be authorized to recapture the credits otherwise authorized by the provisions of Sections 2357.73 and 2357.74 of Title 68 of the Oklahoma Statutes if it finds that the transaction does not meet the requirements of the Rural Venture Capital Formation Incentive Act. [68 O.S. § 2357.74A]*

(g) **Tax credit moratorium.** No credit may be claimed for qualified investments in Oklahoma rural small business ventures during the period of June 1, 2010, through December 31, 2011. No amount of a qualified investment made in a qualified rural small business capital company which has not been invested in one or more Oklahoma rural small business ventures prior to June 1, 2010 is eligible for any credit otherwise

authorized, and no investment made during the moratorium is eligible for a credit.

710:50-15-91. Credit for employers incurring expenses for the provision of child care services

(a) **General Provisions.** There shall be a non-refundable tax credit against the tax imposed by 68 O.S. § 2355 for employers, as defined by 68 O.S. § 2357.26(B)(2), incurring eligible expenses in the connection with providing child care services for children of their employees. The credit is based on the amount of eligible expenses and shall be twenty percent (20%) of the eligible expense subject to limits based on the type of expense. The credit is effective for tax years beginning after December 31, 2001.

(b) **Eligible expenses subject to the \$3,100.00 cap.** Eligible expenses subject to the \$3,100.00 cap per employee-child are those amounts paid for the purchase of childcare services for children of employees at a facility licensed by the Department of Human Services and rated at least two stars.

(c) **Eligible expenses subject to the \$50,000.00 cap.** Eligible expenses subject to the \$50,000.00 cap are those expenses associated with providing a child care center. These include expenses associated with planning, preparing, constructing, or expanding a child care center; equipment for a child care center; or maintenance and operating expenses of a child care center, including direct administrative and staff costs.

(d) **Eligible expenses subject to the \$5,000.00 cap.** Eligible expenses subject to the \$5,000.00 cap are those expenses for fees and grants to child care resource and referral organizations doing business within Oklahoma.

(e) **Credit is in lieu of expense deduction.** The credit for employers incurring expenses for the provision of child care services shall be in lieu of a deduction of eligible expenses used in computing Oklahoma taxable income. If the credit is claimed or generated, then none of the expenses on which the credit is based shall be allowed as deduction in calculating Oklahoma taxable income.

(f) **Carryforward allowed.** Credits generated but not used are allowed to be carried forward four (4) years following the year generated.

(g) **Tax credit moratorium.** No credit may be claimed for any expenditure occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for eligible expenditures occurring on or after July 1, 2012.

710:50-15-92. Credit for manufacturers of advanced small wind turbines

(a) **General provisions.** Oklahoma manufacturers of advanced small wind turbines may claim an Oklahoma income tax credit for manufacturing advanced small wind turbines in this state. This credit is available for advanced small wind turbines manufactured between January 1, 2003 and December 31, 2012.

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(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Advanced small wind turbines (ASWT)"** are upwind, furling wind turbines that have a rated capacity of at least one kilowatt (1kw) but no more than fifty kilowatts (50kw). The wind turbine must also incorporate advanced technologies such as new airfoils, new generators, new power electronics, and variable speed. In order to qualify as an advanced small wind turbine, at least one unit of each model must have undergone testing at the United States Department of Energy National Wind Technology Center and must comply with appropriate interconnection safety standards of the Institute of Electrical and Electronics Engineers as are applicable to small wind turbines.

(2) **"Rotor Swept Area"** means an area calculated by using the formula $\pi \times D^2$ divided by 4, (D being the rotor diameter in feet, $\pi = 3.1416$).

(3) **"Oklahoma manufacturer"** means, for purposes of this Section, a manufacturer who operates facilities that have the capability of manufacturing small wind turbine products in this state.

(4) **"Small wind turbine products"** means and includes rotor blades and alternator fabrication.

(c) **Computation of the credit.** The credit is based on the square footage of the rotor swept area of the advanced small wind turbine manufactured in Oklahoma. For ASWT manufactured between January 1, 2003, and December 31, 2003, the credit is Twenty-five Dollars (\$25.00) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2004, and December 31, 2004, the credit is Twelve Dollars and Fifty Cents (\$12.50) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2005, and December 31, 2007, the credit is Twenty-five Dollars (\$25.00) per square foot of the rotor swept area.

(d) **Transfer of the credit.** Effective for tax year 2004, the credit for manufacturers of advanced small wind turbines may be transferred.

(e) **Tax credit moratorium.** No credit may be claimed for any advanced small wind turbines manufactured during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for advanced small wind turbines manufactured on or after July 1, 2012.

710:50-15-95. Poultry litter credit

(a) **General provisions.** Effective for tax years beginning on or after January 1, 2005, and ending on or before December 31, 2009 an income tax credit is established for the purchase and transportation of poultry litter. The credit is five dollars (\$5.00) per ton of poultry litter purchased and transported. Effective for tax years beginning on or after January 1, 2010, and ending on or before December 31, 2013 the credit is ten dollars (\$10.00) per ton of poultry litter purchased and transported. Any unused credit may be carried over for up to five (5) years.

(b) **Qualification.** In order to qualify for the credit the poultry litter must:

(1) Be purchased from a registered, Oklahoma-based poultry operation located within an environmentally sensitive and nutrient-limited watershed;

(2) Be used or spread in a watershed that is not environmentally sensitive and nutrient-limited; and,

(3) Be applied by a certified poultry waste applicator and in a manner consistent with the Animal Waste Management Plan.

(c) **Limitation.** The sum total of all such credits claimed cannot exceed Three Hundred Seventy-five Thousand Dollars (\$375,000.00) annually, for all claimers of the credit.

(d) **Tax credit moratorium.** No credit may be claimed for purchases occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for poultry litter purchased and transported on or after July 1, 2012.

710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines

(a) **General provisions.** An Oklahoma Income Tax credit of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines is allowed. In order to qualify for the credit the business enterprise must meet certain eligibility requirements.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Nonqualified operating expenditures"** means *labor costs, salary and other compensation, whether direct or indirect, paid to directors, officers, limited liability company members, limited liability company managers, partners or other principals or employees of the business entity* [68 O.S. § 2357.201(A)(1)];

(2) **"Qualified direct costs"** means *expenditures, other than nonqualified operating expenditures, to construct dog kennels, fences, pens, training areas for canines, structures for office space or other improvements to real property necessary for the proper training of a specially trained canine, including the cost of food, water, veterinary expenses and other costs directly related to the operation of the training facility* [68 O.S. § 2357.201(A)(2)]; and

(3) **"Specially trained canines"** means *dogs that are raised by a person who is officially licensed as a dog breeder by the United States Department of Agriculture.* [68 O.S. § 2357.201(A)(3)]

(c) **Qualification.** In order to qualify for the credit, applicant must have:

(1) An official copy of the United States Department of Agriculture dog breeder license; and

(2) Documentation showing that the business enterprise's principal purpose is the rearing of specially trained canines. Also, a written description of the services of the organization, as may be evidenced by copies of:

(A) Articles of incorporation;

- (B) By-laws;
 - (C) Brochure; or
 - (D) Notarized letter from the President or Chairman of the business enterprise.
- (3) Evidence of qualification must be provided to the Oklahoma Tax Commission upon request.
- (d) **Computation of credit.** The taxpayer must attach a schedule showing qualified direct costs to the Oklahoma Income Tax Return. The allowed credit is equal to fifty (50%) of the "qualified direct costs". Receipts for all "qualified direct costs" must be provided to the Oklahoma Tax Commission upon request.
- (e) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used any tax year may be carried over, in order, to each of the five (5) subsequent taxable years. The credit is also not transferable.
- (f) **Tax credit moratorium.** No credit may be claimed for any expenditure occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for expenditures occurring on or after July 1, 2012 for qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines

710:50-15-98. Credits for biodiesel production

- (a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, 2013, there is an income tax credit for biodiesel production at certain biodiesel facilities.
- (b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:
- (1) **"Biodiesel"** is any diesel-equivalent biofuel made from renewable materials such as vegetable oils or animal fats.
 - (2) **"Biodiesel facility"** is a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts. The facility must be located within the State of Oklahoma.
 - (3) **"Name plate design capacity"** means the original designed capacity of a biodiesel facility. Capacity must be specified as gallons of biodiesel produced per year.
- (c) **Basic credit.** Any biodiesel facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, 2008 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of biodiesel produced for the first sixty (60) months provided the biodiesel facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents (\$0.20) per gallon of biodiesel produced expires for production after December 31, 2013.
- (d) **Excess production credit.** Any biodiesel facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents (\$0.20) per gallon of

biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after July 1, 2005 and before December 31, 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2013.

(e) **Credit for production after December 31, 2013.** For production of biodiesel after December 31, 2013 a biodiesel facility may receive an income tax credit in the amount of seven and one-half cents (\$0.075) per gallon of biodiesel, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2011, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of biodiesel production at a biodiesel facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2012.

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the biodiesel production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Biodiesel Production Facilities is only allowed for biodiesel that is produced at a plant at which all biodiesel esterification takes place.

(2) Not more than twenty-five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2011.

(3) Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve-consecutive-month period at a biodiesel facility shall be eligible for credit for production after December 31, 2011. The credit for production after December 31, 2011 may only be claimed by a producer for production that occurs on or before December 31, 2014.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for

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that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

(g) **Carryover.** Any credits allowed under this Section but not used may be carried forward as a credit against subsequent income tax liability for a period not exceeding five (5) years, beginning July 1, 2009.

(h) **Tax credit moratorium.** No credit may be claimed for any biodiesel production during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for biodiesel production at certain biodiesel facilities produced on or after July 1, 2012.

710:50-15-99. Dry fire hydrant credit

(a) **General provisions.** For tax years beginning after December 31, 2005, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 for the cost of the purchase of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.

(b) **Definitions.** **"Dry fire hydrant"** means nonpressurized pipes permanently installed in lakes, farm ponds, and streams that provide a ready means of drawing water.

(c) **Qualification.** In order to qualify for the credit, the dry fire hydrants or new water storage facilities must meet the following criteria:

(1) Each body of water or water storage structure must be able to provide two hundred fifty (250) gallons per minute for a continuous two-hour period during a fifty-year drought or freeze at a vertical lift of eighteen (18) feet for each body of water or water storage structure.

(2) Each dry fire hydrant must be located within twenty-five (25) feet of an all-weather roadway and accessible to fire protection equipment.

(3) Dry fire hydrants must be located at a reasonable distance from other dry or pressurized hydrants.

(d) **Certification.** The Oklahoma Tax Commission will receive certifications from The State Fire Marshall's Office. Allowed credits will be based on these certifications. The Taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return.

(e) **Computation of credit.** Upon certification, the allowed credit shall be equal to fifty percent (50%) of the purchase price of a dry fire hydrant or the actual expenditure for the new water storage construction, equipment, development and installation of the dry hydrant or new water storage facility.

(f) **Limitations.** The amount of credit allowed pursuant to this Section shall not exceed \$5,000.00 for each taxpayer and any credit allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.

(g) **Tax credit moratorium.** No credit may be claimed for purchases occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for purchases on or after July 1, 2012 of a

dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.

710:50-15-101. Twenty-five percent (25%) Film and Music Profit Reinvestment Credit

(a) **General provisions.** There shall be allowed against the tax imposed by 68 O.S. § 2355, a credit equal to twenty-five percent (25%) of the profit from the investment in an existing Oklahoma film or music project with a production company to pay for production costs that is reinvested by the taxpayer with a production company for a new Oklahoma film or music project.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Film"** means a professional single media, multi-media program or feature, which is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes including, but not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for home viewing markets; [68 O.S. § 2357.101 (D)(1)]

(2) **"Music project"** means a professional recording released on a national or international level, whether via traditional manufacturing or distributing or electronic distribution, using technology currently in use or future technology including, but not limited to, music CDs, radio commercials, jingles, cues, or electronic device recordings; [68 O.S. § 2357.101 (D)(2)]

(3) **"Production company"** means a person who produces a film or music project for exhibition in theaters, on television or elsewhere; [68 O.S. § 2357.101(D)(3)]

(4) **"Total production cost"** includes, but is not limited to:

(A) wages or salaries of persons who have earned income from working on a film or music project in this state, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,

(B) the cost of construction and operations, wardrobe, accessories and related services,

(C) the cost of photography, sound synchronization, lighting and related services,

(D) the cost of editing and related services,

(E) rental of facilities and equipment, and

(F) other direct costs of producing of a film or music project. [68 O.S. § 2357.101(D)(4)]

(5) **"Profit"**, when used in reference to an eligible investment, means the amount made by the taxpayer to be determined as follows:

(A) *the gross revenues less gross expenses, including direct production, distribution and marketing costs and an allocation of indirect overhead costs, of the film or music project shall be multiplied by,*

(B) *a ratio, the numerator of which is Oklahoma production costs as defined in paragraph 6 of this subsection, and the denominator of which is total production costs, as defined in paragraph 4 of this subsection, which shall be multiplied by,*

(C) *the percent of the taxpayer's taxable income allocated to Oklahoma in a taxable year, and*

(D) *subtract from the result of the formula calculated pursuant to subparagraphs A through C of this paragraph the profit made by a taxpayer from investment in an existing Oklahoma film or music project in previous taxable years. Profit shall include either a net profit or net loss.*

(6) **"Oklahoma production cost"** means that portion of total production costs which are incurred with any qualified vendor.

(7) **"Qualified vendor"** means an Oklahoma entity which provides goods or services to a production company and:

(A) fifty percent (50%) of more of the vendor's employees are Oklahoma residents, and

(B) fifty percent (50%) or more of gross wages, as reported on IRS Form W-2 or Form 1099, are paid to Oklahoma residents.

(C) For purposes of paragraph 7, an employee shall include a self-employed individual reporting income from a qualified vendor on IRS Form 1040.

(8) **"Investment"** means costs associated with the original production company. Film or music projects acquired from an original production company do not qualify as investment under subsection (a) of this section.

(9) **"Reinvestment"** means the taxpayer invests twenty-five percent (25%) of the profit received from an existing Oklahoma film to pay for the production cost of the production company for a new Oklahoma film or music project.

(10) **"Existing Oklahoma film or music production"** means an existing Oklahoma Film or Music Project as determined by the Oklahoma Film or Music Office.

(11) **"New Oklahoma film or music project"** is a film or music project that has commenced production in Oklahoma after June 6, 2005 as certified by the Oklahoma Film or Music Office.

(c) **Eligibility requirements.** In order to qualify for the film and music production twenty-five percent (25%) profit reinvestment tax credit, a film or music production company must first be approved by the Oklahoma Film and Music Office. After approval, the company may apply for the credit by submitting a completed Oklahoma Tax Commission Form 562 to the Oklahoma Tax Commission with their income tax return.

Supporting documentation listed below must be provided to the Oklahoma Tax Commission upon request.

(1) A copy of the approval from the Film and Music Office.

(2) A copy of the final cost-accounting summary for the project with a breakout of Oklahoma costs for each line item.

(3) The name, address, social security number and amount paid to every resident of Oklahoma for whom the company wishes to claim credit for wages/salaries.

(4) Other documents that the Tax Commission may require ascertaining the validity of the credit.

(d) **Transferability.** The credit provided is not transferable.

(e) **Tax credit moratorium.** No credit may be claimed for reinvestments occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for reinvestments on or after July 1, 2012, of the profit from the investment in an existing Oklahoma film or music project with a production company for a new Oklahoma film or music project.

710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) **General provisions.** For tax years beginning after 12/31/05 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.** The amount of the credit may not exceed the product of Five Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars (\$2,000.00) for tax years 2008 and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year. In tax year 2009 and subsequent tax years, an eligible taxpayer may elect to increase the limit for tax year 2008 to an amount equal to three times the amount specified. However, the taxpayer may only claim one third (1/3) of the credit in any one taxable period. An eligible taxpayer who elects to increase the limitation on the credit will not be granted additional credits during the period of such election.

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(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an "eligible transferee" shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

(f) **Tax credit moratorium.** No credit may be claimed for qualified railroad reconstruction or replacement expenditures occurring during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. Qualified railroad reconstruction or replacement expenditures occurring before July 1, 2010 will qualify for the tax credit regardless of when the Department of Transportation issues the certificate of verification of completion of the project. This credit may be claimed for tax year 2012 and subsequent tax years, for qualified railroad reconstruction or replacement expenditures on or after July 1, 2012.

710:50-15-104. Credit for construction of energy efficient residential property

(a) **General provisions.** Effective for tax year 2006, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home. In cases if more than one person qualifies as the contractor, the primary contractor.

(2) **"Eligible energy efficient residential property"** means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material

specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) **"Home energy ratings"** means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) **"Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) **"Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(c) **Amount of credit.**

(1) The credit is capped at Four Thousand Dollars (\$4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty-nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of completion, the credit is limited to Two Thousand Dollars (\$2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

(e) **Transfer of the credit.** Effective for credits earned on or after August 25, 2006, the credit for construction of energy efficient residential property may be transferred.

(f) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. A credit will be allowed for eligible expenditures made prior to July 1, 2010 regardless of when the property is substantially complete. This credit may be claimed for tax year 2012 and subsequent tax years, for eligible expenditures made on or after July 1, 2012, by contractors who construct either energy efficient residential property or energy efficient manufactured homes

710:50-15-105. Credit for research and development

(a) **General provisions.** For taxable years beginning after December 31, 1992, and before January 1, 2003, and for taxable years beginning after December 31, 2005, there is an income tax credit for a net increase in the number of full-time-equivalent employees of a qualifying computer services, data processing or research and development entity.

(b) **Definitions.** Qualifying computer services, data processing or research and development entities are those who are primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372, 7373, 7374 and 7375 of the SIC Manual (latest revision) and those entities which are primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual (latest revision).

(c) **Qualifications.** In order to qualify for the credit, entities primarily engaged in computer services and data processing (as defined under Industrial Group Number 7374 of the SIC Manual [latest revision]) must also have a minimum of One Hundred Thousand Dollars (\$100,000.00) in purchases of computers, data processing equipment, related peripherals, telephone, telegraph, or telecommunications service or telecommunications equipment. All qualified entities must derive fifty percent (50%) of revenues from out-of-state buyers or consumers. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer. All qualified entities must also annually file an affidavit with the Oklahoma Tax Commission stating that the business so qualifies and such other information as required by the Commission.

(d) **Amount of credit.** The credit allowed is Five Hundred Dollars (\$500.00) for each new employee, but in no event may the total annual credit exceed fifty new employees. The credit is allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. However the credit is allowed in each of the eight (8) subsequent years only if the level of new employees is maintained in the subsequent year and if the credit is taken for taxable years beginning after December 31, 2005. *In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Thirty-five Thousand Dollars (\$35,000.00) during each year the credit is claimed shall be included in the calculation. The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.*

(e) **Limitations.** This credit is not transferable. Unused credits may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those initial four (4) years in order to each of the following five (5) years.

(f) **Tax credit moratorium.** No credit may be claimed for jobs created during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This

credit may be claimed for tax year 2012 and subsequent tax years, for new jobs created on or after July 1, 2012.

710:50-15-106. Credits for ethanol production

(a) **General provisions.** For tax years beginning after December 31, 2003 and before January 1, 2013, there is an income tax credit for ethanol production at certain ethanol facilities.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Ethanol"** is a blend of gasoline and ethyl alcohol consisting of not more than fifteen percent (15%) ethyl alcohol by volume.

(2) **"Ethanol facility"** is a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts. The facility must be located within the state of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of an ethanol facility. Capacity must be specified as gallons of ethanol produced per year.

(c) **Basic credit.** Any ethanol facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of ethanol, on or before December 31, 2010 is eligible for a credit in the amount of twenty cents (\$0.20) per gallon of ethanol produced for the first sixty (60) months provided the ethanol facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents (\$0.20) per gallon of ethanol produced expires for production after December 31, 2012.

(d) **Excess production credit.** Any ethanol facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents (\$0.20) per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after the July 1, 2003 and before December 31, 2008. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2012.

(e) **Credit for production after December 31, 2012.** For production of ethanol after December 31, 2012 an ethanol facility may receive an income tax credit in the amount of seven and one-half cents (\$0.075) per gallon of ethanol before denaturing, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2012, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2013, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2011, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly

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average of the highest three (3) months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2013

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the ethanol production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Ethanol Production Facilities is only allowed for ethanol that is produced at a plant at which all ethanol fermentation, distillation, and dehydration takes place. No credit will be given for ethanol produced or sold for use in the production of distilled spirits.

(2) Not more than twenty-five million (25,000,000) gallons of ethanol produced annually at any single ethanol facility nor more than seventy-five million (75,000,000) gallons of ethanol produced annually at all ethanol facilities shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2012.

(3) Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at any single ethanol facility nor more than thirty million (30,000,000) gallons produced annually at all ethanol facilities shall be eligible for credit for production after December 31, 2012. The credit for production after December 31, 2012 may only be claimed by a producer for production that occurs on or before December 31, 2015.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

(g) **Tax credit moratorium.** No credit may be claimed for any ethanol production during the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for ethanol production at certain ethanol facilities produced on or after July 1, 2012.

710:50-15-107. Eligible wage and modification expenses credits

(a) **General provisions regarding credit based on wages.** Effective for tax year 2006 a credit of ten percent (10%) is available to employers based on wages paid for employees returning to work in restricted duties. The credit is based on eligible gross wages paid for a 90-day period. Eligible wages are those that are compensable under the Workers Compensation

Act and are paid upon the employees return to work under restricted duty. The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars (\$25,000) for any employer in a taxable year.

(1) **Definitions.** The following words and terms, when used regarding the eligible wage credit, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Eligible wages"** are gross wages paid by an employer to an employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act. The wages must be paid beginning when the employee returns to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement. Wages paid after ninety (90) days or when the employee has reached maximum medical improvement are not eligible wages.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars (\$25,000) for any employer in a taxable year. This credit is not transferable.

(b) **General provisions for credit based on modification expenses.** Effective for tax year 2006 a credit of fifty percent (50%) is available for eligible modification expenses that enable an injured worker to return to work under restricted duty.

(1) **Definitions.** The following words and terms, when used regarding the credit based on modification expenses, shall have the following meaning, unless the context clearly indicates otherwise.

(A) **"Eligible modification expenses"** are expenses incurred by an employer to modify a workplace, tools or equipment or to obtain new tools or equipment which are incurred by an employer solely to enable a specific injured employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act to return to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement, and which workplace, tools or equipment are used primarily by the injured employee.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed one thousand dollars (\$1,000) for any employee, and may not exceed ten thousand dollars (\$10,000) for any employer in a taxable year. This credit is not transferable.

(c) **Tax credit moratorium.** No credit may be claimed for any expenditure made during the period of July 1, 2010 through

June 30, 2012, for which the credit would otherwise be allowable. This credit may be claimed for tax year 2012 and subsequent tax years, for wages paid or modification expenses made on or after July 1, 2012.

710:50-15-108. Credit for qualified rehabilitation expenditures

(a) **General Provisions.** The Credit for Qualified Rehabilitation Expenditures is one hundred percent (100%) of the allowable federal rehabilitation credit provided for in Section 47 of Title 26 of the United States Code. All rehabilitation work to which the Credit for Qualified Rehabilitation Expenditures may be applied must be reviewed by the State Historic Preservation Office. The State Historic Preservation Office will forward the information to the National Park Service for certification in accordance with 36 C.F.R., Part 67. A certified historic structure may be rehabilitated for any lawful use or uses, including without limitation mixed uses and still retain eligibility for the credit provided for in this section.

(b) **Definitions.**

(1) *"Certified historic hotel or historic newspaper plant building" means a hotel or newspaper plant building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to 68 O.S. § 2357.41.*

(2) *"Certified historic structure" means a building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to this section or a building located in Oklahoma which is certified by the State Historic Preservation Office as contributing to the historic significance of a certified historic district listed on the National Register of Historic Places, or a local district that has been certified by the State Historic Preservation Office as eligible for listing in the National Register of Historic Places.*

(3) *"Qualified rehabilitation expenditures" means capital expenditures that qualify for the federal rehabilitation credit provided in Section 47 of Title 26 of the United States Code and that were paid after December 31, 2000. Qualified rehabilitation expenditures do not include capital expenditures for nonhistoric additions except an addition that is required by state or federal regulations that relate to safety or accessibility. In addition, qualified rehabilitation expenditures do not include expenditures related to the cost of acquisition of the property.*

(c) **Provisions for tax years beginning after December 31, 2000 and ending before January 1, 2006.** Only certified historic hotel or historic newspaper plant buildings located in an increment or incentive district created pursuant to the Local Development Act (62 O.S. §§ 850 et. seq.) are eligible for the Credit for Qualified Rehabilitation Expenditures.

(d) **Provisions for tax years beginning on or after before January 1, 2006.** The Credit for Qualified Rehabilitation Expenditures is available for qualified rehabilitation expenditures incurred after January 1, 2006 in connection with any certified historic structure.

(e) **Provisions for claiming the credit.** Generally, the first year the Credit for Qualified Rehabilitation Expenditures is

eligible to be claimed is the first tax year that the federal rehabilitation credit, provided for in Section 47 of Title 26 of the United States Code, is eligible to be claimed. For carryover of the credit, see carryover provisions below. Further the Credit for Qualified Rehabilitation Expenditures may only be claimed after the relevant local governmental body responsible for doing so issues a certificate of occupancy or other document that is a precondition for the applicable use of the building or structure that is the basis upon which the credit is claimed. All requirements with respect to qualification for the credit authorized by Section 47 of Title 26 of the United States Code shall be applicable to the Credit for Qualified Rehabilitation Expenditures.

(f) **Carryover.** If the Credit for Qualified Rehabilitation Expenditures exceeds the amount of income taxes due or if there are no state income taxes due, the amount of the credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding ten (10) years following the qualified expenditures.

(g) **Transferability.** The Credit for Qualified Rehabilitation Expenditures allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(h) **Written transfer agreement requirements.** The entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. Subsequent transfers will require the transferor and transferee to jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed as well as a representation by the transferor that the transferor has neither claimed such credits for its own behalf nor conveyed said credits to any other transferee. Such filing of the written credit transfer agreement with the Oklahoma Tax Commission will perfect said transfer.

(i) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(j) **Repayment of disallowed credit.** Effective January 1, 2009, if the Credit for Qualified Rehabilitation Expenditures has been transferred and is subsequently reduced as the result of an adjustment by the Internal Revenue Service, the Oklahoma Tax Commission, or any other applicable government agency, only the transferor originally allowed the credit will be held liable to repay any amount of disallowed credit. Any subsequent transferee of the credit is not liable to repay the amount of disallowed credit.

(k) **Tax credit moratorium.** No credit may be claimed for any qualified rehabilitation expenditures made during the period of July 1, 2010 through June 30, 2012, prior to the taxable year beginning January 1, 2012. No credits which accrue during the period of July 1, 2010, through June 30, 2012, may be

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used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2012.

710:50-15-109. Credit for qualified employers and employees of the aerospace sector

(a) **General provisions.** For tax years beginning after December 31, 2008 three (3) credits are allowed against the tax imposed by Section 2355 of Title 68 for the employment of qualified employees in the aerospace sector. The three (3) credits are as follows:

- (1) Credit for qualified employers for tuition reimbursement to qualified employees.
- (2) Credit for qualified employers for compensation paid to qualified employees.
- (3) Credit for qualified employees.

(b) **Definitions.** The following words and terms, when used in this Section, shall have the following meaning, unless the context clearly indicates otherwise:

- (1) **"Aerospace sector"** is a private or public organization that is:
 - (A) a manufacturer of aerospace or defense hardware and/or software;
 - (B) provides aerospace maintenance, repair or overhaul;
 - (C) supplies parts to the aerospace industry;
 - (D) provides services and/or support relating to the aerospace industry;
 - (F) provides research and development of aerospace technology and systems, or
 - (G) provides education or training of aerospace personnel.
- (2) **"Compensation"** includes salary or other remuneration, wages subject to withholding tax paid to either a part-time employee or full-time employee and payments in the form of contract labor for which the payor is required to provide a Form 1099 to the person paid. Compensation does not include any employer-provided benefits, including but not limited to retirement, medical or health-care benefits; reimbursement for travel, meals, lodging or any other expense.
- (3) **"Institution"** is any institution included within The Oklahoma State System of Higher Education or any other public or private college or university that is accredited by a national accrediting body.
- (4) **"Qualified employer"** is an entity whose principal business activity involves the aerospace sector. This includes sole proprietors, general partnerships, limited partnerships, limited liability companies, corporations, or any other legally recognized business entity, or public entity.
- (5) **"Qualified employee"** is any person newly employed by or contracting with a qualified employer on or after January 1, 2009 employed in Oklahoma. Further, the person must have been awarded an undergraduate or graduate degree from a qualified program by an institution. Qualified employees do not include person employed in the aerospace sector in this state immediately preceding employment or contracting with a qualified employer.

(6) **"Qualified program"** is any program that awards undergraduate or graduate degrees and has been accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET)

(7) **"Tuition"** is the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program. Tuition does not include the cost of books, any other fees or the cost of room and board.

(c) **Credit for tuition reimbursement.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes based on the amount of tuition reimbursed to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for tuition reimbursement may only be claimed if the qualified employee has been awarded an undergraduate or graduate degree within one (1) year of starting employment with the qualified employer. The undergraduate or graduate degree must be from a qualified program.

(3) The credit for tuition reimbursement is equal to fifty percent (50%) of the tuition reimbursed to a qualified employee and may be claimed for the first through fourth years of employment with the qualified employer. The credit is only allowed to be claimed in the tax year that the tuition was reimbursed to the qualified employee and may not exceed in any taxable year fifty percent (50%) of the average annual amount paid by a qualified employee for enrollment and instruction in a qualified program at a public institution in Oklahoma.

(4) The credit for tuition reimbursement may not be used to reduce the tax liability of the qualified employer to less than zero (0), is not transferable and may not be carried over.

(5) The credit for tuition reimbursement may not be claimed after the fourth year of employment of the qualified employee.

(d) **Credit for compensation paid.**

(1) Qualified employers are allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes for compensation paid to a qualified employee. This credit is effective for taxable years beginning after December 31, 2008.

(2) The credit for compensation paid equals:

- (A) Ten percent (10%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located in this state.
- (B) Five percent (5%) of the compensation paid for the first through fifth years of employment in the aerospace sector if the qualified employee graduated from an institution located outside this state.

(3) The credit for compensation paid cannot exceed Twelve Thousand Five Hundred Dollars (\$12,500.00) for each qualified employee annually.

(4) The credit for compensation paid may not be used to reduce the tax liability of the qualified employer to less

than zero (0), is not transferable and may not be carried over.

(5) The credit for compensation paid may not be claimed after the fifth year of employment.

(e) Credit for qualified employees.

(1) For taxable years beginning after December 31, 2008, a qualified employee shall be allowed a credit against the tax imposed pursuant to Section 2355 of Title 68 of the Oklahoma Statutes of up to Five Thousand Dollars (\$5,000.00) per year for a period of time not to exceed five (5) years.

(2) The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

(3) Any credit claimed, but not used, may be carried over, in order, to each of the five (5) subsequent taxable years.

(f) Tax credit moratorium.

(1) No credit may be claimed for any tuition reimbursed by a qualified employer to a qualified employee for the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. For example:

(A) Qualified employee is hired by qualified employer on January 1, 2010. Qualified employer may receive a tax credit for tuition reimbursed from January 1, 2010 to June 30, 2010. Qualified employer shall not receive a tax credit for tuition reimbursed for the period of July 1, 2010 to June 30, 2012. Qualified employer may receive a tax credit for tuition reimbursed for the period of July 1, 2012 to December 31, 2013. Qualified employer shall not receive a tax credit for tuition reimbursed to the qualified employee on or after January 1, 2014 because it is outside the four (4) year limitation.

(B) Qualified employee is hired by qualified employer on July 1, 2010. Qualified employer shall not receive a tax credit for tuition reimbursed for the period of July 1, 2010 to June 30, 2012. Qualified employer may receive a tax credit for tuition reimbursed for the period of July 1, 2012 to June 30, 2014. Qualified employer shall not receive a tax credit for tuition reimbursed to the qualified employee on or after July 1, 2014 because it is outside the four (4) year limitation.

(2) No credit may be claimed for compensation paid to a qualified employee for the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. For example:

(A) Qualified employee is hired by qualified employer on January 1, 2010. Qualified employer may receive a tax credit for compensation paid for the period of January 1, 2010 to June 30, 2010. Qualified employer shall not receive a tax credit for compensation paid for the period of July 1, 2010 to June 30, 2012. Qualified employer may receive a tax credit for compensation paid for the period of July 1, 2012 to December 31, 2014. Qualified employer shall not

receive a tax credit for compensation paid to a qualified employee on or after January 1, 2015 because it is outside the five (5) year limitation.

(B) Qualified employee is hired by qualified employer on July 1, 2010. Qualified employer shall not receive a tax credit for compensation paid for the period of July 1, 2010 to June 30, 2012. Qualified employer may receive a tax credit for compensation paid for the period of July 1, 2012 to June 30, 2015. Qualified employer shall not receive a tax credit for compensation paid to a qualified employee on or after July 1, 2015 because it is outside the five (5) year limitation.

(3) No credit may be claimed by a qualified employee for the period of July 1, 2010 through June 30, 2012, for which the credit would otherwise be allowable. For example:

(A) Qualified employee is hired by qualified employer on January 1, 2010. Qualified employee may receive an income tax credit for tax years 2010, 2012, 2013 and 2014. Employee shall not receive an income tax credit for tax year 2011 due to the tax credit moratorium. Employee shall not receive an income tax credit for tax year 2015, or subsequent tax years, due to the five (5) year limitation.

(B) Qualified employee is hired by qualified employer on July 1, 2010. Qualified employee may receive an income tax credit for tax years 2012, 2013 and 2014. Employee shall not receive a tax credit for tax years 2010 and 2011 due to the tax credit moratorium. Employee shall not receive a tax credit for tax year 2015, or subsequent tax years, due to the five (5) year limitation.

710:50-15-110. Income tax credit moratorium

(a) General provisions. No credit may be claimed for credits generated on or after July 1, 2010 and before July 1, 2012, for which the credit would otherwise be allowable for the following income tax credits.

(1) Recycling facility credit under 27A O.S. § 2-11-303. Specifically the installation and actual use of a recycling reuse or source reduction of any hazardous waste process between July 1, 2010 and June 30, 2012 is ineligible to be claimed as an income tax credit.

(2) Credit for gas used in manufacturing under 68 O.S. § 2357. Specifically gas used between July 1, 2010 and June 30, 2012 is ineligible to be claimed as an income tax credit.

(3) Credit for energy conservation assistance fund contributions under 68 O.S. § 2357.6. Specifically contributions made between July 1, 2010 and June 30, 2012 are ineligible to be claimed as an income tax credit.

(4) Oklahoma coal credits under 68 O.S. § 2357.11. See OAC 710:50-15-76.

(5) Credit for investment in Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association under 68 O.S. § 2357.25. See OAC 710:50-15-85.

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- (6) Credit for employers incurring expenses for the provision of child care services under 68 O.S. § 2357.26. See *OAC 710:50-15-91*
- (7) Credit for child care service providers under 68 O.S. § 2357.27. Specifically eligible expenses incurred between July 1, 2010 and June 30, 2012 are ineligible to be claimed as an income tax credit.
- (8) Credit for small business guaranty fees for financing guaranteed by the Small Business Administration (SBA) under 68 O.S. § 2357.30. Specifically guarantee fees paid between July 1, 2010 and June 30, 2012 are ineligible to be claimed as an income tax credit.
- (9) Credit for manufacturers of advanced small wind turbines under 68 O.S. § 2357.32B. See *OAC 710:50-15-92*.
- (10) Credit for providing hepatitis immunization for food service employees under 68 O.S. § 2357.33. Specifically immunization expenses incurred between July 1, 2010 and June 30, 2012 are ineligible to be claimed as an income tax credit.
- (11) Credit for construction of energy efficient residential property under 68 O.S. § 2357.46. See *OAC 710:50-15-104*
- (12) Credit for eligible wage and modification expenses under 68 O.S. § 2357.47. See *OAC 710:50-15-107*.
- (13) Qualified Recycling Facility credit under 68 O.S. § 2357.59. See *OAC 710:50-15-84*.
- (14) Credits for ethanol production under 68 O.S. § 2357.66. See *OAC 710:50-15-106*
- (15) Credits for biodiesel production under 68 O.S. § 2357.67. See *OAC 710:50-15-98*
- (16) Credit for enterprise zone investment incentive under 68 O.S. § 2357.81. Specifically ad valorem taxes exempted per 62 O.S. § 860 for facilities in an enterprise zone between July 1, 2010 and June 30, 2012 are ineligible to be claimed as an income tax credit.
- (17) Poultry litter credit under 68 O.S. § 2357.100. See *OAC 710:50-15-95*.
- (18) Film and music profit reinvestment credit under 68 O.S. § 2357.101. See *OAC 710:50-15-101*.
- (19) Dry fire hydrant credit under 68 O.S. § 2357.102. See *OAC 710:50-15-99*.
- (20) Credit for qualified railroad reconstruction or replacement expenditures under 68 O.S. § 2357.104. See *OAC 710:50-15-103*.
- (21) Credit for qualified direct costs of a business enterprise of specially trained canines under 68 O.S. § 2357.203. See *OAC 710:50-15-97*.
- (22) Credit for qualified employers and employees of the aerospace sector under 68 O.S. § 2357.302 through 2357.304. See *OAC 710:50-15-109*.
- (23) Credit for financial institutions making loans under the *Rural Economic Development Loan Act* under 68 O.S. § 2370. Specifically loans made between July 1, 2010 and June 30, 2012 can not be claimed as an income tax credit.
- (24) Credit for Stafford loan origination fees under 68 O.S. § 2370.3. Specifically origination fees paid between

July 1, 2010 and June 30, 2012 are ineligible to be claimed as an income tax credit.

(25) Credit for research and development jobs under 68 O.S. § 54006. See *OAC 710:50-15-105*.

(b) **Carryover provisions.** Credits established before July 1, 2010 are eligible to be claimed under normal carryover provisions if applicable.

(c) **Deferral of certain credits.** The following credits may be generated during the tax credit moratorium period (July 1, 2010 through June 30, 2012) but are limited as to when they may be claimed:

(1) Credit for investment/new jobs under 68 O.S. § 2357.4. See *OAC 710:50-15-74*.

(2) Credit for electricity generated by zero-emission facilities under 68 O.S. § 2357.32A. Credit generated between July 1, 2010 and June 30, 2011 may be claimed on returns required to be filed on or after July 1, 2011.

(3) Credit for qualified rehabilitation expenditures under 68 O.S. § 2357.41 See *OAC 710:50-15-108*.

[*OAR Docket #10-1168; filed 8-18-10*]

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

[*OAR Docket #10-1178*]

RULEMAKING ACTION:

Emergency adoption

RULES:

Subchapter 11. Animal Husbandry [NEW]

775:10-11-1 [NEW]

Subchapter 12. Equine Teeth Floating [NEW]

775:10-12-1 [NEW]

AUTHORITY:

59 O.S. Supp.2009, SEC. 698.1 et seq.; Board of Veterinary Medical Examiners

DATES:

Adoption:

July 16, 2010

Approved by Governor:

August 17, 2010

Effective:

Immediately upon Governor's approval

Expiration:

Effective through July 14, 2011, unless superseded by another rule or disapproval by the Legislature.

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

FINDING OF EMERGENCY:

With the passage of HB 3202 the Legislature did not define what animal husbandry is or what services are considered to be the practice of animal husbandry (which could be performed by unlicensed and unskilled lay people); this could allow an increased risk and potential harm to the animals and citizens in Oklahoma. Also in the passage of HB 3202 new statutes were passed that allow lay people to float horse's teeth. New rules are required to explain the certification process along with the requirements. Unlicensed equine teeth floaters represent themselves to the public as "equine dentists" implying a professional designation, education and the authority to perform

the services for which they've been hired. Many lay teeth floaters obtain education and achieve "certification", but this is a misleading term and creates confusion with the public. While veterinarians complete standardized training from recognized educational institutions, there is no such standardization or oversight for the lay teeth floater's certification process and they are not required to continually update their skills through continuing education. The public may be misled to believe the lay person they've hired is highly trained and legally qualified to perform their tasks as to the same level as the veterinarians. This new law, HB 3202 will be effective August 27, 2010 and it is necessary to have rules in place before the effective date of the statutes.

ANALYSIS:

Title 59 O.S. Section 698.12 exempts animal husbandry from the practice of veterinary medicine. This emergency rule will help define exactly what constitutes animal husbandry and the rule sets out requirements for lay teeth floating.

CONTACT PERSON:

Cathy Kirkpatrick (405) 524-9006.

PURSUANT TO THE ACTIONS DECLARED 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 11. ANIMAL HUSBANDRY

775:10-11-1. Definition of Animal husbandry

Acts of Animal husbandry as referenced and used in Section 698.12 (1) of the Act do not include any of the acts listed under the practice of veterinary medicine as set forth in Section 698.11 (A)(1) of the Act; and specifically acts of animal husbandry do not include acts of reproductive services, such as but not limited to those involving pregnancy diagnosis or prognosis by ultrasound, embryo transfer, and fetal sexing.

SUBCHAPTER 12. EQUINE TEETH FLOATING

775:10-12-1. Application for certification

Any person who desires to apply for certification (voluntary) as a non veterinary equine dental care provider for teeth floating must submit a sworn application on printed forms provided by the Board and shall be accompanied by a fee of \$200 as authorized in Section 698.12(13) of the Act. In addition the foregoing application, applicant must comply with Section 698.30 of the Act.

[OAR Docket #10-1178; filed 8-24-10]

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

1:2010-35.

EXECUTIVE ORDER 2010-35

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by Sections 1 and 2 of Article VI of the Oklahoma Constitution, hereby direct and order as follows:

New and rehabilitated school facilities are urgently needed across the state. Section 1541 of the American Recovery and Reinvestment Act of 2009 (ARRA), codified at 26 U.S.C. 54F, provides an allocation of \$22 billion nationally for Qualified School Construction Bonds to be issued by state and local governments. A Qualified School Construction Bond (QSCB) is one in which 100% of the available proceeds are used for the construction, rehabilitation or repair of public school facilities or for the acquisition of land on which a public school facility will be constructed. Bond issuers are entitled to direct federal payments equal to approximately one hundred percent (100%) of the interest on such bonds. The intent of these payments is to make QSCBs, effectively, zero-interest bonds.

Applicable federal law limits the dollar amount of QSCB obligations that may be issued in Oklahoma in a calendar year. The amount of QSCBs that may be issued in the state is divided between an amount specifically designated for identified local school districts pursuant to ARRA (local allocation) and amounts allocated to the entire state for use throughout the state (statewide allocation). Oklahoma has received local and statewide allotments (Volume Cap) for 2009 and 2010 that total Two Hundred Forty-four Million One Hundred Ninety-eight Thousand Dollars (\$244,198,000.00), which the state may allocate among school districts seeking capital for school construction projects. Any allocation unused from 2009 and 2010 may be carried forward to the next calendar year.

This Executive Order will facilitate the use of ARRA financing of new and refurbished schools with review and coordination at the state level. The State Department of Education (Department) is hereby designated the state education agency responsible for administering the statewide allocation of authority to issue QSCB financing under 26 U.S.C. Section 54F. The Department shall perform the functions required to implement and utilize the statewide allocation for the QSCB program in Oklahoma. Those functions include, but shall not be limited to, the following:

1. The Department shall solicit requests from school districts for allocations of QSCB Volume Cap for specified projects eligible for QSCB financing;
2. The Department shall design an application process, including providing requirements for applications and other information necessary for the Department to evaluate, prioritize and approve requests for QSCB Volume Cap from school districts. Such process shall allow for the individual school districts to issue QSCBs before their expiration;
3. In prioritizing projects, the Department's consideration shall include, but shall not be limited to:
 - a. the age and condition of existing facilities
 - b. the need for new facilities to accommodate growth in student population,
 - c. the ability of the school district to successfully finance the facilities without allocation of QSCB Volume Cap, and
 - d. the cost of the facilities relative to the availability of funds;
4. The Department shall select school districts for allocation of the statewide QSCB Volume Cap and establish conditions for the use of the allocation. These conditions shall include, but shall not be limited to:
 - a. requiring that the bond proceeds be used only for purposes permitted under 26 U.S.C. Section 54F,
 - b. ensuring that the allocations are used in a timely manner and are made in accordance with the requirements of federal law, and
 - c. requiring that school districts acknowledge and agree that they will timely report to the Department the amount and date of issuance of any bonds issued according to the QSCB Volume Cap allocations, the projects funded with the proceeds of such bonds, and any other information required to demonstrate compliance with the requirements of federal law within 90 days of completion of any funding;
5. The Department shall confirm that the terms of any QSCB financing issued in accordance with this program are consistent with the terms of the federal program;
6. The Department shall receive notice from any local school district stating that such district will not use its local allocation in a manner which results in the unused resource becoming part of the statewide allocation. Local school districts receiving a local allocation are hereby directed to coordinate the use of such allocation

Executive Orders

with the Department so that any local allocation not used by the local school district shall become eligible for use as part of the statewide allocation; and

7. The Department shall make reasonably available to the public information concerning the amount of QSCB Volume Cap available to the State by statewide allocation and local allocation, as well as all allocations made by the Department of QSCB Volume Cap as authorized and directed in this Executive Order.

This Executive Order shall be distributed to all members of the ARRA Coordinating Council, all members of the Governor's Executive Cabinet, the State Superintendent of Public Instruction and the chief executives of all appropriate and affected state agencies, all of whom shall cause the provisions of this order to be implemented by all appropriate officials and 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 23 day of August 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-1179; filed 8-24-10]

1:2010-41.

EXECUTIVE ORDER 2010-41

I, Jari Askins, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, August 30, 2010, to honor former State Representative Denton Howard, an Oklahoma resident, who died on Monday, August 16, 2010, at age 85.

Representative Denton served in the Oklahoma State House of Representative from 1966 to 1970. Representative Denton was a dedicated public servant and a faithful representative to his constituents. Throughout his life, Representative Denton made great contributions to the State of Oklahoma.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 23rd day of August, 2010.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Jari Askins

ATTEST:
M. Susan Savage
Secretary of State

[OAR Docket #10-1181; filed 8-25-10]
