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Submissions for Review

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

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

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

[OAR Docket #11-428]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Chapter 10. Oil & Gas Conservation [AMENDED]
SUBMITTED TO GOVERNOR:
March 9, 2011
SUBMITTED TO HOUSE:
March 9, 2011
SUBMITTED TO SENATE:
March 9, 2011

[OAR Docket #11-428; filed 4-19-11]

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

[OAR Docket #11-481]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULE:
325:75-1-3 [AMENDED]
325:75-1-3.1 [AMENDED]
SUBMITTED TO GOVERNOR:
March 24, 2011
SUBMITTED TO HOUSE:
March 24, 2011
SUBMITTED TO SENATE:
March 24, 2011

[OAR Docket #11-481; filed 4-19-11]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 10. PEACE OFFICER CERTIFICATION

[OAR Docket #11-387]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
390:10-1-2 [AMENDED]
390:10-1-3 [AMENDED]
390:10-1-5 [AMENDED]
390:10-1-7 [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
SUBMITTED TO HOUSE:
March 25, 2011
SUBMITTED TO SENATE:
March 25, 2011

[OAR Docket #11-387; filed 4-13-11]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 15. BASIC PEACE OFFICER CERTIFICATION TRAINING

[OAR Docket #11-388]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 1. Basic Academy Programs
390:15-1-2 [AMENDED]
390:15-1-9 [AMENDED]
390:15-1-13 [AMENDED]
Subchapter 3. Collegiate Officer Program
390:15-3-1 [AMENDED]
390:15-3-6 [AMENDED]
390:15-3-8 [AMENDED]
390:15-3-10 [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
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March 25, 2011
SUBMITTED TO SENATE:
March 25, 2011

[OAR Docket #11-388; filed 4-13-11]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 20. RESERVE PEACE OFFICER CERTIFICATION AND TRAINING

[OAR Docket #11-389]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
390:20-1-2 [AMENDED]
390:20-1-3 [AMENDED]
390:20-1-3.1 [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
SUBMITTED TO HOUSE:
March 25, 2011
SUBMITTED TO SENATE:
March 25, 2011

[OAR Docket #11-389; filed 4-13-11]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 25. CONTINUING LAW ENFORCEMENT EDUCATION

[OAR Docket #11-390]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
390:25-1-3 [AMENDED]
390:25-1-4 [AMENDED]
390:25-1-9 [AMENDED]
390:25-1-14 [AMENDED]
390:25-1-19 [AMENDED]
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[OAR Docket #11-390; filed 4-13-11]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 27. POLICE OFFICER ANNUAL FIREARMS REQUALIFICATION

[OAR Docket #11-391]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
390:27-1-2 [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
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March 25, 2011
SUBMITTED TO SENATE:
March 25, 2011

[OAR Docket #11-391; filed 4-13-11]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 30. CDS DETECTOR DOG CERTIFICATION

[OAR Docket #11-392]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
390:30-1-5 [AMENDED]
390:30-1-6 [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
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March 25, 2011

[OAR Docket #11-392; filed 4-13-11]

TITLE 390. COUNCIL ON LAW ENFORCEMENT EDUCATION AND TRAINING
CHAPTER 35. REGULATION OF PRIVATE SECURITY INDUSTRY

[OAR Docket #11-392A]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 5. License Requirements

390:35-5-2 [AMENDED]
390:35-5-3 [AMENDED]
390:35-5-11 [AMENDED]
Subchapter 7. Application Procedure
390:35-7-6 [AMENDED]
390:35-7-7 [AMENDED]
Subchapter 13. Use of Firearms
390:35-13-1 [AMENDED]
Subchapter 15. Training Standards and Requirements
390:35-15-7 [AMENDED]

SUBMITTED TO GOVERNOR:
March 25, 2011
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[OAR Docket #11-392A; filed 4-13-11]

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

[OAR Docket #11-453]

RULEMAKING ACTION:
Submission of gubernatorial and legislative review
RULES:
Chapter 10. Non-Coal Rules and Regulations [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
SUBMITTED TO HOUSE:
March 25, 2011
SUBMITTED TO SPEAKER:
March 25, 2011

[OAR Docket #11-453; filed 4-19-11]

TITLE 460. DEPARTMENT OF MINES CHAPTER 15. UNDERGROUND COAL AND ASPHALT

[OAR Docket #11-454]

RULEMAKING ACTION:
Submission of gubernatorial and legislative review
RULES:
Chapter 15. Underground Coal and Asphalt [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
SUBMITTED TO HOUSE:
March 25, 2011
SUBMITTED TO SPEAKER:
March 25, 2011

[OAR Docket #11-454; filed 4-19-11]

TITLE 460. DEPARTMENT OF MINES CHAPTER 25. OKLAHOMA EXPLOSIVES AND BLASTING REGULATIONS

[OAR Docket #11-455]

RULEMAKING ACTION:
Submission of gubernatorial and legislative review
RULES:
Chapter 25. Oklahoma Explosives and Blasting Regulations [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
SUBMITTED TO HOUSE:
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SUBMITTED TO SPEAKER:
March 25, 2011

[OAR Docket #11-455; filed 4-19-11]

TITLE 460. DEPARTMENT OF MINES CHAPTER 30. COAL COMBUSTION BY-PRODUCT STANDARDS

[OAR Docket #11-456]

RULEMAIKING ACTION:
Submission of gubernatorial and legislative review
RULES:
Chapter 30. Coal Combustion By-Product Standards [AMENDED]
SUBMITTED TO GOVERNOR:
March 25, 2011
SUBMITTED TO HOUSE:
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SUBMITTED TO SPEAKER:
March 25, 2011

[OAR Docket #11-456; filed 4-19-11]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES CHAPTER 15. CENTRAL PURCHASING [REVOKED]

[OAR Docket #11-575]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review

RULES:
Subchapter 2. General Provisions [REVOKED]
Subchapter 4. Supplier Provisions [REVOKED]
Subchapter 6. State Agency Provisions [REVOKED]
SUBMITTED TO GOVERNOR:
March 3, 2011
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March 3, 2011
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March 3, 2011

[OAR Docket #11-575; filed 4-22-11]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 16. CENTRAL PURCHASING

[OAR Docket #11-574]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 1. General Provisions [NEW]
580:16-1-1 [NEW]
580:16-1-2 [NEW]
580:16-1-3 [RESERVED]
580:16-1-4 [NEW]
580:16-1-5 [RESERVED]
580:16-1-6 [NEW]
580:16-1-7 [RESERVED]
580:16-1-8 [NEW]
580:16-1-9 [RESERVED]
580:16-1-10 [NEW]
580:16-1-11 [RESERVED]
580:16-1-12 [NEW]
580:16-1-13 [RESERVED]
580:16-1-14 [NEW]
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580:16-3-1 [NEW]
580:16-3-2 [RESERVED]
580:16-3-3 [NEW]
580:16-3-4 [RESERVED]
580:16-3-5 [NEW]
580:16-3-6 [RESERVED]
580:16-3-7 [NEW]
580:16-3-8 [RESERVED]
580:16-3-9 [NEW]
580:16-3-10 [RESERVED]
580:16-3-11 [NEW]
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580:16-3-21 [NEW]
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580:16-3-23 [NEW]
580:16-3-24 [RESERVED]
580:16-3-25 [NEW]
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580:16-5-1 [NEW]
580:16-5-2 [RESERVED]
580:16-5-3 [NEW]
580:16-5-4 [RESERVED]
580:16-5-5 [NEW]
580:16-5-6 [RESERVED]
580:16-5-7 [NEW]
580:16-5-8 [RESERVED]
580:16-5-9 [NEW]
580:16-5-10 [RESERVED]
580:16-5-11 [NEW]
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580:16-5-15 [NEW]
580:16-5-16 [RESERVED]
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580:16-5-21 [NEW]
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580:16-7-3 [NEW]
580:16-7-4 [RESERVED]
580:16-7-5 [NEW]
580:16-7-6 [RESERVED]
580:16-7-7 [NEW]
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580:16-7-11 [NEW]
580:16-7-12 [RESERVED]
580:16-7-13 [NEW]
580:16-7-14 [RESERVED]
580:16-7-15 [NEW]
580:16-7-16 [RESERVED]
580:16-7-17 [NEW]
580:16-7-18 [RESERVED]
580:16-7-19 [NEW]
580:16-7-20 [RESERVED]
580:16-7-21 [NEW]
580:16-7-22 [RESERVED]
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580:16-7-24 [RESERVED]
580:16-7-25 [NEW]
580:16-7-26 [RESERVED]

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580:16-9-4 [RESERVED]
580:16-9-5 [NEW]
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580:16-11-5 [NEW]
580:16-11-6 [RESERVED]
580:16-11-7 [NEW]
580:16-11-8 [RESERVED]
580:16-11-9 [NEW]

SUBMITTED TO GOVERNOR:
March 3, 2011
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March 3, 2011
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March 3, 2011

[OAR Docket #11-574; filed 4-22-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-399]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 5. Practice and Procedure
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-40. Options available to parties after action by Administrative Law Judge [AMENDED]
Subchapter 13. Consumer Compliance Initiative [NEW]
710:1-13-1. Purpose [NEW]
710:1-13-2. [RESERVED]
710:1-13-3. Consumer Compliance Initiative [NEW]
SUBMITTED TO GOVERNOR:
February 16, 2011
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February 16, 2011

[OAR Docket #11-399; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #11-400]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 7. Manufacturing Facilities
710:10-7-4. Qualifying manufacturing concerns exempt; forms [AMENDED]
710:10-7-5. Date of qualification; application for exemption [AMENDED]
710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection [AMENDED]
Subchapter 14. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate Qualified owner [AMENDED]
SUBMITTED TO GOVERNOR:
January 26, 2011
SUBMITTED TO HOUSE:
January 26, 2011
SUBMITTED TO SENATE:
January 26, 2011

[OAR Docket #11-400; filed 4-14-11]

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

[OAR Docket #11-401]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 5. Procedures for Registration
710:22-5-11. Registration renewal notification [NEW]
SUBMITTED TO GOVERNOR:
February 11, 2011
SUBMITTED TO HOUSE:
February 11, 2011
SUBMITTED TO SENATE:
February 11, 2011

[OAR Docket #11-401; filed 4-14-11]

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

[OAR Docket #11-402]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
710:25-1-5. Decals for general use [AMENDED]
SUBMITTED TO GOVERNOR:
January 26, 2011
SUBMITTED TO HOUSE:
January 26, 2011
SUBMITTED TO SENATE:
January 26, 2011

[OAR Docket #11-402; filed 4-14-11]

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

[OAR Docket #11-403]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
710:25-1-9. Application for decals; affixing decals; refunds [AMENDED]
SUBMITTED TO GOVERNOR:
March 28, 2011
SUBMITTED TO HOUSE:
March 28, 2011
SUBMITTED TO SENATE:
March 28, 2011

[OAR Docket #11-403; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 35. ESTATES

[OAR Docket #11-404]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 1. General Provisions
710:35-1-3. Annual Report Available To Public [AMENDED]
Subchapter 3. Returns; Remittance; Releases
Part 3. Releases
710:35-3-21. Release upon full payment; order releasing taxable estates [AMENDED]
710:35-3-23. Order releasing property subject to Oklahoma Estate Tax liability and lien; partial release of specific property subject to the determination of tax [AMENDED]
SUBMITTED TO GOVERNOR:
January 27, 2011
SUBMITTED TO HOUSE:
January 27, 2011
SUBMITTED TO SENATE:
January 27, 2011

[OAR Docket #11-404; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #11-405]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Returns and Reports
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-45. Verification of signatures on electronically-filed returns [AMENDED]
Subchapter 9. Refunds
710:50-9-3. Interest on refunds [AMENDED]
Subchapter 11. Intercept of Refunds

710:50-11-6. Tax Commission shall have priority over all other agencies, municipal courts, or district courts [AMENDED]
710:50-11-7. Notice to taxpayer [AMENDED]
710:50-11-8. Post intercept notice [REVOKED]
710:50-11-9. Joint returns intercept [AMENDED]
710:50-11-10. Nondebtor spouse protest [AMENDED]
710:50-11-11. Notification after final determination at hearing [AMENDED]
Subchapter 13. Estimated Tax
710:50-13-9. Estimated tax using annualized income method [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-51. Military pay of ~~non-residents~~ nonresidents and income earned by spouse of nonresident servicemember [AMENDED]
Part 7. Credits against Tax
710:50-15-74. Credit for investment/new jobs [AMENDED]
710:50-15-75. Recycling, reuse and source reduction incentives [AMENDED]
710:50-15-76. Oklahoma coal credits [AMENDED]
710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property [AMENDED]
710:50-15-82. Amendment and repeal of certain tax credit provisions; preservation of certain claims under repealed law [AMENDED]
710:50-15-84. Recycling facility credit [AMENDED]
710:50-15-85. Credit for investment in Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association [AMENDED]
710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits [AMENDED]
710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits [AMENDED]
710:50-15-91. Credit for employers incurring expenses for the provision of child care services [AMENDED]
710:50-15-92. Credit for manufacturers of advanced small wind turbines [AMENDED]
710:50-15-95. Poultry litter credit [AMENDED]
710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines [AMENDED]
710:50-15-98. Credits for biodiesel production [AMENDED]
710:50-15-99. Dry fire hydrant credit [AMENDED]
710:50-15-101. Twenty-five percent (25%) Film and Music Profit Reinvestment Credit [AMENDED]
710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures [AMENDED]
710:50-15-104. Credit for construction of energy efficient residential property [AMENDED]
710:50-15-105. Credit for research and development [AMENDED]
710:50-15-106. Credits for ethanol production [AMENDED]
710:50-15-107. Eligible wage and modification expenses credits [AMENDED]
710:50-15-108. Credit for qualified rehabilitation expenditures [AMENDED]
710:50-15-109. Credit for qualified employers and employees of the aerospace sector [AMENDED]
710:50-15-110. Income tax credit moratorium [NEW]
710:50-15-111. Wire transfer fee credit [NEW]
710:50-15-112. Credit for electric motor vehicle manufacturers [NEW]
710:50-15-113. Qualified independent biomedical research institute or qualified cancer research center credit [NEW]
Subchapter 20. Limited Liability Companies
710:50-20-1. Limited liability companies [AMENDED]

SUBMITTED TO GOVERNOR:
February 14, 2011
SUBMITTED TO HOUSE:
February 14, 2011
SUBMITTED TO SENATE:
February 14, 2011

[OAR Docket #11-405; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 55. MOTOR FUEL

[OAR Docket #11-406]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 1. General Provisions
710:55-1-2. Definitions [AMENDED]
SUBMITTED TO GOVERNOR:
February 11, 2011
SUBMITTED TO HOUSE:
February 11, 2011
SUBMITTED TO SENATE:
February 11, 2011

[OAR Docket #11-406; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #11-407]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Registration and Licensing

Part 1. General Provisions
710:60-3-25. Active Duty Military Personnel Registration [AMENDED]
710:60-3-26. Online Registration Renewal [NEW]
710:60-3-27. Registration Renewal Notification [NEW]
Part 3. Penalties
710:60-3-37. Waiver of Penalties [AMENDED]
Part 11. Other Vehicles
710:60-3-111. Miscellaneous Vehicles; Definitions [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title
710:60-5-63. Drug Manufacture Vehicle Brand [NEW]
Part 7. Transfer of Title
710:60-5-78. Procedures for Handling Assignment Errors [AMENDED]
Part 9. Affidavits for Use in Titles
710:60-5-91. Affidavit of Assembly and Ownership [AMENDED]
Part 11. Liens
710:60-5-116. Possessory Liens under Title 42 of the Oklahoma Statutes [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 5. Specific Recordkeeping Duties
710:60-9-53. Accountable Items [AMENDED]

SUBMITTED TO GOVERNOR:
March 9, 2011
SUBMITTED TO HOUSE:
March 9, 2011
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March 9, 2011

[OAR Docket #11-407; filed 4-14-11]

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

[OAR Docket #11-408]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4. Contents of Monthly Sales Report [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-17.1. Vendors' Fine For Refusal to Accept 100% Disabled Veterans Claims For Sales Tax Exemption [NEW]
Subchapter 13. Sales and Use Tax Exemptions
Part 18. Precious Metals [NEW]
710:65-13-95. Exemption for Sales of Gold, Silver, Platinum, Palladium or Other Bullion Items for Storage in a Recognized Depository Facility [NEW]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-172. Exemption for Community Health Centers, Migrant Health Centers, Indigent Health Care Clinics, Certain Community-Based Health Care Centers, and Community Mental Health Centers [AMENDED]
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:65-13-275. Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate [AMENDED]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-3. Sourcing of Retail Sales [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 5. "C"
710:65-19-50. Coins and Bullion [AMENDED]
Subchapter 21. Use Tax
710:65-21-8. Out-of-State Retailers or Vendors Not Registered in Oklahoma [NEW]

SUBMITTED TO GOVERNOR:
January 26, 2011
SUBMITTED TO HOUSE:
January 26, 2011
SUBMITTED TO SENATE:
January 26, 2011

[OAR Docket #11-408; filed 4-14-11]

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

[OAR Docket #11-409]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 13. Sales and Use Tax Exemptions
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to Medicare/Medicaid program recipients [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 39. " T "
710:65-19-330. Telecommunications services [AMENDED]

SUBMITTED TO GOVERNOR:
March 7, 2011
SUBMITTED TO HOUSE:
March 7, 2011

SUBMITTED TO SENATE:
March 7, 2011

[OAR Docket #11-409; filed 4-14-11]

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

[OAR Docket #11-410]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions
710:70-2-10. Discount on Cigarette Tax Stamps Purchased [AMENDED]
Part 3. Delivery Sales
710:70-2-50. Filing Requirements for Persons Making "Delivery Sales of Cigarettes" [AMENDED]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally Recognized Indian Tribes and Nations
710:70-7-4. Stamps Required [AMENDED]
710:70-7-5. Documentation That Purchaser Is Tribally Owned or Licensed Retail Store Must Be Obtained and Retained [REVOKED]
710:70-7-8. Cigarette Stamp Tax Rates for Sales by Federally-Recognized Indian Tribes and Nations [AMENDED]
710:70-7-9. Tobacco Products Tax Rates for Sales by Federally-Recognized Indian Tribes and Nations [AMENDED]
SUBMITTED TO GOVERNOR:
February 14, 2011
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February 14, 2011
SUBMITTED TO SENATE:
February 14, 2011

[OAR Docket #11-410; filed 4-14-11]

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

[OAR Docket #11-411]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Saving Quality Jobs Program
Part 1. General Provisions
710:85-3-1. Purpose [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-1. Purpose [AMENDED]
710:85-5-8. Procedure for Filing Report, Review, Determination [AMENDED]
710:85-5-15. Denial, Cessation, And Resumption of Incentive Payments [AMENDED]
Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-3. Procedure upon Qualification; Payment [AMENDED]
SUBMITTED TO GOVERNOR:
February 14, 2011
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February 14, 2011
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February 14, 2011

[OAR Docket #11-411; filed 4-14-11]

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

[OAR Docket #11-412]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
PROPOSED RULES:
Subchapter 3. Telecommunication for the Hearing-Impaired Surcharge
710:95-3-3. Telecommunications for the hearing-impaired surcharge [AMENDED]
Subchapter 5. Waste Tire Recycling
710:95-5-3. Waste tire recycling fee [AMENDED]
710:95-5-8. Transactions to which the fee is inapplicable [AMENDED]
710:95-5-9. Examples [AMENDED]
Subchapter 9. Professional Licensing Compliance Review
710:95-9-2. Definitions [AMENDED]
710:95-9-3. General provisions [AMENDED]
Subchapter 17. Prepaid Wireless Fee [NEW]
710:95-17-1. Purpose [NEW]
710:95-17-2. [RESERVED]
710:95-17-3. Definitions [NEW]
710:95-17-4. [RESERVED]
710:95-17-5. Fees, reports, payments and penalties [NEW]
710:95-17-6. [RESERVED]
710:95-17-7. Due date that falls on Saturday, Sunday or holiday [NEW]
710:95-17-8. [RESERVED]
710:95-17-9. Contents of monthly prepaid wireless fee report [NEW]
710:95-17-10. [RESERVED]

710:95-17-11. Registrants must file a return for every reporting period [NEW]
710:95-17-12. [RESERVED]
710:95-17-13. Records required to document resale transactions [NEW]
710:95-17-14. [RESERVED]
710:95-17-15. Sourcing purchases of prepaid wireless telecommunications service [NEW]
Subchapter 19. Business Activity Tax [NEW]
710:95-19-1. Purpose [NEW]
710:95-19-2. Definitions [NEW]
710:95-19-3. General provisions [NEW]
710:95-19-4. Filing requirements [NEW]
710:95-19-5. Tax rate [NEW]
710:95-19-6. Tax credit [NEW]
710:95-19-7. Special provisions for combined / consolidated filers [NEW]
710:95-19-8. Apportionment [NEW]

SUBMITTED TO GOVERNOR:
February 14, 2011
SUBMITTED TO HOUSE:
February 14, 2011
SUBMITTED TO SENATE:
February 14, 2011

[OAR Docket #11-412; filed 4-14-11]

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

[OAR Docket #11-482]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Technology Centers Education
780:15-3-2. [AMENDED]
780:15-3-5. [AMENDED]
SUBMITTED TO GOVERNOR:
March 31, 2011
SUBMITTED TO HOUSE:
March 31, 2011
SUBMITTED TO SENATE:
March 31, 2011

[OAR Docket #11-482; filed 4-20-11]

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

[OAR Docket #11-483]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 3. Secondary, Full-Time and Short-Term Adult CareerTech Programs
780:20-3-1. [AMENDED]
780:20-3-2. [AMENDED]
SUBMITTED TO GOVERNOR:
March 31, 2011
SUBMITTED TO HOUSE:
March 31, 2011
SUBMITTED TO SENATE:
March 31, 2011

[OAR Docket #11-483; filed 4-20-11]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 25. BUSINESS AND INDUSTRY SERVICES

[OAR Docket #11-484]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 5. Business and Industry Development
780:25-5-1. [AMENDED]
SUBMITTED TO GOVERNOR:
March 31, 2011
SUBMITTED TO HOUSE:
March 31, 2011
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March 31, 2011

[OAR Docket #11-484; 4-20-11]

Gubernatorial Approvals

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

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

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 1. ORGANIZATION

[OAR Docket #11-429]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
160:1-1-1.2 [AMENDED]
160:1-1-7 [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-429; filed 4-19-11]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 3. PROCEDURE

[OAR Docket #11-430]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
160:3-1-4 [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-430; filed 4-19-11]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 5. FEES

[OAR Docket #11-431]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
160:5-1-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-431; filed 4-19-11]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 15. PAWN TRASACTIONS

[OAR Docket #11-432]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Records
160:15-3-1.1 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-432; filed 4-19-11]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 30. CREDIT SERVICES ORGANIZATION

[OAR Docket #11-433]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Records
160:30-9-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-433; filed 4-19-11]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 35. OKLAHOMA RENTAL-PURCHASE ACT

[OAR Docket #11-434]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Records
160:35-5-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-434; filed 4-19-11]

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

[OAR Docket #11-435]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-435; filed 4-19-11]

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 65. SUPERVISED LENDERS

[OAR Docket #11-436]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Records
160:65-7-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-436; filed 4-19-11]

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

[OAR Docket #11-437]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Records
160:70-7-2 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-437; filed 4-19-11]

TITLE 165. CORPORATION COMMISSION
CHAPTER 20. GAS & HAZARDOUS LIQUID PIPELINE SAFETY

[OAR Docket #11-489]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Pipeline Assessments
165:20-3-1. Pipeline assessments [AMENDED]
Subchapter 5. Safety Regulations for Gas Pipelines
Part 1. General Provisions
165:20-5-2. Scope [AMENDED]
Part 3. Telephonic Notice and Reporting Requirements
165:20-5-14.Transmission and gathering systems reporting requirements [AMENDED]
Part 5. Minimum Safety Standards for Gas
165:20-5-21. Adoption of federal safety regulations [AMENDED]
Subchapter 7. Safety Regulations for Hazardous Liquids
165:20-7-1. Adoption of federal safety and reporting regulations [AMENDED]
165:20-7-5. Reporting safety related conditions [NEW]
165:20-7-6. Annual report [NEW]
Subchapter 10. Non-DOT Regulated Gas Gathering Pipelines [NEW]
165:20-10-1. Authority [NEW]
165:20-10-2. Definitions [NEW]
165:20-10-3. Telephonic notice of certain non-DOT gathering pipeline incidents [NEW]
165:20-10-4. Non-DOT gathering pipeline incident reports [NEW]
165:20-10-5. Remedial action [NEW]
165:20-10-6. Record confidentiality [NEW]
Subchapter 11. Drug Testing
165:20-11-2. Reporting of anti-drug testing results [NEW]
Subchapter 13. Enforcement
Part 1. General
165:20-13-1. Scope and fines [AMENDED]
Part 3. Procedure
165:20-13-12. Inspections and accident investigations [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-489; filed 4-21-11]

TITLE 165. CORPORATION COMMISSION
CHAPTER 20. GAS & HAZARDOUS LIQUID PIPELINE SAFETY

[OAR Docket #11-490]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Safety Regulations for Gas Pipelines
Part 3. Telephonic Notice and Reporting Requirements
165:20-5-16. Reporting safety related conditions [NEW]
GUBERNATORIAL APPROVAL:
April 19, 2011

[OAR Docket #11-490; filed 4-21-11]

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

[OAR Docket #11-457]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:100-1-3. Definitions [AMENDED]
252:100-1-4. Units, abbreviations and acronyms [AMENDED]
Subchapter 3. Air Quality Standards and Increments
252:100-3-4. Significant deterioration increments [AMENDED]
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]
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]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-457; filed 4-19-11]

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

[OAR Docket #11-458]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-2.3. Annual operating fees for area sources of air pollution [NEW]
Subchapter 7. Permits for Minor Facilities
Part 2. Permit Application Fees
252:100-7-3. Permit application fees [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 3. Permit Application Fees
252:100-8-1.7. Permit application fees [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-458; filed 4-19-11]

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

[OAR Docket #11-459]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [REVOKED]
Appendix A. Allowable Particulate Matter Emission Rate for Incinerators [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-459; filed 4-19-11]

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

[OAR Docket #11-460]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Appendix E. Primary Ambient Air Quality Standards [REVOKED]
Appendix E. Primary Ambient Air Quality Standards [NEW]

GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-460; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 302. FIELD LABORATORY ACCREDITATION

[OAR Docket #11-461]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
Subchapter 3. Field Laboratory Accreditation Process [NEW]
Part 1. Application [NEW]
Part 2. Conditions of Accreditation [NEW]
Part 3. Grounds to Suspend or Revoke [NEW]
Subchapter 5. General Operations [NEW]
Subchapter 7. Proficiency Testing [NEW]
Subchapter 9. Quality Assurance/Quality Control [NEW]
Part 1. Quality Assurance/Quality Control General Criteria [NEW]
Part 2. Standard Operating Procedures and Methods Manual [NEW]
Part 3. QA/QC Program Requirements [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-461; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 303. TNI LABORATORY ACCREDITATION

[OAR Docket #11-462]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
Subchapter 3. Laboratory Accreditation Process [NEW]
Part 1. Application [NEW]
Part 2. Conditions of Accreditation [NEW]
Part 3. Grounds to Suspend or Revoke [NEW]
Subchapter 5. General Operations [NEW]
Subchapter 7. Management and Technical Requirements [NEW]
Subchapter 9. Secondary Accreditation [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-462; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 410. RADIATION MANAGEMENT

[OAR Docket #11-463]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Certification of Industrial Radiographers
252:410-5-3. DEQ certification examination [AMENDED]
Subchapter 7. Radiation Management Authorizations; Procedures and Requirements
Part 1. General Provisions Common to All Authorizations
252:410-7-3. General application requirements [AMENDED]
Subchapter10. Radioactive Materials Program
Part 101. Radioactive Materials Program Fees
252:410-10-101. Fee schedules [AMENDED]
252:410-10-102. Fees for special nuclear materials licensing [AMENDED]
252:410-10-103. Fees for source materials licensing [AMENDED]
252:410-10-104. Fees for byproduct material licensing [AMENDED]
252:410-10-105. Fees for waste disposal and processing [AMENDED]
252:410-10-106. Fees for well logging [AMENDED]
252:410-10-107. Fees for nuclear laundries [AMENDED]
252:410-10-108. Fees for human use of byproduct, source or special materials licensing [AMENDED]
252:410-10-109. Fees for civil defense activities [AMENDED]
252:410-10-111. Fees for small entities [AMENDED]
252:410-10-114. Full cost fees [AMENDED]
252:410-10-118. Reciprocity fees [AMENDED]
Subchapter 19. X-Ray Fluorescence Instruments Used for Lead-based Paint Detection
252:410-19-6. LBP-XRF permit application fee [AMENDED]
Appendix A. Application and Annual Fee Schedule for Radiation Machines [REVOKED]
Appendix A. Application and Annual Fee Schedule for Radiation Machines [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-463; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 606. OKLAHOMA POLLUTANT DISCHARGE ELIMINATION SYSTEM (OPDES) STANDARDS

[OAR Docket #11-464]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Introduction
252:606-1-2. Definitions [AMENDED]
252:606-1-4. Date of federal regulations incorporated [AMENDED]
Subchapter 3. Discharge Permitting Process for ~~Regular~~ Individual and General Discharge Permits
252:606-3-4. ~~Annual permit fee~~ Fees [AMENDED]
Subchapter 5. Discharge Permit Requirements
252:606-5-5. Stormwater discharges [AMENDED]
Subchapter 8. Biosolids Requirements.
252:606-8-2. Permit applications [AMENDED]
252:606-8-3. Sludge (biosolids) management plan [AMENDED]
252:606-8-5. Class B biosolid production [AMENDED]
252:606-8-7. Biosolid land application site closure and remediation [NEW]
Subchapter 11. Test and Reports.
252:606-11-2. Laboratory analyses and reporting [AMENDED]
252:606-11-3. Municipal laboratories [AMENDED]
252:606-11-4. ~~Municipal operating records~~ Records [AMENDED]
252:606-11-5. Industrial flow measuring and sampling [AMENDED]
Subchapter 13. Closure and Remediation [REVOKED]
252:606-13-1. Site closure and remediation [REVOKED]
Appendix A Minimum Control Test For Municipal Wastewater Treatment Facilities [REVOKED]
Appendix A. Minimum Control Test For Wastewater Treatment Facilities [NEW]
Appendix B. Fees for Non-Industrial Discharge Permits [REVOKED]
Appendix B. Annual Fees for Non-Industrial Discharge Permits [NEW]
Appendix C. Annual Industrial Discharge Permit Fees [REVOKED]
Appendix C. Annual Industrial Discharge Fees [NEW]
Appendix D. Fees for Stormwater Permits and Other General Permits [REVOKED]
Appendix D. Annual Fees for Stormwater Permits and Other General Permits [NEW]
Appendix E. Fees For Individual Discharge Permits for Categorical Industries [REVOKED]
Appendix E. Fees for Industrial Users [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-464; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 611. GENERAL WATER QUALITY

[OAR Docket #11-465]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:611-1-3. Adoption and incorporation by reference [AMENDED]
252:611-1-7. Planning and wasteload allocations [AMENDED]
Subchapter 3. Certifications
252:611-3-2. Requirements for certification [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-465; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 616. INDUSTRIAL WASTEWATER SYSTEMS

[OAR Docket #11-466]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Permit Procedures
252:616-3-3. Annual fees [AMENDED]
252:616-3-4. Applications [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-466; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 619. OPERATION AND MAINTENANCE OF NON-INDUSTRIAL TOTAL RETENTION LAGOON SYSTEMS AND LAND APPLICATION

[OAR Docket #11-467]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:619-1-5 Annual fees for total retention lagoon systems [AMENDED]
252:619-1-6 Fee escalator based on Consumer Price Index (CPI) [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-467; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 621. NON-INDUSTRIAL ~~FLOW-THROUGH~~ DISCHARGING AND PUBLIC WATER SUPPLY ~~IMPOUNDMENTS~~ LAGOONS INCLUDING LAND APPLICATION

[OAR Docket #11-468]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:621-1-1. Purpose [AMENDED]
252:621-1-2. Definitions [AMENDED]
Subchapter 3. Permit Procedures
252:621-3-1. Requirement to obtain permits [AMENDED]
252:621-3-2. Compliance required [AMENDED]
252:621-3-3. Annual permit fees for non-industrial discharging and public water supply ~~surface impoundments~~ lagoons [AMENDED]
252:621-3-4. Financial assurance [AMENDED]
Subchapter 5. Operation and Maintenance
252:621-5-1. Operation and maintenance for non-industrial discharging and public water supply ~~surface impoundments~~ lagoons [AMENDED]
252:621-5-2. Operation and maintenance for non-industrial land application systems [AMENDED]
Subchapter 9. Closure Requirements and Plans
252:621-9-1. Termination of activities [AMENDED]
252:621-9-3. Closure plan content requirements [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-468; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 623. PRETREATMENT FOR CENTRAL TREATMENT TRUSTS

[OAR Docket #11-469]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:623-1-7. Incorporation by reference [AMENDED]
Subchapter 7. Wastewater Discharge Permit Application
252:623-7-4. Permit application contents [AMENDED]
Subchapter 23. Miscellaneous Provisions
252:623-23-1. Pretreatment charges and fees [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-469; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 624. MINOR PUBLIC WATER SUPPLY SYSTEMS

[OAR Docket #11-470]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:624-1-3. Authorizations and permits [AMENDED]
Subchapter 11. Fees [NEW]
252:624-11-1. Fees [NEW]
252:624-11-2. Fee escalator based on Consumer Price Index (CPI) [NEW]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-470; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 626. PUBLIC WATER SUPPLY CONSTRUCTION STANDARDS

[OAR Docket #11-471]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Permit Procedures
252:626-3-8. Variances from construction standards [AMENDED]
252:626-3-10. Permit fees [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-471; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 631. PUBLIC WATER SUPPLY OPERATION

[OAR Docket #11-472]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Introduction
252:631-1-3. Adoption of U.S. EPA regulations by reference [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-472; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 641. INDIVIDUAL AND SMALL PUBLIC ON-SITE SEWAGE TREATMENT SYSTEMS

[OAR Docket #11-473]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
252:641-1-2.1. Authorizations and permits for on-site sewage treatment systems [AMENDED]
252:641-1-3. General requirements for on-site sewage treatment systems [AMENDED]
Subchapter 3. Soil Tests
252:641-3-2. Percolation test method [AMENDED]
252:641-3-4. Soil profile description test method [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-473; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 656. WATER POLLUTION CONTROL FACILITY CONSTRUCTION STANDARDS

[OAR Docket #11-474]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Introduction
252:656-1-1. ~~Purpose~~ Applicability [AMENDED]
252:656-1-2. Definitions [AMENDED]
Subchapter 3. Permit Procedures
252:656-3-1. ~~Uniform permit~~ Permitting process [AMENDED]
252:656-3-2. Applications [AMENDED]
252:656-3-4. Engineering report [AMENDED]
252:656-3-5. Plans and specifications [AMENDED]
252:656-3-6. Revisions [AMENDED]
252:656-3-7. Variances from construction standards [AMENDED]
252:656-3-8. Financial responsibility [AMENDED]
252:656-3-9. Fees [AMENDED]
252:656-3-10. Operation and Maintenance (O & M) Manual [NEW]
Subchapter 5. Sanitary Sewer Standards
252:656-5-2. Design standards [AMENDED]
252:656-5-3. Materials [AMENDED]
252:656-5-4. Construction standards [AMENDED]
252:656-5-5. Tests [AMENDED]
Subchapter 7. Pump Station Standards
252:656-7-1. Pump station design [AMENDED]
252:656-7-2. Suction lift pumps [AMENDED]
252:656-7-4. Emergency operation [AMENDED]
Subchapter 9. General Standards
252:656-9-1. Plant location and design life [AMENDED]
252:656-9-2. Essential facilities [AMENDED]
Subchapter 11. Lagoon Standards
252:656-11-2. Basis of design [AMENDED]
252:656-11-3. Lagoon construction details [AMENDED]
Subchapter 13. Preliminary Treatment Standards
252:656-13-2. Grit chambers [AMENDED]
252:656-13-3. Diurnal flow equalization [AMENDED]
252:656-13-4. Wet weather flow equalization basins [AMENDED]
Subchapter 16. Biological Treatment Standards
252:656-16.1. Suspended growth systems [AMENDED]

252:656-16-2. Attached growth systems [AMENDED]
252:656-16-3. Biological nutrient removal [AMENDED]
Subchapter 17. Clarifier Standards
252:656-17-2. Clarifier design considerations [AMENDED]
252:656-17-3. Sludge and scum removal [AMENDED]
Subchapter 19. Sludge Facility Standards
252:656-19-1. Design considerations [AMENDED]
252:656-19-2. Anaerobic sludge digestion [AMENDED]
252:656-19-3. Aerobic sludge digestion [AMENDED]
252:656-19-5. Sludge dewatering [AMENDED]
252:656-19-5.1. Lime stabilization [AMENDED]
252:656-19-6. Stabilized sludge holding facilities [AMENDED]
Subchapter 21.. Disinfection Standards
252:656-21-1. Disinfection criteria [AMENDED]
252:656-21-2. Chlorine disinfection [AMENDED]
252:656-21-3. Ultraviolet radiation disinfection [AMENDED]
252:656-21-4. Ozone disinfection [REVOKED]
Subchapter 23. Supplemental Treatment Standards
252:656-23-2. ~~Submerged rock~~ Disc filters [AMENDED]
252:656-23-3. Post-aeration [AMENDED]
Subchapter 25. Wastewater Land Application Systems
252:656-25-1. The slow rate land application process [AMENDED]
252:656-25-2. Slow rate system design [AMENDED]
Subchapter 27. Wastewater Reuse [RESERVED]
Appendix A. Design Tables [REVOKED]
Appendix A. Design Tables [NEW]
Appendix B. Final Clarifier Minimum Design Criteria [REVOKED]
Appendix B. Secondary and/or Final Clarifier Minimum Design Criteria [NEW]
Appendix C. Cascade Aeration [REVOKED]
Appendix C. Cascade Aeration [NEW]
Appendix E. Table of Rainfall and Evaporation Data by County [NEW]

GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-474; filed 4-19-11]

TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY CHAPTER 690. WATER QUALITY STANDARDS IMPLEMENTATION

[OAR Docket #11-475]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Introduction
252:690-1-2. Definitions [AMENDED]
252:690-1-3. Technical acronyms [AMENDED]
252:690-1-4. Incorporation of ~~USEPA~~ EPA regulations by reference [AMENDED]
252:690-1-7. Water quality management planning [AMENDED]
Subchapter 3. Point Source Discharges
252:690-3-2. Measurable levels and data characterization [AMENDED]
252:690-3-14. Requirements specific to numeric criteria for toxic substances for the Fish and Wildlife propagation beneficial use [AMENDED]
252:690-3-19. TREs, TIEs and WET limits [AMENDED]
252:690-3-32. Test failure notification and retesting [AMENDED]
252-690-3-41. WET testing frequency and trial period [AMENDED]
252:690-3-42. WET testing frequency reductions after WET testing trial period [AMENDED]
252:690-3-60. Receiving water characterization for the implementation of dissolved oxygen criteria to protect the Fish and Wildlife Propagation beneficial use [AMENDED]
252:690-3-62. Modeling procedures for the implementation of dissolved oxygen criteria to protect the Fish and Wildlife Propagation beneficial use [AMENDED]
252:690-3-86. Implementation of bacteriological criteria to protect the Primary Body Contact Recreation (PCBR) and the Secondary Body Contact Recreation (SBCR) beneficial use [AMENDED]
252:690-3-88. Effluent monitoring [AMENDED]
252:690-3-89. Effluent monitoring frequency where permit limitations are required [AMENDED]
252:690-3-91. Performance-based monitoring frequency reductions and increases [AMENDED]
Appendix A. Water Quality Standards Implementation Plan Department of Environmental Quality [REVOKED]
Appendix A. Water Quality Standards Implementation Plan, Oklahoma Department of Environmental Quality [NEW]
Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [REVOKED]
Appendix B. Priority and Nonpriority Pollutants with Numerical Criteria Requiring Reasonable Potential Screening [NEW]
Appendix I. Performance-Based Effluent Monitoring Frequency Reductions [REVOKED]
Appendix I. Performance-Based Effluent Monitoring Frequency Reductions [NEW]

GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-475; filed 4-19-11]

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

[OAR Docket #11-513]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
317:2-1-14. [NEW]
(Reference APA WF # 10-31)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-513; filed 4-22-11]

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

[OAR Docket #11-518]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
317:2-1-1. [AMENDED]
(Reference APA WF 10-37B)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-518; filed 4-22-11]

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

[OAR Docket #11-525]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
317:2-1-2. [AMENDED]
317:2-1-5. [AMENDED]
317:2-1-6. [AMENDED]
317:2-1-7. [AMENDED]
317:2-1-13. [AMENDED]
(Reference APA WF # 10-45)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-525; filed 4-22-11]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 10. PURCHASING

[OAR Docket #11-494]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
317:10-1-1. [AMENDED]
317:10-1-2. [AMENDED]
317:10-1-3. [AMENDED]
317:10-1-4. [AMENDED]
317:10-1-5. [REVOKED]
317:10-1-6. [REVOKED]
317:10-1-7. [REVOKED]
317:10-1-8. [REVOKED]
317:10-1-9. [REVOKED]
317:10-1-10. [REVOKED]
317:10-1-11. [REVOKED]
317:10-1-12. [AMENDED]
317:10-1-15. [REVOKED]
317:10-1-16. [AMENDED]
317:10-1-17. [REVOKED]
317:10-1-18. [REVOKED]
317:10-1-18.1. [REVOKED]
317:10-1-18.2. [REVOKED]
317:10-1-19. [REVOKED]
317:10-1-20. [REVOKED]
(Reference APA WF # 10-09)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-494; filed 4-22-11]

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

[OAR Docket #11-497]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Health Access Networks [NEW]
317:25-9-1. through 317:25-9-3. [NEW]
(Reference APA WF # 10-14)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-497; filed 4-22-11]

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

[OAR Docket #11-506]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. ~~Soonercare~~ SoonerCare
Part 1. General Provisions
317:25-7-7. [NEW]
(Reference APA WF # 10-25)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-506; filed 4-22-11]

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

[OAR Docket #11-491]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 83. ~~Residential Behavior Management Services in Foster Care Settings~~ Outpatient Behavioral Health Services in Therapeutic Foster Care Homes
317:30-5-740. [AMENDED]
317:30-5-740.1. [AMENDED]
317:30-5-741. [AMENDED]
317:30-5-742. [AMENDED]
317:30-5-742.1. [AMENDED]
317:30-5-742.2. [AMENDED]
317:30-5-743. [REVOKED]
317:30-5-743.1. [AMENDED]
317:30-5-744. [AMENDED]
317:30-5-745. [AMENDED]
(Reference APA WF # 10-02)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-491; filed 4-22-11]

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

[OAR Docket #11-492]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 75. Federally Qualified Health Centers
317:30-5-660.1. [AMENDED]
317:30-5-660.3. through 30-5-660.5. [AMENDED]
317:30-5-661.1. [AMENDED]
317:30-5-661.4. through 30-5-661.5. [AMENDED]
317:30-5-661.7. [AMENDED]
317:30-5-664.3. [AMENDED]
317:30-5-664.5. [AMENDED]
317:30-5-664.7. [AMENDED]
317:30-5-664.10. [AMENDED]
317:30-5-664.11. [REVOKED]
(Reference APA WF # 10-04)
GUBERNATORIAL APPROVAL:
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[OAR Docket #11-492; filed 4-22-11]

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

[OAR Docket #11-495]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-59. [AMENDED]
317:30-3-60. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
317:30-5-9. [AMENDED]
(Reference APA WF # 10-11)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-495; filed 4-22-11]

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

[OAR Docket #11-498]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 25. Psychologists
317:30-5-275. [AMENDED]
317:30-5-276. [AMENDED]
317:30-5-278. [AMENDED]
Part 26. Licensed Behavioral Health Providers [NEW]
317:30-5-280. [NEW]
317:30-5-281. [NEW]
317:30-5-282. [NEW]
317:30-5-283. [NEW]
(Reference APA WF #10-15)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-498; filed 4-22-11]

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

[OAR Docket #11-500]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241.1. [AMENDED]
(Reference APA WF # 10-18)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-500; filed 4-22-11]

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

[OAR Docket #11-501]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 65. Case Management Services for Over 21
317:30-5-586.1. [REVOKED]
317:30-5-589. [REVOKED]
Part 67. Behavioral Health Case Management Services
317:30-5-595. [AMENDED]
317:30-5-596. [AMENDED]
(Reference APA WF # 10-19)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-501; filed 4-22-11]

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

[OAR Docket #11-502]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us)
317:30-5-1091. [AMENDED]
317:30-5-1098. [AMENDED]
(Reference APA WF # 10-20)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-502; filed 4-22-11]

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

[OAR Docket #11-503]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 103. Qualified Schools As Providers of Health Related Services
317:30-5-1023. [AMENDED]
317:30-5-1027. [AMENDED]
(Reference APA WF # 10-22)

GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-503; filed 4-22-11]

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

[OAR Docket #11-504]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
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)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-504; filed 4-22-11]

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

[OAR Docket #11-505]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-211.5. [AMENDED]
(Reference APA WF # 10-24)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-505; filed 4-22-11]

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

[OAR Docket #11-507]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-2.1. [AMENDED]
(Reference APA WF # 10-26)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-507; filed 4-22-11]

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

[OAR Docket #11-508]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
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)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-508; filed 4-22-11]

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

[OAR Docket #11-509]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-24. [AMENDED]
(Reference APA WF # 10-28A)
GUBERNATORIAL APPROVAL:
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[OAR Docket #11-509; filed 4-22-11]

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

[OAR Docket #11-511]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-240. [AMENDED]
317:30-5-240.1. through 317:30-5-240.3. [AMENDED]
317:30-5-241. [AMENDED]
317:30-5-241.3. [AMENDED]
317:30-5-241.5. [AMENDED]
317:30-5-248. [AMENDED]
(Reference APA WF # 10-29)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-511; filed 4-22-11]

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

[OAR Docket #11-512]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95. [AMENDED]
317:30-5-95.4. through 317:30-5-95.6. [AMENDED]
317:30-5-95.8. through 317:30-5-95.10. [AMENDED]
317:30-5-95.13. through 317:30-5-95.16. [AMENDED]
317:30-5-95.18. through 317:30-5-95.20. [AMENDED]
317:30-5-95.22. through 317:30-5-95.40. [AMENDED]
317:30-5-95.42. [AMENDED]
317:30-5-96.2. through 317:30-5-96.4. [AMENDED]
317:30-5-96.7. [AMENDED]
(Reference APA WF # 10-30)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-512; filed 4-22-11]

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

[OAR Docket #11-515]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-211.19. [NEW]
(Reference APA WF # 10-34)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-515; filed 4-22-11]

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

[OAR Docket #11-516]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-29. [NEW]
(Reference APA WF # 10-36)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-516; filed 4-22-11]

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

[OAR Docket #11-519]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-30. [NEW]
(Reference APA WF # 10-39)

GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-519; filed 4-22-11]

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

[OAR Docket #11-523]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-20.1. [REVOKED]
(Reference APA WF # 10-44)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-523; filed 4-22-11]

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

[OAR Docket #11-524]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-28. [NEW]
(Reference APA WF # 10-49)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-524; filed 4-22-11]

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

[OAR Docket #11-526]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-24. [AMENDED]
(Reference APA WF # 10-50)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-526; filed 4-22-11]

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

[OAR Docket #11-527]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
317:30-5-336.10. [AMENDED]
(Reference APA WF # 10-52)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-527; filed 4-22-11]

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

[OAR Docket #11-528]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-241.2. [AMENDED]
(Reference APA WF # 10-53)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-528; filed 4-22-11]

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

[OAR Docket #11-529]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties

Part 3. Hospitals
317:30-5-42.16. [AMENDED]
Part 58. Non-Hospital Based Hospice
317:30-5-532. [AMENDED]
(Reference APA WF # 10-54)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-529; filed 4-22-11]

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

[OAR Docket #11-530]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 85. Advantage Program Waiver Services
317:30-5-763. [AMENDED]
(Reference APA WF # 10-55A)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-530; filed 4-22-11]

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

[OAR Docket #11-531]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-5. [AMENDED]
(Reference APA WF # 10-56)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-531; filed 4-22-11]

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

[OAR Docket #11-532]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider policies
Part 4. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program/Child Health Services
317:30-3-65.8 [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-695. [AMENDED]
317:30-5-696. [AMENDED]
317:30-5-698. [AMENDED]
317:30-5-699. [AMENDED]
317:30-5-700. [AMENDED]
317:30-5-700.1. [AMENDED]
(Reference APA WF # 10-58)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-532; filed 4-22-11]

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

[OAR Docket #11-533]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-43. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-122. [AMENDED]
Part 41. Family Support Services
317:30-5-412. [AMENDED]
(Reference APA WF 10-59A)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-533; filed 4-22-11]

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

[OAR Docket #11-536]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-4.1. [AMENDED]
(Reference APA WF # 10-60)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-536; filed 4-22-11]

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

[OAR Docket #11-537]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 17. Medical Suppliers
317:30-5-210. [AMENDED]
(Reference APA WF # 10-61)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-537; filed 4-22-11]

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

[OAR Docket #11-538]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 5. Pharmacies
317:30-5-72. [AMENDED]
317:30-5-72.1. [AMENDED]
317:30-5-77. [AMENDED]
317:30-5-77.3. [AMENDED]
317:30-5-78. [AMENDED]
317:30-5-78.1. [AMENDED]
(Reference APA WF # 10-62)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-538; filed 4-22-11]

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

[OAR Docket #11-541]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 108. Nutrition Services
317:30-5-1076. [AMENDED]
(Reference APA WF # 10-66)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-541; filed 4-22-11]

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

[OAR Docket #11-542]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-3. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 64. Clinic Services [NEW]
317:30-5-575. [NEW]
317:30-5-576. [NEW]
317:30-5-577. [NEW]
317:30-5-578. [NEW]
(Reference APA WF # 10-67)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-542; filed 4-22-11]

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

[OAR Docket #11-543]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-27. [AMENDED]
(Reference APA WF # 10-68)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-543; filed 4-22-11]

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

[OAR Docket #11-545]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-39. [NEW]
317:30-3-40. through 317:30-3-41. [AMENDED]
(Reference APA WF # 10-71)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-545; filed 4-22-11]

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

[OAR Docket #11-499]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. ICF/MR, HCBW/MR, and Individuals Age 65 or Older in Mental Health Hospitals
Part 2. Medicaid Recovery Program
317:35-9-15. [AMENDED]
Subchapter 19. Nursing Facility Services
317:35-19-4. [AMENDED]
(Reference APA WF # 10-16)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-499; filed 4-22-11]

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

[OAR Docket #11-510]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-43. [AMENDED]
(Reference APA WF # 10-28B)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-510; filed 4-22-11]

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

[OAR Docket #11-517]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 21. Oklahoma Cares Breast and Cervical Cancer Treatment Program
317:35-21-1. through 317:35-21-6. [AMENDED]
317:35-21-8. through 317:35-21-9. [AMENDED]
317:35-21-11. through 317:35-21-13. [AMENDED]
317:35-21-14. [NEW]
(Reference APA WF 10-37A)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-517; filed 4-22-11]

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

[OAR Docket #11-522]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 23. Living Choice Program
317:35-23-2. [AMENDED]
(Reference APA WF # 10-43)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-522; filed 4-22-11]

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

[OAR Docket #11-534]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. ICF/MR, HCBW/MR, and IndividualsAge 65 or Older In Mental Health Hospitals
Part 1. Services
317:35-9-4. [AMENDED]
317:35-9-5. [AMENDED]
317:35-9-5.1. [REVOKED]
Part 5. Determination of Medical Eligibility For ICF/MR, HCBW/MR, and Individuals Age 65 or Older In Mental Health Hospitals
317:35-9-45. [AMENDED]
(Reference APA WF 10-59B)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-534; filed 4-22-11]

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

[OAR Docket #11-539]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Eligibility and Countable Income
Part 3. Non-Medical Eligibility Requirements
317:35-5-25. [AMENDED]
(Reference APA WF # 10-63)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-539; filed 4-22-11]

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

[OAR Docket #11-540]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Eligibility and Countable Income
Part 5. Countable Income and Resources
317:35-5-41.6. [AMENDED]
317:35-5-41.9. [AMENDED]
317:35-5-42. [AMENDED]
Subchapter 10. Other Eligibility Factors for Families with Children and Pregnant Women
Part 5. Income
317:35-10-26. [AMENDED]
(Reference APA WF # 10-65)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-540; filed 4-22-11]

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

[OAR Docket #11-544]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. ADvantage Waiver Services
317:35-17-3. through 317:35-17-4. [AMENDED]
317:35-17-16. [AMENDED]
(Reference APA WF 10-69)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-544; filed 4-22-11]

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

[OAR Docket #11-546]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Eligibility and Countable Income
Part 1. Determination of Qualifying Categorical Relationships
317:35-5-6. [AMENDED]
317:35-5-6.1. [AMENDED]
(Reference APA WF # 10-77)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-546; filed 4-22-11]

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

[OAR Docket #11-535]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
317:40-1-1. [AMENDED]
Subchapter 5. Member Services
Part 1. Agency Companion Services
317:40-5-8. [AMENDED]
Part 3. Guidelines to Staff
317:40-5-40. [AMENDED]
Part 5. Specialized Foster Care
317:40-5-55. [AMENDED]
317:40-5-59. [AMENDED]
Part 9. Service Provisions
317:40-5-100. [AMENDED]
317:40-5-103. [AMENDED]
317:40-5-113. [AMENDED]
Subchapter 7. Employment Services Through Home and Community-Based Services Waivers [AMENDED]
317:40-7-5. [AMENDED]
317:40-7-7. [AMENDED]
317:40-7-15. [AMENDED]
317:40-7-21. [AMENDED]
Subchapter 9. Self-Directed Services
317:40-9-1. [AMENDED]
(Reference APA WF # 10-59C)
GUBERNATORIAL APPROVAL:
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[OAR Docket #11-535; filed 4-22-11]

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

[OAR Docket #11-493]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
317:45-1-1. through 317:45-1-4. [AMENDED]
Subchapter 3. Insure Oklahoma~~/O-Epic~~ Carriers
317:45-3-1. [AMENDED]
317:45-3-2. [AMENDED]
Subchapter 5. Insure Oklahoma~~/O-Epic~~ Qualified Health Plans
317:45-5-1. [AMENDED]
317:45-5-2. [AMENDED]
Subchapter 7. Insure Oklahoma~~/O-Epic~~ ESI Employer Eligibility
317:45-7-1. through 317:45-7-8. [AMENDED]
Subchapter 9. Insure Oklahoma~~/O-Epic~~ ESI Employee Eligibility
317:45-9-1. through 317:45-9-4. [AMENDED]
317:45-9-6. through 317:45-9-8. [AMENDED]
Subchapter 11. Insure Oklahoma~~/O-Epic~~ IP
Part 1. Individual Plan Providers
317:45-11-1. [AMENDED]
317:45-11-2. [AMENDED]
Part 3. Insure Oklahoma~~/O-Epic~~ IP Member Health Care Benefits
317:45-11-10. [AMENDED]
317:45-11-11. [AMENDED]
317:45-11-12. [NEW]
317:45-11-13. [NEW]
Part 5. Insure Oklahoma~~/O-Epic~~ IP Member Eligibility
317:45-11-20. through 317:45-11-28. [AMENDED]
(Reference APA WF # 10-08)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-493; filed 4-22-11]

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

[OAR Docket #11-514]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Insure Oklahoma Dental Services [NEW]
317:45-13-1. [NEW]
(Reference APA WF # 10-32)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-514; filed 4-22-11]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 50. HOME AND COMMUNITY BASED SERVICES WAIVERS

[OAR Docket #11-496]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Medically Fragile Waiver Services [NEW]
317:50-1-1. through 317:50-1-16. [NEW]
(Reference APA WF # 10-13)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-496; filed 4-22-11]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 50. HOME AND COMMUNITY BASED SERVICES WAIVERS

[OAR Docket #11-520]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Sooner Seniors Waivers Services [NEW]
317:50-5-1. through 317:50-5-16. [NEW]
(Reference APA WF # 10-40)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-520; filed 4-22-11]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 50. HOME AND COMMUNITY BASED SERVICES WAIVERS

[OAR Docket #11-521]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. My Life, My Choice Waiver Services [NEW]
317:50-3-1. through 317:50-3-16. [NEW]
(Reference APA WF # 10-41)
GUBERNATORIAL APPROVAL:
April 14, 2011

[OAR Docket #11-521; filed 4-22-11]

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

[OAR Docket #11-564]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. Scope and Applicability
340:25-1-1.1 [AMENDED]
340:25-1-5.1 [AMENDED]
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340-25-5-67 through 340:25-5-67.1 [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-114 [AMENDED]
340:25-5-117 [AMENDED]
340:25-5-123 [AMENDED]
340:25-5-124.2 [AMENDED]
Part 17. Past Support
340:25-5-140.1 [AMENDED]
Part 20. Medical Support
340:25-5-168 [AMENDED]
Part 21. Establishment
340:25-5-178 [AMENDED]
340:25-5-179.1 [AMENDED]
Part 22. Review and Modification
340:25-5-198.1 [AMENDED]
340:25-5-198.2 [AMENDED]
Part 23. Enforcement
340:25-5-203.1 [AMENDED]
Part 25. Federal Offset Programs
340:25-5-215 [AMENDED]
Part 27. State Tax Refund Offset Program
340:25-5-235 [AMENDED]

Part 33. Interstate and International Cases
340:25-5-270 [AMENDED]
Part 37. Recovery.
340:25-5-312 [AMENDED]
Part 39. Accounting and Distribution
340:25-5-350.1 [AMENDED]
340:25-5-351 [AMENDED]
(Reference APA WFs 10-05, 10-10, and 10-21)
GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-564; filed 4-22-11]

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

[OAR Docket #11-565]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 5. Operational Policies
Part 20. Medical Support
340:25-5-169 [AMENDED]
(Reference APA WF 10-21)
GUBERNATORIAL APPROVAL:
April 5, 2011

[OAR Docket #11-565; filed 4-22-11]

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

[OAR Docket #11-567]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-2 [AMENDED]
340:75-1-6 [REVOKED]
340:75-1-7 [AMENDED]
340:75-1-9 [AMENDED]
340:75-1-12.2 [REVOKED]
340:75-1-12.7 through 340:75-1-12.8 [REVOKED]
340:75-1-13 through 340:75-1-14 [AMENDED]
340:75-1-18.3 [REVOKED]
340:75-1-25 [REVOKED]
340:75-1-26 [AMENDED]
340:75-1-26.2 [AMENDED]
340:75-1-27 [REVOKED]
340:75-1-28 [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-42 [AMENDED]
340:75-1-43 [REVOKED]
340:75-1-44 [AMENDED]
Part 10. Oklahoma Children's Services (OCS)
340:75-1-152.9 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-2 [AMENDED]
340:75-3-6.1 [AMENDED]
340:75-3-7.4 through 340:75-3-7.5 [AMENDED]
340:75-3-8 through 340:75-3-8.1 [AMENDED]
340:75-3-11 [AMENDED]
340:75-3-13 [AMENDED]
340:75-3-14 [REVOKED]
340:75-3-20 [NEW]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-31.1 [AMENDED]
340:75-6-31.3 through 340:75-6-31.4 [AMENDED]
Part 7. Family and Child Individualized Service Planning Components
340:75-6-40.3 through 340:75-6-40.4 [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-47 [REVOKED]
340:75-6-48 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85.4 [AMENDED]
340:75-6-86 [AMENDED]
340:75-6-88 [AMENDED]
340:75-6-91 [AMENDED]
Part 13. Independent Living
340:75-6-110 [AMENDED]
Subchapter 7. Foster Home Care
Part 2. Development of Resources
340:75-7-18 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 28. Foster Parent Hotline and Mediation [NEW]
340:75-7-290 through 340:75-7-291 [NEW]
Subchapter 10. Emergency Shelter Care
340:75-10-8 [AMENDED]
340:75-10-8.1 through 340:75-10-8.4 [NEW]
340:75-10-9 through 340:75-10-20 [REVOKED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-240 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children In Out-Of-Home Care
Part 7. Medical Services
340:75-13-63 through 340:75-13-64 [AMENDED]
340:75-13-65 [REVOKED]

340:75-13-75 [AMENDED]
340:75-13-80 through 340:75-13-81 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-9 [AMENDED]
Part 14. Post Adoption Services
340:75-15-128 [AMENDED]
340:75-15-128.2 [AMENDED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-30 [AMENDED]
340:75-16-37 [AMENDED]
340:75-16-38 [AMENDED]
(Reference APA WFs 10-12 and 10-22)
GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-567; filed 4-22-11]

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

[OAR Docket #11-571]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 3. Administration
Part 1. General Administration
340:100-3-1[AMENDED]
340:100-3-5 [AMENDED]
Part 3. Administration
340:100-3-38 through 340:100-3-38.5 [AMENDED]
340:100-3-38.7 through 340:100-3-38.8 [AMENDED]
340:100-3-38.10 [AMENDED
340:100-3-38.11 [REVOKED]
340:100-3-38.12 through 340:100-3-38.13 [AMENDED]
340:100-3-39 through 340:100-3-40 [AMENDED]
Subchapter 5. Client Services
Part 3. Service Provisions
340:100-5-22.1 [AMENDED]
340:100-5-22.6 [AMENDED]
340:100-5-26.1 [AMENDED]
340:100-5-32 [AMENDED]
340:100-5-34 through 340:100-5-35 [NEW]
Part 5. Individual Planning
340:100-5-52 [AMENDED]
Subchapter 6. Group Home Regulations
Part 3. Standards
340:100-6-12 [AMENDED]
Part 11. Program Standards
340:100-6-55 [AMENDED]
Subchapter 18. Licensing [NEW]
340:100-18-1 [NEW]
(Reference APA WFs 10-09 and 10-13)
GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-571; filed 4-22-11]

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

[OAR Docket #11-569]

RULEMAKING ACTION:
Gubernatorial approval
RULES:
Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended
Part 3. State Agency
340:105-10-12 [AMENDED]
Part 7. Program Standards for Services Funded Under Title III
340:105-10-64 [AMENDED]
Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects
340:105-10-102 [AMENDED]
340:105-10-108 [AMENDED]
340:105-10-110.1 [AMENDED]
340:105-10-121 [AMENDED]
(Reference APA WF 10-20)
GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-569; filed 4-22-11]

TITLE 429. OKLAHOMA LOTTERY COMMISSION
CHAPTER 10. RETAILER PROVISIONS

[OAR Docket #11-476]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
429:10-1-3 [AMENDED]
429:10-1-10 [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-476; filed 4-19-11]

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

[OAR Docket #11-424]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Fees
535:1-11-1. Annual licenses, permits and renewals [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-424; filed 4-15-11]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 15. CENTRAL PURCHASING [REVOKED]

[OAR Docket #11-573]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. General Provisions [REVOKED]
Subchapter 4. Supplier Provisions [REVOKED]
Subchapter 6. State Agency Provisions [REVOKED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-573; filed 4-22-11]

TITLE 580. DEPARTMENT OF CENTRAL SERVICES
CHAPTER 16. CENTRAL PURCHASING

[OAR Docket #11-572]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
580:16-1-1 [NEW]
580:16-1-2 [NEW]
580:16-1-3 [RESERVED]
580:16-1-4 [NEW]
580:16-1-5 [RESERVED]
580:16-1-6 [NEW]
580:16-1-7 [RESERVED]
580:16-1-8 [NEW]
580:16-1-9 [RESERVED]
580:16-1-10 [NEW]
580:16-1-11 [RESERVED]
580:16-1-12 [NEW]
580:16-1-13 [RESERVED]
580:16-1-14 [NEW]
Subchapter 3. Supplier Provisions [NEW]
580:16-3-1 [NEW]
580:16-3-2 [RESERVED]
580:16-3-3 [NEW]
580:16-3-4 [RESERVED]
580:16-3-5 [NEW]
580:16-3-6 [RESERVED]
580:16-3-7 [NEW]
580:16-3-8 [RESERVED]
580:16-3-9 [NEW]
580:16-3-10 [RESERVED]
580:16-3-11 [NEW]
580:16-3-12 [RESERVED]
580:16-3-13 [NEW]
580:16-3-14 [RESERVED]
580:16-3-15 [NEW]
580:16-3-16 [RESERVED]
580:16-3-17 [NEW]
580:16-3-18 [RESERVED]
580:16-3-19 [NEW]
580:16-3-20 [RESERVED]
580:16-3-21 [NEW]
580:16-3-22 [RESERVED]
580:16-3-23 [NEW]
580:16-3-24 [RESERVED]
580:16-3-25 [NEW]
Subchapter 5. State Agency Provisions [NEW]
580:16-5-1 [NEW]
580:16-5-2 [RESERVED]
580:16-5-3 [NEW]
580:16-5-4 [RESERVED]
580:16-5-5 [NEW]
580:16-5-6 [RESERVED]
580:16-5-7 [NEW]
580:16-5-8 [RESERVED]
580:16-5-9 [NEW]
580:16-5-10 [RESERVED]
580:16-5-11 [NEW]
580:16-5-12 [RESERVED]
580:16-5-13 [NEW]
580:16-5-14 [RESERVED]
580:16-5-15 [NEW]
580:16-5-16 [RESERVED]
580:16-5-17 [NEW]
580:16-5-18 [RESERVED]
580:16-5-19 [NEW]
580:16-5-20 [RESERVED]
580:16-5-21 [NEW]
Subchapter 7. Procurement [NEW]
Part 1. General Procurement [NEW]
580:16-7-1 [NEW]

580:16-7-2 [RESERVED]
580:16-7-3 [NEW]
580:16-7-4 [RESERVED]
580:16-7-5 [NEW]
580:16-7-6 [RESERVED]
580:16-7-7 [NEW]
Part 3. Requirements for Acquisitions [NEW]
580:16-7-11 [NEW]
580:16-7-12 [RESERVED]
580:16-7-13 [NEW]
580:16-7-14 [RESERVED]
580:16-7-15 [NEW]
580:16-7-16 [RESERVED]
580:16-7-17 [NEW]
580:16-7-18 [RESERVED]
580:16-7-19 [NEW]
580:16-7-20 [RESERVED]
580:16-7-21 [NEW]
580:16-7-22 [RESERVED]
580:16-7-23 [NEW]
580:16-7-24 [RESERVED]
580:16-7-25 [NEW]
580:16-7-26 [RESERVED]
Part 5. Competitive Sealed Solicitations [NEW]
580:16-7-30 [NEW]
580:16-7-31 [RESERVED]
580:16-7-32 [NEW]
580:16-7-33 [RESERVED]
580:16-7-34 [NEW]
580:16-7-35 [RESERVED]
580:16-7-36 [NEW]
Part 7. Additional Procurement Information [NEW]
580:16-7-40 [NEW]
580:16-7-41 [RESERVED]
580:16-7-42 [NEW]
580:16-7-43 [RESERVED]
580:16-7-44 [NEW]
580:16-7-45 [RESERVED]
580:16-7-46 [NEW]
580:16-7-47 [RESERVED]
580:16-7-48 [NEW]
Part 9. Information Technologogy Acquistions [NEW]
580:16-7-52 [NEW]
580:16-7-53 [RESERVED]
580:16-7-54 [NEW]
580:16-7-55 [RESERVED]
580:16-7-56 [NEW]
Subchapter 9. Contract Management [NEW]
580:16-9-1 [NEW]
580:16-9-2 [RESERVED]
580:16-9-3 [NEW]
580:16-9-4 [RESERVED]
580:16-9-5 [NEW]
580:16-9-6 [RESERVED]
580:16-9-7 [NEW]
580:16-9-8 [RESERVED]
580:16-9-9 [NEW]
Subchapter 11. Purchase Cards and Other Electronic Payment Mechanisms [NEW]
580:16-11-1 [NEW]
580:16-11-2 [RESERVED]
580:16-11-3 [NEW]
580:16-11-4 [RESERVED]
580:16-11-5 [NEW]
580:16-11-6 [RESERVED]
580:16-11-7 [NEW]
580:16-11-8 [RESERVED]
580:16-11-9 [NEW]

GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-572; filed 4-22-11]

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

[OAR Docket #11-477]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Education and Examination Requirements
605:10-3-3. [AMENDED]
605:10-3-7. [AMENDED]
Subchapter 5. Instruction and Entity Requirements and Standards
605:10-5-1. [AMENDED]
605:10-5-1.1. [AMENDED]
605:10-5-2. [AMENDED]
605:10-5-3. [AMENDED]
Subchapter 7. Licensing Procedures and Options
605:10-7-2. [AMENDED]
605:10-7-8. [AMENDED]
605:10-7-8.1. [AMENDED]
605:10-7-8.2. [AMENDED]
605:10-7-8.3. [NEW]
605:10-7-10. [AMENDED]
Subchapter 9. Broker's Operational Procedures
605:10-9-1. [AMENDED]
605:10-9-4. [AMEDNED]
605:10-9-5. [AMENDED]

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[OAR Docket #11-477; filed 4-19-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-413]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Practice and Procedure
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-40. Options available to parties after action by Administrative Law Judge [AMENDED]
Subchapter 13. Consumer Compliance Initiative [NEW]
710:1-13-1. Purpose [NEW]
710:1-13-2. [RESERVED]
710:1-13-3. Consumer Compliance Initiative [NEW]
GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-413; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #11-414]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Manufacturing Facilities
710:10-7-4. Qualifying manufacturing concerns exempt; forms [AMENDED]
710:10-7-5. Date of qualification; application for exemption [AMENDED]
710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection [AMENDED]
Subchapter 14. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-4. Qualified owner [AMENDED]
GUBERNATORIAL APPROVAL:
March 3, 2011

[OAR Docket #11-414; filed 4-14-11]

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

[OAR Docket #11-415]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Procedures for Registration
710:22-5-11. Registration renewal notification [NEW]
GUBERNATORIAL APPROVAL:
March 11, 2011

[OAR Docket #11-415; filed 4-14-11]

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

[OAR Docket #11-416]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
710:25-1-5. Decals for general use [AMENDED]
GUBERNATORIAL APPROVAL:
March 3, 2011

[OAR Docket #11-416; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 35. ESTATES

[OAR Docket #11-417]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
710:35-1-3. Annual Report Available To Public [AMENDED]
Subchapter 3. Returns; Remittance; Releases
Part 3. Releases
710:35-3-21. Release upon full payment; order releasing taxable estates [AMENDED]
710:35-3-23. Order releasing property subject to Oklahoma Estate Tax liability and lien; partial release of specific property subject to the determination of tax [AMENDED]

GUBERNATORIAL APPROVAL:
March 3, 2011

[OAR Docket #11-417; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #11-418]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Returns and Reports
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-45. Verification of signatures on electronically-filed returns [AMENDED]
Subchapter 9. Refunds
710:50-9-3. Interest on refunds [AMENDED]
Subchapter 11. Intercept of Refunds
710:50-11-6. Tax Commission shall have priority over all other agencies, municipal courts, or district courts [AMENDED]
710:50-11-7. Notice to taxpayer [AMENDED]
710:50-11-8. Post intercept notice [REVOKED]
710:50-11-9. Joint returns intercept [AMENDED]
710:50-11-10. Nondebtor spouse protest [AMENDED]
710:50-11-11. Notification after final determination at hearing [AMENDED]
Subchapter 13. Estimated Tax
710:50-13-9. Estimated tax using annualized income method [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-51. Military pay of ~~non-residents~~ nonresidents and income earned by spouse of nonresident servicemember [AMENDED]
Part 7. Credits against Tax
710:50-15-74. Credit for investment/new jobs [AMENDED]
710:50-15-75. Recycling, reuse and source reduction incentives [AMENDED]
710:50-15-76. Oklahoma coal credits [AMENDED]
710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property [AMENDED]
710:50-15-82. Amendment and repeal of certain tax credit provisions; preservation of certain claims under repealed law [AMENDED]
710:50-15-84. Recycling facility credit [AMENDED]
710:50-15-85. Credit for investment in Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association [AMENDED]
710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits [AMENDED]
710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits [AMENDED]
710:50-15-91. Credit for employers incurring expenses for the provision of child care services [AMENDED]
710:50-15-92. Credit for manufacturers of advanced small wind turbines [AMENDED]
710:50-15-95. Poultry litter credit [AMENDED]
710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines [AMENDED]
710:50-15-98. Credits for biodiesel production [AMENDED]
710:50-15-99. Dry fire hydrant credit [AMENDED]
710:50-15-101. Twenty-five percent (25%) Film and Music Profit Reinvestment Credit [AMENDED]
710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures [AMENDED]
710:50-15-104. Credit for construction of energy efficient residential property [AMENDED]
710:50-15-105. Credit for research and development [AMENDED]
710:50-15-106. Credits for ethanol production [AMENDED]
710:50-15-107. Eligible wage and modification expenses credits [AMENDED]
710:50-15-108. Credit for qualified rehabilitation expenditures [AMENDED]
710:50-15-109. Credit for qualified employers and employees of the aerospace sector [AMENDED]
710:50-15-110. Income tax credit moratorium [NEW]
710:50-15-111. Wire transfer fee credit [NEW]
710:50-15-112. Credit for electric motor vehicle manufacturers [NEW]
710:50-15-113. Qualified independent biomedical research institute or qualified cancer research center credit [NEW]
Subchapter 20. Limited Liability Companies
710:50-20-1. Limited liability companies [AMENDED]
GUBERNATORIAL APPROVAL:
March 11, 2011

[OAR Docket #11-418; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 55. MOTOR FUEL

[OAR Docket #11-419]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
710:55-1-2. Definitions [AMENDED]

GUBERNATORIAL APPROVAL:
March 11, 2011

[OAR Docket #11-419; filed 4-14-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #11-438]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Registration and Licensing
Part 1. General Provisions
710:60-3-25. Active Duty Military Personnel Registration [AMENDED]
710:60-3-26. Online Registration Renewal [NEW]
710:60-3-27. Registration Renewal Notification [NEW]
Part 3. Penalties
710:60-3-37. Waiver of Penalties [AMENDED]
Part 11. Other Vehicles
710:60-3-111. Miscellaneous Vehicles; Definitions [AMENDED]
Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title
710:60-5-63 Drug Manufacture Vehicle Brand [NEW]
Part 7. Transfer of Title
710:60-5-78. Procedures for Handling Assignment Errors [AMENDED]
Part 9. Affidavits for Use in Titles
710:60-5-91. Affidavit of Assembly and Ownership [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 5. Specific Recordkeeping Duties
710:60-9-53. Accountable Items [AMENDED]
GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-438; filed 4-19-11]

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

[OAR Docket #11-420]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4. Contents of Monthly Sales Report [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-17.1. Vendors' Fine For Refusal to Accept 100% Disabled Veterans Claims For Sales Tax Exemption [NEW]
Subchapter 13. Sales and Use Tax Exemptions
Part 18. Precious Metals [NEW]
710:65-13-95. Exemption for Sales of Gold, Silver, Platinum, Palladium or Other Bullion Items for Storage in a Recognized Depository Facility [NEW]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-172. Exemption for Community Health Centers, Migrant Health Centers, Indigent Health Care Clinics, Certain Community-Based Health Care Centers, and Community Mental Health Centers [AMENDED]
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:65-13-275. Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate [AMENDED]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-3. Sourcing of Retail Sales [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 5. "C"
710:65-19-50. Coins and Bullion [AMENDED]
Subchapter 21. Use Tax
710:65-21-8. Out-of-State Retailers or Vendors Not Registered in Oklahoma [NEW]
GUBERNATORIAL APPROVAL:
March 3, 2011

[OAR Docket #11-420; filed 4-14-11]

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

[OAR Docket #11-439]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Sales and Use Tax Exemptions
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-173. Exemption for medical appliances, medical devices and other medical equipment furnished to Medicare/Medicaid program recipients [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 39. " T "
710:65-19-330. Telecommunications services [AMENDED]

GUBERNATORIAL APPROVAL:
April 12, 2011

[OAR Docket #11-439; filed 4-19-11]

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

[OAR Docket #11-421]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions
710:70-2-10. Discount on Cigarette Tax Stamps Purchased [AMENDED]
Part 3. Delivery Sales
710:70-2-50. Filing Requirements for Persons Making "Delivery Sales of Cigarettes" [AMENDED]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally Recognized Indian Tribes and Nations
710:70-7-4. Stamps Required [AMENDED]
710:70-7-5. Documentation That Purchaser Is Tribally Owned or Licensed Retail Store Must Be Obtained and Retained [REVOKED]
710:70-7-8. Cigarette Stamp Tax Rates for Sales by Federally-Recognized Indian Tribes and Nations [AMENDED]
710:70-7-9. Tobacco Products Tax Rates for Sales by Federally-Recognized Indian Tribes and Nations [AMENDED]
GUBERNATORIAL APPROVAL:
March 11, 2011

[OAR Docket #11-421; filed 4-14-11]

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

[OAR Docket #11-422]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Saving Quality Jobs Program
Part 1. General Provisions
710:85-3-1. Purpose [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-1. Purpose [AMENDED]
710:85-5-8. Procedure for Filing Report, Review, Determination [AMENDED]
710:85-5-15. Denial, Cessation, And Resumption of Incentive Payments [AMENDED]
Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-3. Procedure upon Qualification; Payment [AMENDED]
GUBERNATORIAL APPROVAL:
March 11, 2011

[OAR Docket #11-422; filed 4-14-11]

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

[OAR Docket #11-423]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Telecommunication for the Hearing-Impaired Surcharge
710:95-3-3. Telecommunications for the hearing-impaired surcharge [AMENDED]
Subchapter 5. Waste Tire Recycling
710:95-5-3. Waste tire recycling fee [AMENDED]
710:95-5-8. Transactions to which the fee is inapplicable [AMENDED]
710:95-5-9. Examples [AMENDED]
Subchapter 9. Professional Licensing Compliance Review
710:95-9-2. Definitions [AMENDED]
710:95-9-3. General provisions [AMENDED]
Subchapter 17. Prepaid Wireless Fee [New]
710:95-17-1. Purpose [NEW]
710:95-17-2. [RESERVED]
710:95-17-3. Definitions [NEW]
710:95-17-4. [RESERVED]
710:95-17-5. Fees, reports, payments and penalties [NEW]
710:95-17-6. [RESERVED]
710:95-17-7. Due date that falls on Saturday, Sunday or holiday [NEW]
710:95-17-8. [RESERVED]
710:95-17-9. Contents of monthly prepaid wireless fee report [NEW]
710:95-17-10. [RESERVED]
710:95-17-11. Registrants must file a return for every reporting period [NEW]
710:95-17-12. [RESERVED]
710:95-17-13. Records required to document resale transactions [NEW]
710:95-17-14. [RESERVED]
710:95-17-15. Sourcing purchases of prepaid wireless telecommunications service [NEW]
Subchapter 19. Business Activity Tax [NEW]

710:95-19-1. Purpose [NEW]
710:95-19-2. Definitions [NEW]
710:95-19-3. General provisions [NEW]
710:95-19-4. Filing requirements [NEW]
710:95-19-5. Tax rate [NEW]
710:95-19-6. Tax credit [NEW]
710:95-19-7. Special provisions for combined / consolidated filers [NEW]
710:95-19-8. Apportionment [NEW]

GUBERNATORIAL APPROVAL:
March 11, 2011

[OAR Docket #11-423; filed 4-14-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #11-559]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
785:35-1-4. Violations and penalties [AMENDED]
Subchapter 5. General Requirements to Maintain Licenses and Operator Certifications
785:35-5-3. Requirements for multi-purpose completion report [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
785:35-7-3. Variances to minimum standards for construction of wells [AMENDED]

GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-559; filed 4-22-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #11-560]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 5. Surface Water Quality Standards
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-12. Fish and wildlife propagation [AMENDED]
785.45-5-13. Agriculture [AMENDED]
785:45-5-16. Primary Body Contact Recreation [AMENDED]
Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [REVOKED]
Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [NEW]

GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-560; filed 4-22-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #11-561]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 15. Use Support Assessment Protocols
785:46-15-4. Default protocols [AMENDED]
785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-6. Assessment of Primary Body Contact Recreation support [AMENDED]
785:46-15-7. Assessment of Public and Private Water Supply support [AMENDED] 785:46-15-8. Assessment of Agriculture support [AMENDED]
785:46-15-10. Nutrients [AMENDED]
785:46-15-13.1. Assessment of Navigation support [NEW]
Subchapter 19. Implementation of Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation
785:46-19-3. Reasonable potential determination [AMENDED]

GUBERNATORIAL APPROVAL:
March 29, 2011

[OAR Docket #11-561; filed 4-22-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #11-562]

RULEMAKING ACTION:

Gubernatorial approval of permanent rules

RULES:

Subchapter 3. Projects and Entities Eligible
785:50-3-1. Project eligibility [AMENDED]
785:50-3-2. Eligible entities [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 1. General Provisions
785:50-9-9. Definitions [AMENDED]
Part 3. General Program Requirements [AMENDED]
785:50-9-21. Eligible Project [AMENDED]
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-24. Intended Use Plan [AMENDED]
785:50-9-30. Planning Documents [AMENDED]
785:50-9-45. Compliance with Federal Authorities [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-62. Environmental Review by the Board [AMENDED]

GUBERNATORIAL APPROVAL:

March 29, 2011

[OAR Docket #11-562; filed 4-22-11]

Withdrawn Rules

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

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

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

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

[OAR Docket #11-452]

RULEMAIKING ACTION:
Withdrawal of PERMANENT rule making
WITHDRAWN RULES:
Subchapter 35. State Inspection
460:10-35-8. Serious Injury or Fatality Report [NEW]
DATES:
Adoption:
March 17, 2011
Submitted to Governor:
March 25, 2011
Submitted to House:
March 25, 2011
Submitted to Senate:
March 25, 2011
Withdrawn:
April 18, 2011

[OAR Docket #11-452; filed 4-19-11]

TITLE 735. STATE TREASURER CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #11-547]

RULEMAKING ACTION:
Withdrawal of **PERMANENT** rulemaking.
PROPOSED RULES:
Chapter 80. Unclaimed Property [AMENDED]
WITHDRAWN RULES:
Subchapter 3. Reporting Requirements
Part 5. Business Associations
735:80-3-15 [AMENDED]
DATES:
Adoption:
March 24, 2011
Submitted to Governor:
March 24, 2011
Submitted to House:
March 24, 2011
Submitted to Senate:
March 24, 2011
Withdrawn:
April 12, 2011

[OAR Docket #11-547; filed 4-22-11]

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 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #11-440]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 2. Business Personal Property Valuation Schedules
710:10-2-5. Petroleum related equipment [AMENDED]
AUTHORITY:
68 O.S. §§ 203 and 2817; Oklahoma Tax Commission
DATES:
Adoption:
March 8, 2011 (Commission Order No. 2011-03-08-02)
Approved by Governor:
April 12, 2011
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2012, unless superseded by another rule or disapproval by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
FINDING OF EMERGENCY:
That emergency adoption of an amendment to the existing rules is necessary as a result of a recent Oklahoma Supreme Court decision (Assessor of Roger Mills County vs. Unit Drilling Company, 2011 OK 4) that 68 O.S. Supp 2010, §2817(L) is unconstitutional. Thus, the current rule, as written, is also unconstitutional. The emergency rule is necessary so that it can be promptly disseminated to local assessing authorities, providing them with a basis and guidance which is consistent with the Oklahoma Supreme Court's decision in the subject case.
ANALYSIS:
The rule changes reflect the recent Oklahoma Supreme Court decision regarding the valuation of personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs for tax assessment purposes.
CONTACT PERSON:
Lisa Haws, OBA #12695, Tax Policy Analyst; (405) 521-3133.

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 2. BUSINESS PERSONAL PROPERTY VALUATION SCHEDULES

710:10-2-5. Petroleum related equipment

(a) **Petroleum related equipment. "Petroleum related equipment"** includes, but is not limited to: cable tool rigs, casing and tubing, crude oil, drill pipe, drilling rigs, gas compressors, meters, natural gas, pipeline costs, tanks, and valves.

(b) **Exploration related equipment.** All taxable personal property used in the exploration of oil, natural gas, or other minerals, including drilling equipment and rigs shall be assessed annually at ~~the~~ its fair cash value, based upon the value set ~~for~~ by the first *Hadco International* monthly bulletin published for the current tax year and such other available relevant and reliable market data, if any, concerning the fair cash value of property of the same kind, using the appropriate depth rating assigned to the drawworks by its manufacturer and actual condition of the rig. [**See:** 68 O.S. Supp.2007 § 2817(K)]

(c) **Sources.** Sources utilized to determine the values of petroleum related equipment are:

(1) For cable tool rigs, values are determined by reference to catalogs of equipment manufacturers and dealers.

(2) For casing, tubing, drill pipe, collars, and drilling rigs the source for values utilized is *Hadco International*, an appraisal and data firm specializing in the petroleum industry which measures current market conditions and values of various assets. This is a monthly publication.

(3) For crude oil, values are determined from the Oklahoma market twelve-month verage.

(4) For valves and tanks, values utilized are taken from *Marshall and Swift Valuation Service*, a national valuation service contracted by the Division to provide tables of values for real and personal property, depreciation schedules, and trending tables for historical costs. The service is updated on a monthly basis.

(5) For natural gas in storage, value is determined by reference to the *New York Mercantile Exchange (NYMEX)*, which provides average cost of natural gas purchased from the storage facility, including data on well head gas purchase price, pipeline transportation, and storage fees.

(6) For gas compressors, meters, pipeline costs, and related equipment, values are determined from surveys of Oklahoma companies, research of records filed in the

various counties, and other available sources. Such values may be adjusted using *Marshall and Swift Valuation Service* tables as provided in ~~*OAC* 710:10~~ *OAC* 710:10-2-1(c).

[OAR Docket #11-440; filed 4-19-11]

Permanent Final Adoptions

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

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

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

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

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION
CHAPTER 25. AVIATION EDUCATION PROGRAM

[OAR Docket #11-393]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
25:25-1-2 [AMENDED]
25:25-1-3 [AMENDED]
AUTHORITY:
3 O.S. Section 85 (L); Oklahoma Aeronautics Commission
DATES:
Comment period:
October 1, 2010 through November 1, 2010.
Public hearing:
November 2, 2010
Adoption:
November 10, 2010
Submitted to Governor:
November 18, 2010
Submitted to House:
November 18, 2010
Submitted to Senate:
November 18, 2010
Gubernatorial approval:
December 21, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 1, 2011
Final adoption:
April 1, 2011
Effective:
May 26, 2011
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORORATIONS BY REFERENCE:
n/a
ANALYSIS:
Per 3 O.S. Section 85 (L), which gives the Oklahoma Aeronautics Commission the authority to organize and administer an aerospace education program, this rule clarifies requirements for participation in the Aviation Education Program, the criteria selection for applicants, and the procedures for awarding an Aviation Education Grant or Contract.
CONTACT PERSON:
Jane Mitchell, Administrative Rules Liaison, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6901

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

25:25-1-2. Requirements for receiving funding for an Aviation Education Program

(a) The Oklahoma Aeronautics Commission shall identify and award grants to public schools, colleges, and universities, and execute contracts with private entities to promote aviation, aerospace, STEM education that have direct application to aviation, which includes the fields of science, technology, engineering and math, and careers in aviation and aerospace among Oklahoma students. All grant proposals must demonstrate a direct application to aviation.

(b) Each school, college, university, teacher or private entity must complete the Aviation Education Grant application located on the website of the Commission.

(c) A private entity or organization must also complete the Aviation Education Grant application and if their application is selected, enter into a contract with the Oklahoma Aeronautics Commission for the project. Additional contractual forms will also need to be completed.

(d) Applications must be submitted or postmarked no later than May 31st in order to be considered for the following fiscal year which starts July 1st.

(e) Applicants who receive approval must provide a Financial Audit and a Completion Report to the Oklahoma Aeronautics Commission, which documents the usage of funds and gives a detailed description of the program's implementation. The report is due within sixty (60) days of the completion of the program.

25:25-1-3. Criteria selection for applicants

(a) An applicant's program must have a direct application to aviation with the purpose of increasing ~~increase~~ aviation awareness by promoting science, technology, engineering, and mathematics (STEM) education, or encourage Oklahoma students to pursue a career in the aviation/aerospace industry.

(b) Applications will be rated according to the following criteria listed in the application:

(1) Program description
(2) Grade levels served
(3) Number of students involved
(4) Program goals and objectives, must be directly linked to aviation
(5) Curriculum/subject areas covered
(6) Desired learning outcomes, must be directly linked to aviation
(7) Student benefits
(8) Measurements of success
(9) Justification of need for the funding

(c) Applications will also be rated according to the following financial information provided by the applicant:

(1) Total budget of the organization

(2) Total budget of the program

(3) Other contributors and the amount contributed

(4) Percentage of the program that the Oklahoma Aeronautics commission is being asked to fund

[OAR Docket #11-393; filed 4-13-11]

TITLE 25. OKLAHOMA AERONAUTICS COMMISSION
CHAPTER 30. AIRCRAFT PILOT AND PASSENGER PROTECTION ACT

[OAR Docket #11-394]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
25:30-1-1 [NEW]
25:30-1-2 [NEW]
25:30-1-3 [NEW]
25:30-1-4 [NEW]
25:30-1-5 [NEW]
Subchapter 3. Application Requirements [NEW]
25:30-3-1 [NEW]
25:30-3-2 [NEW]
25:30-3-3 [NEW]
25:30-3-4 [NEW]
Subchapter 5. Obstruction Standards [NEW]
25:30-5-1 [NEW]
25:30-5-2 [NEW]
Subchapter 7. Notice, Determination and Commission Actions [NEW]
25:30-7-1 [NEW]
25:30-7-2 [NEW]
25:30-7-3 [NEW]
25:30-7-4 [NEW]
25:30-7-5 [NEW]
25:30-7-6 [NEW]
Subchapter 9. Permits [NEW]
25:30-9-1 [NEW]
25:30-9-2 [NEW]
25:30-9-3 [NEW]
Subchapter 11. Miscellaneous Provisions [NEW]
25:30-11-1. Military airspace [NEW]
Appendix A. Survey Type Adjustment [NEW]
AUTHORITY:
Oklahoma Aeronautics Commission, 3 O.S. Section 120.14.
DATES:
Comment period:
October 1, 2010 through November 1, 2010.
Public hearing:
November 2, 2010
Adoption:
November 10, 2010
Submitted to Governor:
November 18, 2010
Submitted to House:
November 18, 2010
Submitted to Senate:
November 18, 2010
Gubernatorial approval:
December 21, 2010
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 1, 2011
Final adoption:
April 1, 2011
Effective:
May 26, 2011
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions [NEW]
25:30-1-1 [NEW]
25:30-1-2 [NEW]
25:30-1-3 [NEW]
25:30-1-4 [NEW]
25:30-1-5 [NEW]
Subchapter 3. Application Requirements [NEW]
25:30-3-1 [NEW]
25:30-3-2 [NEW]
25:30-3-3 [NEW]
25:30-3-4 [NEW]
Subchapter 5. Obstruction Standards [NEW]
25:30-5-1 [NEW]
25:30-5-2 [NEW]
Subchapter 7. Notice, Determination and Commission Actions [NEW]
25:30-7-1 [NEW]
25:30-7-2 [NEW]
25:30-7-3 [NEW]
25:30-7-4 [NEW]
25:30-7-5 [NEW]
25:30-7-6 [NEW]
Subchapter 9. Permits [NEW]
25:30-9-1 [NEW]
25:30-9-2 [NEW]
25:30-9-3 [NEW]
Subchapter 11. Miscellaneous Provisions [NEW]
25:30-11-1. Military airspace [NEW]
Gubernatorial approval:
September 17, 2010
Register publication:
28 OkReg 77
INCORORATIONS BY REFERENCE:
n/a
ANALYSIS:
Per 3 O.S. Section 120.1, which set the requirements and procedures to be followed by the Aeronautics Commission in the administration and enforcement of its duties regarding the construction of a structure in the vicinity of a public-use airport and notification to military airports in the state of Oklahoma.
CONTACT PERSON:
Jane Mitchell, Administrative Rules Liaison, Oklahoma Aeronautics Commission, 120 N. Robinson, Suite 1244W, Oklahoma City, OK 73120, (405) 604-6901

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

25:30-1-1. Purpose

The purpose of this chapter is to set administrative rules for the implementation of HB 2919-the Aircraft Pilot and Passenger Protection Act. This chapter establishes the requirements and procedures to be followed by the Commission in the administration and enforcement of its duties under Title 3, Oklahoma Statues, Section 120.1 for construction of structures in the vicinity of public-use airports.

25:30-1-2. Definitions

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

"Airport elevation" is the highest point of an airport's usable runways measured in feet from mean sea level;

"Airport reference point" is the geometrical center of all usable runways;

"Applicant" is an individual, firm, partnership, corporation, association, or body politic and includes a trustee, receiver, assignee, or other similarly authorized representative of any of them;

"Approach surface" is an imaginary surface shaped like a trapezoid:

(A) longitudinally centered on the extended runway centerline at a public-use airport,

(B) beginning two hundred (200) feet beyond the end of each runway pavement and at the runway end elevation,

(C) having an inner-edge width of one thousand (1,000) feet expanding outward uniformly to a width of sixteen thousand (16,000) feet at the outer edge, and

(D) sloping upward for a distance of ten thousand (10,000) feet at a slope of fifty (50) to one (1), with an additional forty thousand (40,000) feet at a slope of forty (40) to one (1);

"Commission" means the Oklahoma Aeronautics Commission or a successor agency;

"Conical surface" is an imaginary surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty (20) to one (1) for a horizontal distance of four thousand (4,000) feet;

"FAA" means the Federal Aviation Administration or a successor agency;

"Horizontal surface" is an imaginary horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of ten thousand (10,000) feet radii from a point located on the extended runway centerline two hundred (200) feet beyond each end of runway pavement and connecting the adjacent arcs by lines tangent to those arcs;

"Incompatible purpose" means the use of a building or structure as a residence, educational center (including all types of primary and secondary schools, preschools, and child-care facilities), places of worship, hospital, medical inpatient treatment facility, nursing/convalescent home, retirement home, or similar use;

"Legal representative" means a person who is authorized to legally bind an entity;

"Permit" means a permit issued by the Commission under this act;

"Person" means an individual, firm, partnership, corporation, association, or body politic and includes a trustee, receiver, assignee, or other similarly authorized representative of any of them;

"Primary surface" is a surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends two hundred (200) feet beyond each end of that runway; but when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is one thousand (1,000) feet;

"Public-use airport" means a structure or an area of land or water that is designed and set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the interest of the public for the landing and taking off of aircraft and is identified by the FAA as a public-use airport. Public-use airport shall include any military airport operated by a branch of the armed services of the United States government. Public-use airport shall not include any privately owned airport for private use as identified by the FAA, or any airport owned by a municipality with a population exceeding five hundred thousand (500,000) according to the most recent Federal Decennial Census;

"Runway" means the portion of an airport designated as the area used for the landing or takeoff of aircraft;

"Runway protection zone" is a trapezoidal zone centered along the extended runway centerline, beyond each end of the primary surface, two thousand five hundred (2,500) feet long, with an inner width of one thousand (1,000) feet and an outer width of one thousand seven hundred fifty (1,750) feet. The function of the runway protection zone is to enhance the protection of people and property on the ground;

"Structure" means any constructed or installed object, including, but not limited to, buildings, towers, wind turbines, smokestacks, electronic transmission or receiving towers, and antennae and overhead transmission lines. The term does not include:

(A) any aviation navigational aids that are fixed by function, or

(B) any construction or installed object on property owned by the federal government; and

"Total structure height" means the elevation of the ground above mean sea level at the structure's location, plus the height of the structure above ground level in feet, plus the applicable survey type adjustment as described in Appendix A.

25:30-1-3. Who is required to file

A person shall obtain a permit from the Commission prior to the construction or installation of any of the following near a public-use airport:

(1) Any proposed structure for an incompatible purpose in the primary surface or the runway protection zone;

(2) Any structure, alteration or addition to a structure within three (3) statute miles from the airport reference point of a public-use airport, that would result in a total structure height in excess of one hundred fifty (150) feet above the established airport elevation; and

(3) Any structure, alteration or addition to a structure that would result in a total Structure height greater than the horizontal, conical or approach surfaces, as Defined in

25:30-1-2 of the Aircraft Pilot and Passenger Protection Act.

25:30-1-4. Who is not required to file

A permit from the Commission shall not be required for the following:

(1) For mobile or temporary equipment used to construct or install a new structure or to perform routine maintenance, repairs, or replace parts of an existing structure; or

(2) To repair, replace, or alter an existing structure that would not result in a total structure height greater than the horizontal, conical or approach surfaces as defined in Section 25:30-1-2, or change the location of an existing structure.

(3) Structures that exist or have an approved building permit from the local authority with jurisdiction over the property that the structure is proposed to be constructed upon, prior to October 1, 2010.

(4) Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation.

25:30-1-5. Violations

Each violation of the Aircraft Pilot and Passenger Protection Act, or rulings promulgated by the Commission pursuant to this act, shall constitute a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00). Each day that such a failure continues constitutes a separate violation. In addition, the Commission may institute in any court of general jurisdiction, an action to prevent, restrain, correct, or abate any violation of this act, or any rules adopted or orders issued by the Commission pursuant to this act. The court may grant such relief, by way of injunction, which may be mandatory, or otherwise, as may be necessary under this act and the applicable rules or orders of the Commission issued under this act.

SUBCHAPTER 3. APPLICATION REQUIREMENTS

25:30-3-1. Application form and time of notice

(a) **Form.** Each person that is required to file for a permit from the Commission in accordance with 25:30-1-3, shall send one original and one copy of OAC form A-1 to the Commission or on an electronic form approved by the Commission. Copies of the Form may be obtained free of charge from the Commission's Office or downloaded in electronic format from the Commission's website. The Commission will make available a web-based application for online permit application that is consistent with the requirements set forth in Title 62 of the Oklahoma Statutes.

(b) **Additional application requirements.** Applications to the Commission for a permit in accordance with the provisions of these rules shall include the following in addition to the requirements of 25:30-3-1(a):

(1) For construction in a primary surface or runway protection zone, in accordance with section 25:30-5-1:

(A) The following statement signed by a legal representative of the applicant: "The applicant acknowledges for itself, its heirs, its successors, ant its assigns, that the real estate described in this application is located in the primary surface or the runway protection zone of a public-use airport, and that the applicant is building a structure upon this real estate, with the full knowledge and acceptance that it may be incompatible with the normal airport operations including the landing and takeoff of aircraft."

(B) if notice is required to be filed with FAA, a copy of the FAA Form 7460-1, "Notice of Proposed Construction or Alteration", as described in 14 CFR part 77, sub-part B, Section 17, to be submitted to the FAA.

(2) For construction or alteration of a structure in a horizontal, conical, or approach surface in accordance with section 25:30-5-2: a copy of FAA Form 7460-1, if required to be submitted to the FAA.

(c) **When to file for a permit.** If FAA Form 7460-1 is required to be filed for the proposed construction, then an application for a permit pursuant to Section 25:30-1-3 shall be filed at the same time the FAA Form 7460-1 is sent to the FAA, or at any time before that. If FAA Form 7460-1 is not required to be filed with the FAA, then the application shall be filed at least thirty (30) days before the earlier of the following:

(1) The date the proposed construction or alteration is to begin; or

(2) The date an application for a construction or building permit is to be filed with the municipality.

25:30-3-2. Acceptance of application and amendments

(a) **Complete applications.** The date of receipt of an application shall be the date the Commission determines an application is complete in all respects including application fee in accordance with 25:30-3-4, and this date termed as the "date of record" shall be noted in the records.

(b) **Incomplete applications.** If the Commission determines the application is incomplete, the Commission shall advise the applicant and a period of sixty (60) days shall be allowed for the refiling of a complete application. If the Commission determines that a completed application was not submitted within the time allowed, the Commission will consider the application withdrawn, unless the Commission agrees to give the applicant more time.

(c) **Application amendments.** Applications shall be amended or revised by the applicant or his legal representative. Amendments to the application will be classified as either minor or major, depending upon the nature of the amendment requested.

(1) **Minor amendments** are administrative in nature and do not amend the location or total height of the proposed structure. Also, a minor amendment will not amend the "date of record" of the application.

(2) **Major amendments** are defined as those that affect the location and/or the total structure height. The "date of record" for a completed application will be revised once the amendment has been accepted by the Commission.

25:30-3-3. Applications filed later than provided in section 25:30-3-1 subsection (c)

Applications not filed in accordance with the provisions of section 25:30-3-1(c), or filed after construction has begun, will be assessed penalties or be subject to action in accordance with 25:30-1-5.

25:30-3-4. Fees

Pursuant to Title 3, Oklahoma Statues, Section 120.1 for construction of structures in the vicinity of public-use airports, the Commission shall charge reasonable fees for services rendered, not to exceed Two Hundred Dollars ($200.00). All fees shall be paid to the Oklahoma Aeronautics Commission. Required fees must be paid before any action will be taken by the Commission on the matter relating thereto and before the issuance of any permit. Permit fees will not be refunded if the application for a permit is denied or withdrawn. The following fees will be charged:

(1) Application for a new permit: $200.00

(2) Minor amendment to application: $50.00

(3) Major amendment to application: $100.00

(4) Amendments to an existing permit: $100.00

SUBCHAPTER 5. OBSTRUCTION STANDARDS

25:30-5-1. Incompatible structures

The construction of a structure for an incompatible purpose within the primary surface or the runway protection zone is presumed to be incompatible with normal airport operations including the landing and takeoff of aircraft.

25:30-5-2. Tall structures

Any structure or alteration to a structure is presumed to be a hazard to air navigation if its total structure height is greater than the horizontal, conical or approach surfaces, as defined in Section 25:30-1-2 of the Aircraft Pilot and Passenger Protection Act.

SUBCHAPTER 7. NOTICE, DETERMINATION AND COMMISSION ACTIONS

25:30-7-1. Commission review

(a) Upon receiving an application, the Commission shall notify a legal representative of the public-use airport owner affected by the application and solicit comments from the airport owner.

(b) In determining whether to issue a permit, the Commission shall consider sections 25:30-5-1 and 25:30-5-2, and the following:

(1) The nature of the terrain and height of existing structures;

(2) Public and private interests and investments;

(3) The character of flying operations and planned developments of an airport;

(4) Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport;

(5) Technological advances;

(6) The safety of persons on the ground and in the air;

(7) Land use density;

(8) Comments from all interested persons;

(9) Findings and determinations of other government agencies;

(10) Depending upon the type of survey used, an adjustment will be made to the horizontal and vertical measurements of the proposed structure as described in Appendix A of this Chapter. If the survey type (horizontal and vertical) is not certified by a licensed engineer or a licensed surveyor, a horizontal adjustment of plus or minus two hundred fifty (250) feet and a vertical adjustment of fifty (50) feet will be applied to the structure measurements;

(11) Any other information the Commission finds pertinent to that applications review.

25:30-7-2. Review time period

The review time period for an application will commence once a complete application has been accepted in accordance with section 25:30-3-2.

(1) If FAA Form 7460-1 is also required to be filed with FAA, then the Commission shall notify the applicant of its determination within thirty (30) days of the FAA completing its aeronautical study. If the applicant has not been notified by the Commission of its determination within thirty (30) days of the FAA completing its aeronautical study, then the applicant shall notify the Commission that it has not received notice of the Commission's determination. The Commission shall then have seven (7) working days from the date of the applicant's notice to notify the applicant of its determination. Nothing herein precludes the Commission from making its determination before the FAA completes its aeronautical study.

(2) If FAA Form 7460-1 is not required, then the Commission shall notify the applicant of its determination within sixty (60) days of the date of record. If the applicant has not been notified by the Commission of its determination within sixty (60) days of date of record, then the applicant shall notify the Commission that it has not received notice of the Commission's determination. The Commission shall then have seven (7) working

days from the date of the applicant's notice to notify the applicant of its determination.

25:30-7-3. Commission's determination

The Commission's review of an application can lead to the following determinations:

(1) The proposed construction would not exceed any standard as set forth in sections 25:30-5-1 or 25:30-5-2 and is therefore approved;

(2) The proposed construction would exceed the obstruction standards set forth in sections 25:30-5-1 or 25:30-5-2 and is therefore denied;

(3) The proposed construction would exceed the obstruction standards set forth in sections 25:30-5-1 or 25:30-5-2; however, due to other considerations listed in section 25:30-7-1, the application is approved; and

(4) The proposed construction is not located in an area that is regulated in accordance with 25:30-1-3; therefore, a permit from the Commission is not required.

25:30-7-4. Actions required for approved applications

Upon the determination of the Commission to approve an application, an original permit shall be forwarded to the applicant. The applicant shall complete the following steps:

(1) The applicant for a permit under Section 25:30-1-3 shall record each permit issued by the Commission in the office of the county clerk for the county where the structure is located not later than thirty (30) business days after the Commission issues the permit. If a structure is located in more than one county, the county that contains the majority of the structure is the county in which the permit must be filed. A permit issued under Section 25:30-1-3 (1) shall contain the following statement: "The permittee acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this permit is located within the primary surface or the runway protection zone of a public-use airport, and that the permittee is building a structure upon this real estate with the full knowledge and acceptance that it may be incompatible with normal airport operations including the landing and takeoff of aircraft.";

(2) Every permit issued by the Commission shall specify that obstruction markers, markings, lighting, or other visual or aural identification required to be installed on or in the vicinity of the structure shall conform to federal laws and regulations; and

(3) A permit issued in accordance with the provisions of Section 25:30-7-3 is valid only after the Commission receives a certified copy of the recorded permit with the recording data from the county clerk of the county in which the structure is located.

25:30-7-5. Denial of permit

(a) **Denial of permit and notification.** If the Commission determines that a permit should not be issued under the provisions of these rules, the Commission shall notify the applicant in writing of its determination by sending it through certified or registered mail to the applicant at the address specified in the application.

(b) **Final determination and/or reconsideration.** The determination is final thirty (30) days after notification of the determination is served, unless the applicant, within the thirty-day period, requests reconsideration in writing to the Commission and provides written evidence showing why the application should have been approved. The Commission has up to a period of thirty (30) days from the receipt of the request. The Commission shall notify the applicant of its determination as specified in subsection (a) of this section. In the event of a second denial by the Commission of the permit request, the applicant can request a hearing before the Commission with reference to the application. A hearing under this section shall be open to the public. The applicant may appear and be heard either in person or by counsel and may present pertinent evidence and testimony. At the hearing, the applicant has the burden to show cause why the Commission should have issued the permit to erect the proposed structure.

25:30-7-6. Construction of works.

A permit issued in accordance with the provisions of the Aircraft Pilot and Passenger Protection Act is valid only if the proposed structure has been constructed within ten (10) years of the issuance of a permit by the Commission pursuant to Section 25:30-7-4.

SUBCHAPTER 9. PERMITS

25:30-9-1. Contents of permits

(a) Every permit issued by the Commission shall contain the following:

(1) The date the permit is issued.

(2) The county or counties in which the structure(s) is or are located.

(3) The permit number and date issued, which shall be the date the permit is approved by the Commission or where appropriate, by the Director.

(4) The name and address to whom issued.

(5) The purpose for which the structure will be used.

(6) Survey information of the site location and total height of the structure provided with the application.

(7) Any other items to be specified by the Commission.

(b) In addition to the above, the permit shall contain any additional terms, conditions, limitations, or restrictions the Commission may prescribe.

25:30-9-2. Acceptance of permit by permittee

Acceptance of the permit shall be an acknowledgement and agreement that permittee will comply with all the terms, provisions, limitations, conditions and restrictions contained in the permit.

25:30-9-3. Amendments to permit

The Commission shall consider amendments to permits that are administrative in nature including the transfer of ownership rights. The permit holder or his legal representative shall notify the Commission in writing of the amendments to the permit and shall provide the affected permit number(s). Changes to the location or the total height of a permitted structure will require the applicant to obtain a new permit.

SUBCHAPTER 11. MISCELLANEOUS PROVISIONS

25:30-11-1. Military airspace

(a) Any person required to notify the FAA of any proposed construction or alteration pursuant to Subpart B of Section 77.13 of the Federal Aviation Regulations Part 77, that in response receives an acknowledgement from the FAA that further aeronautical study is required to determine whether the proposed construction or alteration would be a hazard to air navigation, shall, upon requesting further aeronautical study by the FAA, concurrently notify the Commission of the request and shall provide the Commission with true and correct copies of all relevant filings made with the FAA.

(b) Upon receipt of such notification of the filing of a request for further aeronautical study, the Commission shall give timely notice thereof to the Oklahoma Strategic Military Planning Commission, or any successor agency, and to any military airport within Oklahoma potentially affected by the proposed construction or alteration.

(c) The Commission further shall use its best efforts to establish regular and consistent communication with the FAA to encourage sharing of information regarding construction or alteration in a military training route or slow-speed low-altitude training route within the state of Oklahoma with appropriate state agencies and military installations.

APPENDIX A. SURVEY TYPE ADJUSTMENT [NEW]

Survey Type Adjustment

Survey Type	Horizontal Adjustment	Survey Type	Vertical Adjustment
1	+20 ft (6 m)	A	+3 ft (1 m)
2	+50 ft (15 m)	B	+10 ft (3 m)
3	+100 ft (30 m)	C	+20 ft (6 m)
4	+250 ft (75 m)	D	+50 ft (15 m)
5	+500 ft (150 m)	E	+125 ft (38 m)

[OAR Docket #11-394; filed 4-13-11]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 20. RACING OFFICIALS AND RACING PERSONNEL

[OAR Docket #11-487]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:20-1-12. Stewards' list [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
Comment Period:
January 18, 2011 through February 16, 2011
Public Hearing:
February 16, 2011
Adoption:
February 17, 2011
Submitted to Governor:
February 24, 2011
Submitted to House:
February 24, 2011
Submitted to Senate:
February 24, 2011
Gubernatorial approval:
March 29, 2011
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 21, 2011
Final Adoption:
April 21, 2011
Effective:
May 26, 2011
SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
The Stewards maintain a Stewards' List of horses which, in their opinion, are ineligible to be entered in any race. Mr. Constantin A. Rieger, Commission Executive Director, recommended that the rule be amended to expand the reasons that may result in a horse being placed on the Stewards' List due to poor or inconsistent performance. The inclusion of the list of examples allows the Stewards the latitude of placing an under-performing horse on the Stewards' List.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE AMENDMENTS ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

325:20-1-12. Stewards' list

The Stewards shall maintain a Stewards' List of those horses which, in their opinion, are ineligible to be entered in any race because of poor or inconsistent performance such as, but not limited to, bolting, badly beaten, erratic behavior, ~~due to the inability to maintain a straight course, or for any other reason considered a hazard to the safety of the participants~~ questions concerning ownership by a suspended or non-licensed person, suspended trainer awaiting proper transfer of horse, eligibility, ownership dispute, claim protest, identification of the horse, or for any other reason that might affect the integrity or welfare of racing. Such horse shall be refused entry until it has ~~demonstrated to the Stewards or their representatives that it can race safely~~ fulfilled the requirements specified by the Stewards and it can be removed from the Stewards' List.

[OAR Docket #11-487; filed 4-21-11]

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

[OAR Docket #11-488]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:75-1-2. Definitions [AMENDED]
325:75-1-21. Expenditure of Oklahoma Breeding Development Fund Special Account Monies for the Purpose of Caring for Retired and Unwanted Oklahoma-Bred Racing Stock [NEW]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
Comment Period:
January 18, 2011 through February 16, 2011
Public Hearing:
February 16, 2011
Adoption:
February 17, 2011
Submitted to Governor:
February 24, 2011
Submitted to House:
February 24, 2011
Submitted to Senate:
February 24, 2011
Gubernatorial approval:
March 29, 2011
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 21, 2011
Final Adoption:
April 21, 2011
Effective:
May 26, 2011
SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
The proposed rule amendments to Rule 325:75-1-2 and the proposed new rule, Rule 325:75-1-21, are necessary to implement SB 820, signed into law May 10, 1010 with a November 1, 2010 effective date. SB 820 amended Section 208.3, Oklahoma Breeding Development Fund Special Account, of Title 3A, Oklahoma Horse Racing Act, to allow an additional use of Oklahoma-Bred funds to provide funding to an Oklahoma non-profit entity exempt from taxation to take care of retired and unwanted Oklahoma-Bred racing stock.
CONTACT PERSON:
Bonnie Morris, Agency Rulemaking Liaison, Oklahoma Horse Racing Commission, Shepherd Mall, 2401 N.W. 23, Suite 78, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE AMENDMENTS ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

325:75-1-2. Definitions

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

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

"Accredit" means to certify as meeting the standard of eligibility for participation as a broodmare, stallion or racing stock in the Oklahoma-Bred Program.

"Accreditation" means the process of verifying and certifying the eligibility of a broodmare, stallion or racing stock for participation in the Oklahoma-Bred Program and adding its name to the official registry.

"Accredited Oklahoma-Bred horse" means a broodmare, stallion or racing stock that is eligible pursuant to the Act and Commission rules and whose enrollment in the Oklahoma-Bred Program has been completed by the official Registering Agency.

"Added money" means the amount exclusive of trophy added into a stakes by the organization licensee, or by sponsors, state-bred programs, or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

"Adoption Program" means a program in which race horses are rehabilitated and/or retrained for other uses, such as, but not limited to, polo, dressage, hunter/jumper and pleasure riding, the goal and purpose of which is the adoption of the race horse after rehabilitation and/or retraining.

"Age" means that the age of a horse is recognized as beginning on the first day of January in the year in which the horse is foaled.

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

"Breakage" means the net pool minus payout.

"Breeder" means the owner of a horse's dam at the time of foaling for Thoroughbreds, and means the owner of a horse's dam at time of conception for non-Thoroughbreds.

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

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

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

"Dual breed registered horse" means an accredited Oklahoma-Bred horse that has filed with the Registering Agency Registration Certificates from more than one breed national registry. A dual breed registered horse may be eligible for dual breed Oklahoma-Bred awards.

"Eligible" means a broodmare, stallion, or racing stock horse that can satisfy all of the requirements for participation in the Oklahoma-Bred Program.

"Enroll" means to enter the name of an eligible broodmare, stallion, or racing stock horse on the official roll, register, or record as a qualified participant in the Oklahoma-Bred Program.

"Hardship Application" means that a horse owner is eligible to complete a Hardship Application if the horse in question is a mare that is accredited as Racing Stock in the Oklahoma-Bred Program, with the proper Oklahoma-Bred stamp, but was not accredited as a Broodmare in the Oklahoma-Bred Program prior to producing a foal.

"Horse" means:

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

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

"Lessee" means a licensed Owner whose interest in a horse is by virtue of a completed Commission-approved lease form attached to the Registration Certificate and on file with the Commission.

"Lessor" means the Owner of a horse that is leased.

"Nomination" means the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Nominator" means the person who nominates a horse as a possible contender in a race.

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

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

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

"Pension Program" means a program for the care and "pasturing" of retired or unwanted horses who, because of their health or condition, are incapable of being rehabilitated/retrained and adopted.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when parimutuel racing occurs on live races conducted at that racetrack.

"Races" mean:

(A) **Allowance.** An overnight race for which eligibility and weight to be carried is determined according to specified conditions which include age, sex, earnings, number of wins, and distance of race.

(B) **Claiming.** A race in which any horse starting may be claimed and purchased for a designated amount in conformance with the rules in this Title.

(C) **Exhibition.** A race on which no wagering is permitted.

(D) **Handicap.** A race in which the weights to be carried by the horses are assigned by the Racing Secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

(E) **Invitational.** A race in which the competing horses are selected by inviting their Owners to enter specific horses.

(F) **Maiden.** A race restricted to non-winners.

(G) **Match.** A race contested between two or more horses under conditions agreed to by their Owners.

(H) **Nomination.** A race in which the subscription to a payment schedule nominates and sustains the eligibility of a particular horse. Nominations must close at least seventy-two (72) hours before the first post time of the day the race is originally scheduled to be run.

(I) **Oklahoma-Bred.** A race for which entry may be restricted to accredited Oklahoma-Bred registered horses.

(J) **Overnight (Purse).** A race for which entries close at a time set by the Racing Secretary.

(K) **Progeny.** A race restricted to the offspring of a specific stallion or stallions.

(L) **Schooling.** A preparatory race for entry qualification in official races which conforms to requirements adopted by the Commission.

(M) **Stakes.** A race which is eligible for stakes or "black-type" recognition by the particular breed registry.

(N) **Trial.** A race of a series of races in which horses participate for the purpose of determining eligibility for a subsequent contest.

(O) **Walkover.** A race in which only one horse starts or in which all the starters are owned by the same interest. To claim the purse, a horse must start and go the distance of the race.

"Register" means the official record of names of broodmares, stallions, or racing stock horses that have been approved for participation in the Oklahoma-Bred Program.

"Registration" means placing the name of approved broodmares, stallions, or racing stock horses in the official record of horses approved to participate in the Oklahoma-Bred Program.

"Registration Certificate" means the official document from the breed-specific national registry, providing the horse's name, foal date, age, color, sex, pedigree and breeder and confirming the horse's registration with the appropriate national breed registry.

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

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

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

"Unclaimed ticket" means:

(A) A winning or refundable pari-mutuel ticket which was not cashed during the performance for which it was issued; or

(B) Proceeds which shall be remitted by the Organization Licensee to the Commission for deposit in the Oklahoma-Breeding Development Fund Special Account in accordance with provisions of statute and as prescribed by the Commission.

"Week" means a period of seven (7) days beginning at 12:01 a.m. Monday during which races are conducted.

"Year" means a calendar year.

325:75-1-21. Expenditure of Oklahoma Breeding Development Fund Special Account Monies for the purpose of caring for retired and unwanted Oklahoma-Bred racing stock

The use of monies from the Oklahoma Breeding Development Fund Special Account for the purpose of caring for retired and unwanted Oklahoma-Bred racing stock shall be subject to the following procedures and requirements:

(1) To be eligible to receive monies from the Oklahoma Breeding Development Fund Special Account for the purpose of caring for retired and unwanted Oklahoma-Bred racing stock, a non-profit entity must:

(A) Be exempt from taxation under the United States Internal Revenue Code, 26 U.S.C. § 501(c),

(B) The official horsemen's representative organization for a participating breed must request that the non-profit entity receive monies from the Special Account for the purpose of caring for retired and unwanted Oklahoma-Bred racing stock,

(C) The non-profit must have a program developed for the care of retired and/or unwanted horses which meets the program requirements specified in this Rule.

(2) Two general types of care programs may receive funding for the purpose of caring for retired or unwanted Oklahoma-Bred racing stock:

(A) Adoption Programs under which Oklahoma-Bred race horses are rehabilitated and/or rehabilitated and retrained for other uses, such as, but not limited to, polo, dressage, hunter/jumper, and pleasure riding. The purpose and goal of such programs is the adoption of the horse by third parties after rehabilitated and/or retraining; and

(B) Pension Programs, for the care and "pasturing" of retired or unwanted race horses who, because of their health or condition, are incapable of being rehabilitated/retrained and adopted.

(C) Such programs may be operated by the eligible non-profit entity itself and/or through the use of subcontractors.

(3) Whether conducted by an eligible non-profit entity itself or through the use of subcontractors, to be eligible, a care program must comply with the following requirements:

(A) The program must enable horses to have access to clean, palatable, safe water and be able to drink their fill at least twice a day;

(B) The program is to maintain all horses in a body condition score of three (3) or more using the body condition scoring system developed by Dr. Don Henneke at Texas A&M University. In establishing this criteria, the Commission recognizes that horses gaining weight and being fed adequately, highly conditioned performance horses and horses with certain chronic health conditions may be in lower body condition scores and still be acceptably nourished, and that horses with more than twenty (20) years of age may not maintain their body condition well, even with special food;

(C) The program shall permit horses to have free access to natural or constructed shelter that is well-ventilated with adequate space and free of hazards. Stables horses should be allowed exercise daily;

(D) The program should ensure that horses are free of significant health problems or should be receiving appropriate health care to prevent unnecessary discomfort and promote prompt return to well-being;

(E) The program must ensure that horses receive adequate hoof care to allow horses to stand in a normal posture and move at all gates without discomfort. In adopting this criterion, the Commission recognizes that some health and hoof problems [such as Heaves or Founder] in horses, particularly those that are long standing, may not be resolved, but this should be determined by a veterinarian;

(F) The non-profit entity and subcontractor participating in the program must agree to and allow random, unannounced inspections of their care operations and facilities by the Commission's Law Enforcement Division;

(G) Non-profit entities and subcontractors participating in the program must agree to and actually file quarterly reports with the Commission on a form provided by the Commission. The reports will include, but are not limited to, an indication of the total number of horses being cared for at the facility during the quarter, the number of eligible Oklahoma-Bred horses being cared for, and horse mortality rate during the quarter and the number of adoptions during the quarter, and

(H) No horse in the non-profit entity's program shall be sent to slaughter.

(4) To be eligible to participate in the program, racing stock must meet the following requirements:

(A) The horse must be of a participating breed;

(B) The horse must be registered in the Oklahoma-Bred Program;

(C) The horse's last race or last workout cannot have occurred more than twelve (12) months prior to its entering into care in a program receiving funding under this Rule;

(D) Ownership of the horse and its registration papers must be turned over to and become the property of the non-profit entity or its designated subcontractor;

(E) The horse shall never be raced again, and

(F) Horses of an owner who has not placed a retired or unwanted horse in an Adoption Program or Pension Program receiving funding authorized in accordance with this Rule will have priority over horses seeking to be placed in such an Adoption or Pension Program whose owners have already placed two (2) or more horses in such an Adoption Program or Pension Program.

(5) The following procedures will be used by the Commission in awarding monies from the Oklahoma Breeding Development Fund Special Account for the purpose of caring for retired and unwanted Oklahoma-Bred racing stock:

(A) No non-profit entity will be eligible to receive monies from the Oklahoma Breeding Development Fund Special Account for the purpose of caring for retired and unwanted Oklahoma-Bred racing stock during any calendar year unless the official horsemen's representative organization for a participating breed requests that the entity receive such from the Special Account during the calendar year. Requests by the official horsemen's representative organization must be made on an annual basis and no matter when made will only make the non-profit entity eligible during the calendar year in question, assuming all other requirements are met by the non-profit entity.

(B) The Commission's Executive Director shall determine whether a non-profit entity and its program are eligible to receive funding for the purpose of caring for retired and unwanted horses. Further, the Executive Director shall determine the amount of funds that each eligible and participating entity shall receive, based upon the number of eligible Oklahoma-Bred horses being cared for or to be cared for by the non-profit entity and how much funding is available, using the following funding parameters:

(i) No more than fifty percent (50%) of funds made available in the Oklahoma Breeding Development Fund Special Account for the purpose of caring for retired or unwanted Oklahoma-Bred racing stock can be used to care for pensioned horses, horses that because of their health or condition are not being rehabilitated and/or retrained for adoption;

(ii) Funding for horses in an Adoption Program, between $200-$250 per month, per horse, or an amount within a range established annually by the Commission's Executive Director;

(iii) Funding for horses in a Pension Program, between $150-$200 per month, per horse, or an amount within a range established annually by the Commission's Executive Director.

(C) Of the funding made available to a non-profit entity for the purpose of providing care to retired and unwanted horses, the non-profit entity may use up to

fifteen percent (15%) of those funds for administrative expenses, which are any expenses not related to directly providing of care to horses in the program.

(D) Before a non-profit entity can receive funding for the care of a horse, whether in an Adoption Program or Pension Program, the horse's eligibility to participate in the program must be established in the following manner: The non-profit entity shall file with the Commission's Oklahoma-Bred Registry Department: (1) an ownership transfer application which transfers ownership of the horse to the non-profit entity or a subcontractor designated by the non-profit entity, together with (2) the horse's original registration papers, (3) documentation showing the horse's last race and/or last workout, and (4) a request that the horse be qualified as retired or unwanted racing stock within its care for the purpose of receiving Oklahoma Breeding Development Fund Special Account monies.

(E) In addition to transferring the ownership based upon the application filed, the Registering Department will also notify both the Commission's Executive Director and the non-profit entity making the application whether the horse is an Oklahoma-Bred racing stock horse and whether the horse is eligible under this Rule.

(F) A non-profit entity must notify the Commission's Executive Director within two (2) weeks on an eligible horse's leaving the non-profit's Adoption or Pension Program by virtue of death, adoption or any other reason.

[OAR Docket #11-488; filed 4-21-11]

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

[OAR Docket #11-548]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Fair Hearings
Part 7. Assistance Programs
340:2-5-79 [AMENDED]
(Reference APA WF 10-06)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Section168 of Title 56 of the Oklahoma Statutes.
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Superseded rules:
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Part 7. Assistance Programs
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27 Ok Reg 2624
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10-1080
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapter 5 of Chapter 2 allow fair hearings to be conducted by telephone. The purpose is to reduce the funds and time spent on travel by administrative hearing officers and other OKDHS employees in the fair hearing process.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

SUBCHAPTER 5. FAIR HEARINGS

PART 7. ASSISTANCE PROGRAMS

340:2-5-79. Telephonic hearings

(a) **Telephonic hearings.** ~~The provision for telephonic hearings is to make the administrative hearing system more accessible to clients and to facilitate prompt action on hearing requests and decisions. In person hearings are preferred and telephone hearings are conducted only when:~~

(1) The Appeals Unit supervisor or the administrative hearing officer (AHO) ~~finds that the client:~~ may designate a hearing be conducted by the AHO by telephone.

~~(A) is not able to participate in an in-person hearing; and~~

~~(B) agrees to a telephonic hearing; and~~

(2) ~~due to unusual circumstances, in the judgment of the Appeals Unit supervisor, there is not an AHO available to conduct an in-person hearing in the county in which the client lives.~~ When a hearing is conducted by an AHO in-person, the AHO may allow a witness, including the client or an Oklahoma Department of Human Services

(OKDHS) employee, to testify by telephone, if the AHO determines:

(A) the person's testimony is needed and he or she is unable to testify in person; or

(B) requiring in-person testimony would be burdensome.

(b) **Procedures relating to telephonic hearings.**

(1) All procedures, forms, and policies regarding ~~administrative~~ hearings apply to telephonic hearings, unless otherwise specified by the AHO.

(2) The notice of hearing includes instructions to the parties regarding:

(A) the submission of exhibits~~.~~;

(B) the location of the client and OKDHS employee during the hearing; and

(C) any other instructions regarding pre-hearing and hearing procedures or requirements.

(c) **AHO ~~responsibility~~ authority.** The AHO ~~may determine where all the persons involved in the hearing will be during the hearing. When appropriate, either the client or the AHO may be present at the local Department of Human Services (DHS) office for the hearing~~ has the authority to issue directions regarding any aspect of a hearing conducted by telephone, even if different than directions and procedures included in other subsections of this Section, if necessary to ensure that the hearing process is fair to the client and OKDHS.

[OAR Docket #11-548; filed 4-22-11]

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

[OAR Docket #11-549]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
340:5-1-5 through 340:5-1-6 [AMENDED]
Subchapter 5. Investigation of Adult Protective Services Referrals
340:5-5-8 [AMENDED]
(Reference APA WF 10-11)
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Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and 43A O.S. §§ 10-110 (SB 1601) and 10-110.1 (HB 2776).
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Subchapter 5. Investigation of Adult Protective Services Referrals
340:5-5-8 [AMENDED]
(Reference APA WF 10-11)
Gubernatorial approval:
November 3, 2010
Register publication:
28 Ok Reg 274
Docket number:
10-1298
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapter 1 of Chapter 5 amend the rules to: (1) add language to comply with new statute, Section 10-110.1 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-110.1), regarding the release of certain information to the public about an individual charged or indicted with committing a crime resulting in death or near death of a vulnerable adult; and (2) add the definition of near death.

The Subchapter 5 of Chapter 5 proposed revisions add language clarifying that investigative records are not expunged except by court order in accordance with 43A O.S. § 10-110.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

340:5-1-5. Confidentiality

(a) All records, working papers, and reports related to an Adult Protective Services (APS) investigation are confidential under ~~Section~~ Sections 10-110 and 10-110.1 of Title 43A of the Oklahoma Statutes (43A O.S. §§ 10-110 and 10-110.1) and may be disclosed only by order of the court except under the circumstances described in (b) through (~~e~~g) of this Section. Representatives of the general public, news media, or agencies not meeting one of the exceptions in (c) of this Section who request details on a specific case may be referred to the county director, area director, Family Support Services Division (FSSD) APS Unit staff, or the Oklahoma Department of Human Services (OKDHS) Office of Communications for a detailed explanation of OKDHS confidentiality rules.

(b) When consulting persons knowledgeable of the circumstances of an alleged victim of abuse, neglect, or exploitation, or when making other contacts as part of the investigation or service planning process, the APS specialist may disclose

information necessary to ensure that the vulnerable adult is protected and the vulnerable adult's needs are met.

(c) Certain persons acting in an official capacity with regard to the vulnerable adult may review or receive information from the entire case record, including:

(1) a district attorney or employees of the district attorney's office;

(2) the attorney representing the person who is the subject of an involuntary services action;

(3) the attorney for the Oklahoma Disability Law Center, when involved in representing the vulnerable adult;

(4) staff of:

(A) an Oklahoma law enforcement agency;

(B) a law enforcement agency of another state;

(C) a state or local Medical Examiner's Office;

(D) a law enforcement agency of a federally recognized tribe in Oklahoma; or

(E) a federal law enforcement agency;

(5) staff of another state's APS program;

(6) physical or mental health care professionals involved in the evaluation or treatment of the vulnerable adult; and

(7) OKDHS staff who use the information in carrying out their own responsibilities.

(d) Any agency or person authorized by OKDHS to provide services to a vulnerable adult may receive a summary of information necessary to secure or provide appropriate care for the vulnerable adult.

(e) The vulnerable adult's caretaker, legal guardian, and next of kin may receive summaries of information from an APS case record.

(f) Some information from APS records may be released to employees or contractors of the State for research purposes, upon application to and approval by the FSSD APS Unit. While local OKDHS offices may release statistical information, no specific case information is released for research purposes unless approval is received from the FSSD APS Unit.

(g) In accordance with 43A O.S. § 10-110.1, when the person responsible for the care of a vulnerable adult has been charged by information or indicted with committing a crime resulting in the death or near death of a vulnerable adult, there is a presumption that it is in the best interest of the public to disclose certain information.

(~~g~~h) If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the disclosed health information.

340:5-1-6. Definitions

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

"Abandonment" means the withdrawal of support or the act of deserting a vulnerable adult by a caretaker or other person responsible for the vulnerable adult's care.

"Abuse" means causing or permitting the:

(A) infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish; or

(B) deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

"Activities of daily living (ADLs)" means basic self-care activities such as toileting, transfer, feeding, bathing, and dressing.

"Adult" means a person 18 years of age or older.

"Alleged victim" means a vulnerable adult who is suspected of being a victim of maltreatment.

"APS specialist" means an Oklahoma Department of Human Services (OKDHS) worker who has successfully completed Adult Protective Services (APS) New Worker Academy or is working under the oversight of a more experienced APS specialist.

"APS specialist III" means the lead APS specialist who mentors and may be designated to act for the APS specialist IV.

"APS specialist IV" means any OKDHS staff assigned or designated to act in an APS supervisory capacity.

"Caretaker" means a person who is responsible for the care of or financial management for a vulnerable adult as a result of family relationship or has assumed responsibility for care of a vulnerable adult voluntarily, by contract, or by friendship; or who serves as a legally appointed guardian, limited guardian, or conservator.

"Emergency" means a situation in which a vulnerable adult is likely to suffer death or serious physical harm without immediate intervention.

"Evidence" means all documentation, photographs, interviews, observations, objects, and other information collected, observed, or otherwise obtained during the course of an investigation.

"Executive function" means the brain's ability to absorb information, interpret this information, and make decisions based upon this information.

"Exploitation" means unjust or improper use of the person or resources of a vulnerable adult for the profit or advantage of another person through undue influence, coercion, harassment, duress, deception, false representation, or false pretense.

"Financial neglect" means repeated instances by a caretaker or other person who has assumed the role of financial management of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including but not limited to:

(A) squandering or negligently mismanaging the money, property, or accounts of a vulnerable adult;

(B) refusing to pay for necessities or utilities in a timely manner; or

(C) providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

"Guardian" means one of the types of guardianship specified in the Oklahoma Guardianship and Conservatorship Act, Title 30 of the Oklahoma Statutes.

(A) **General guardian.** A general guardian is a person appointed by the court to serve as the guardian

of an incapacitated person to ensure that the essential requirements for the health and safety of the person are met, to manage the estate of the person, or both.

(B) **Limited guardian.** A limited guardian is a person appointed by the court to serve as the guardian of a partially incapacitated person and is authorized by the court to exercise only certain powers of a guardian over the person, or estate or financial resources of the person, or both.

(C) **Special guardian.** A special guardian is a person appointed by the court to exercise certain specified powers to alleviate a situation in which there is a threat of serious impairment to the health or safety of an incapacitated or partially incapacitated person, or a situation in which the financial resources of the person will be seriously damaged or dissipated unless immediate action is taken.

"Incapacitated adult" means a vulnerable adult whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that the person lacks the capacity to manage his or her financial resources or to meet essential requirements for the person's mental or physical health or safety without assistance.

"Indecent exposure" means forcing or requiring a vulnerable adult to:

(A) look upon the body or private parts of another person or upon sexual acts performed in the presence of the vulnerable adult; or

(B) touch or feel the body or private parts of another person.

"Information and Referral (I & R)" means a report that has been screened by the APS specialist IV and does not contain an alleged vulnerable adult and at least one allegation of maltreatment.

"Instrumental activities of daily living (IADLs)" means abilities necessary for an adult to function independently in the community, such as preparing meals, using the telephone, driving or arranging for transportation, shopping, and handling finances.

"Mandatory reporter" means any person who has reasonable cause to believe someone is suffering from abuse, neglect, or exploitation.

"Maltreatment" means abuse, neglect, self-neglect, financial exploitation, sexual exploitation, financial neglect, abandonment, or verbal abuse.

"Near death" means the vulnerable adult is in serious or critical condition, as certified by a physician, as a result of abuse or neglect.

"Neglect" means:

(A) failure to provide protection for a vulnerable adult who is unable to protect his or her own interest;

(B) failure to provide adequate shelter, nutrition, health care, or clothing for a vulnerable adult; or

(C) negligent acts or omissions that result in harm or unreasonable risk of harm to a vulnerable adult through action or inaction, or lack of supervision by a caretaker providing direct services.

"Power of attorney" means authority granted by a legal document authorizing a person or other entity to act for the principal, subject to the extent of the power authorized. The affidavit may be durable. If it is durable, the power of attorney has been filed at the county court house and becomes effective when the principal loses decision making abilities as defined by the document and instructions of the principal. The power is revoked upon:

(A) written revocation of the principal;

(B) incapacity of the principal unless it is a durable power of attorney;

(C) death of the principal;

(D) a termination date if specified in the document;

(E) order of the court; or

(F) the appointment of a guardian, in most cases.

"Referral" means a report that has been screened by the APS specialist IV and assigned for investigation.

"Report" means any allegation of maltreatment that is received by OKDHS that has not yet been screened or assigned for investigation.

"Self-neglect" means neglect brought about by a vulnerable adult's own actions or inactions which causes the vulnerable adult to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult's lack of awareness, incompetence, or incapacity.

"Services which are necessary to aid an individual to meet essential requirements for mental or physical health and safety" means services which include, but are not limited to the:

(A) identification of adults in need of protective services;

(B) provision of medical care for physical or mental health needs; and

(C) provision of assistance in personal hygiene, food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical maltreatment, guardianship referral, outreach, and transportation necessary to secure any of such needs. This excludes taking the adult into physical custody without the adult's consent except through proper procedures for the provision of involuntary services.

"Sexual abuse" means:

(A) oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult with any other object by a caretaker or other person providing services to the vulnerable adult;

(B) for the purpose of sexual gratification, the touching, feeling, or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult; or

(C) indecent exposure by a caretaker or other person providing services to the vulnerable adult.

"Sexual exploitation" means and includes, but is not limited to, a caretaker causing, allowing, permitting, or encouraging a vulnerable adult to engage in prostitution or in lewd, obscene, or pornographic photographing, filming, or depiction of the vulnerable adult as those acts are defined by Oklahoma law.

"Substantiated" means the greater weight of the evidence collected during an APS investigation determines that maltreatment occurred and the alleged victim meets the definition of a vulnerable adult.

"Temporary guardian" means a person or other entity appointed by the court under Title 43A of the Oklahoma Statutes with authority only to consent on behalf of an incapacitated adult to the provision of protective services determined necessary to remove conditions creating an emergency need and other services approved by the court. A temporary guardian serves in that capacity only until the expiration of the order appointing him or her.

"Undue influence" means the substitution of one person's will for the true desires of another.

"Unsubstantiated" means evidence found during an APS investigation was insufficient to determine maltreatment occurred.

"Verbal abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions, or behaviors, by a caretaker or other person providing services to a vulnerable adult that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation.

"Vulnerable adult" means an adult who, because of physical or mental disability or other impairment, may be subject to maltreatment and is substantially impaired in his or her ability to independently:

(A) provide adequately for his or her own care or custody;

(B) manage his or her property and financial affairs effectively;

(C) meet essential requirements for mental or physical health or safety; or

(D) protect himself or herself from maltreatment without assistance. This determination is not made based on a person's eligibility for disability benefits from any source or on the impairment being permanent, but solely on the adult's reported physical or mental condition at the time an APS report is made and the APS specialist's assessment of that condition during investigation.

SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REFERRALS

340:5-5-8. Case destruction

(a) The destruction of the Adult Protective Services (APS) paper files is done in accordance with the rules set by Archives and Records.

(b) Records of investigations conducted pursuant to Section 10-110 of the Oklahoma Statutes, known as "The Protective Services for Vulnerable Adults Act," is not expunged except by court order.

[OAR Docket #11-549; filed 4-22-11]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 10. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)

[OAR Docket #11-550]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 2. Temporary Assistance for Needy Families (TANF) Work Program
340:10-2-1 through 340:10-2-2 [AMENDED]
340:10-2-4 through 340:10-2-5 [AMENDED]
340:10-2-7 [AMENDED]
Subchapter 3. Conditions of Eligibility - Need
Part 1. Resources
340:10-3-5 [AMENDED]
Part 3. Income
340:10-3-32 [AMENDED]
340:10-3-39 through 340:10-3-40 [AMENDED]
Part 5. Assistance Payments
340:10-3-57 [AMENDED]
Subchapter 5. Conditions of Eligibility - Age
340:10-5-1 [AMENDED]
Subchapter 7. Conditions of Eligibility - Residence
340:10-7-1 [AMENDED]
Subchapter 9. Conditions of Eligibility - Relationship of Payee to Child
340:10-9-1 [AMENDED]
Subchapter 10. Conditions of Eligibility - Deprivation
340:10-10-4 [AMENDED]
Subchapter 13. Conditions of Eligibility - School Attendance
340:10-13-1 [AMENDED]
Subchapter 14. Conditions of Eligibility - Immunizations
340:10-14-1 [AMENDED]
(Reference APA WF 10-08 and 10-19)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Sections 230.50, 230.52, 230.56, 230.64, 230.65 and 230.66 of Title 56 of the Oklahoma Statutes; Section 2931 of Title 29 of the Code of Federal Regulations (CFR); Parts 261.2, 261.10, 261.30, and 261.50 of Title 45 of the CFR; and Section 7301 of Public Law 109-171.

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340:10-2-7 [AMENDED]
Subchapter 3. Conditions of Eligibility - Need
Part 1. Resources
340:10-3-5 [AMENDED]
Part 3. Income
340:10-3-32 [AMENDED]
340:10-3-40 [AMENDED]
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July 20, 2010
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27 Ok Reg 2788
Docket number:
10-1146
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:

The proposed permanent rule amendments to Subchapter 2 of Chapter 10 amend the rules to: (1) add a new reason for failure to participate in Temporary Assistance for Needy Families (TANF) Work activities; (2) add to vocational training and job skills training that in certain instances homework or study time can be counted toward required work activities; (3) add Community Partnership as a work activity component for TANF work requirements; (4) add clarifying language; (5) remove unnecessary and outdated language; and (6) update terminology.

The proposed permanent rule amendments to Subchapter 3 of Chapter 10 amend rules to: (1) clarify how to consider child support income; (2) clarify information regarding a person acting in the role of spouse including when the income of a non-relative of the opposite sex is not considered; (3) add clarifying language; (4) disregard income received from programs funded by the Workforce Investment Act (WIA) as a resource; and (5) disregard all income received from programs funded by WIA.

The proposed permanent rule amendments to Subchapter 5 of Chapter 10 amend rules to update language and terminology regarding acceptable verification of age.

The proposed permanent rule amendments to Subchapter 7 of Chapter 10 amend rules to clarify that a worker must check out-of-state receipt of benefits before certification.

The proposed permanent rule amendments to Subchapter 9 of Chapter 10 amend rules to clarify legal responsibility when parental rights are terminated or the child is adopted by someone else.

The proposed permanent rule amendments to Subchapter 10 of Chapter 10 amend rules to: (1) update information needed to determine deprivation; and (2) remove outdated information.

The proposed permanent rule amendments to Subchapter 13 of Chapter 10 amend rules to: (1) update type of schools that meet school attendance requirement; (2) remove worker instructions from the rule; and (3) update information to current terminology.

The proposed permanent rule amendments to Subchapter 14 of Chapter 10 amend rules to: (1) change time limit for providing proof of current immunizations; (2) update language to current terminology; and (3) add clarifying information.

CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 2. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) WORK PROGRAM

340:10-2-1. Work requirements

All parents or needy caretakers who apply for or receive cash assistance from Oklahoma are required to be engaged in a work activity. The parent(s) or needy caretaker must participate in work activities for the number of hours weekly that are necessary to move that person into employment and self-sufficiency.

(1) **Work-eligible person.** A work-eligible person is defined as an adult or minor head-of-household included in the Temporary Assistance for Needy Families (TANF) assistance unit. Excluded from this definition is a parent providing care for a disabled family member living in the home who does not attend school on a full-time basis, provided the need for such care is supported by medical documentation.

(2) **Minimum hours of work activities.**

(A) All TANF applicants and recipients who meet the definition of a work-eligible person are required to participate the minimum hours of work activities.

(i) A work-eligible person must participate in work activities an average of 30 hours per week, with the exception of a single custodial parent with a child under age six who must participate in work activities an average of 20 hours per week.

(ii) In a two-parent family, when deprivation is based on incapacity, the non-incapacitated adult must participate in work activities an average 30 hours per week, unless:

(I) required in the home to provide care for the incapacitated work-eligible parent; or

(II) he or she is a custodial parent with a child under age six. In this instance the non-incapacitated adult must participate in work activities an average of 20 hours per week.

(iii) In a two-parent family, when deprivation is based on unemployment, one adult must participate in work activities an average of 35 hours per week and the other adult must participate an average of 30 hours per week. If one parent is an ineligible alien, the other parent must participate in work activities an average of 35 hours per week. If both parents are ineligible aliens, the family does not qualify as a two-parent family as the work requirement cannot be met.

(iv) To determine the average weekly countable work hours for a work-eligible person who is self-employed, the worker:

(I) determines the person's monthly countable earned self-employment income per OAC 340:10-3-32;

(II) divides that figure by the federal minimum wage; and

(III) divides that figure by 4.3 which equals weekly countable work hours.

(B) Hours missed due to holidays and a maximum of an additional 80 hours of excused absences count as hours of participation for any unpaid scheduled work activity.

(i) Federal law establishes public holidays. State holidays are ordered observed by the Governor. If the facility where the participant is scheduled to attend is open on a designated holiday, this day is not considered a holiday for participation purposes.

(ii) Excused absences are reasonable, short-term hours missed from a scheduled work activity. There are a maximum of 80 hours of excused absences in any 12-month period. No more than 16 hours of excused absences in a month are counted as hours of TANF Work participation. All excused absences must be approved by the worker. An excused absence is defined as:

(I) unavailability of appropriate child care;

(II) illness or injury of the participant or a family member who lives in the household. The family member must meet the definition of a relative per OAC 340:10-9-1;

(III) scheduled doctor appointments for the participant or a family member who lives in the household;

(IV) court-required appearance by the participant;

(V) required attendance at parent and teacher conferences by the participant;

(VI) temporary unavailability of planned transportation when needed or inability to arrange for transportation;

(VII) occurrence of inclement weather that prevented the participant, and other persons similarly situated, from traveling to, or participating in, the prescribed activity;

(VIII) crisis intervention needed due to domestic violence issues;

(IX) family crisis; or

(X) required attendance of the participant for a specific appointment by another governmental entity.

(iii) To count an excused absence or holiday as hours of participation, the person must have been scheduled to participate in an allowable work activity for the period of the absence. Participation allowances are paid for approved holidays and approved excused absences.

(3) **Work activities.** Work activities are defined as core and non-core and must be scheduled, structured, and supervised. TANF Work participants are placed in core work activities when appropriate.

(A) Core work activities are:

(i) unsubsidized employment that is full-time or part-time employment in the public or private sector that is not subsidized by TANF or any other public program;

(ii) subsidized private sector employment that is employment in the private sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient;

(iii) subsidized public sector employment that is employment in the public sector for which the employer receives a subsidy from TANF or other public funds to offset some or all of the wages and costs of employing a recipient;

(iv) Work Experience Program (WEP) that is a work activity that provides a person with an opportunity to acquire general skills, training, knowledge, and work habits necessary to obtain employment;

(v) on-the-job training that is training in the public or private sector that a paid employee receives while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job;

(vi) job search that is the act of seeking or obtaining employment and job readiness that prepares the person to seek or obtain employment, and includes life skills training, substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable; ~~and~~

(vii) vocational training, not to exceed 12 months, that are organized educational programs directly related to the preparation of persons for employment in current or emerging occupations requiring training. Countable vocational training may include up to 12 months toward a two year vocational training certificate, an associate's degree, a bachelor's degree, or an advanced degree program that qualifies a person to obtain immediate employment in a specific field; and

(viii) Community Partnership (CP) is a structured work activity in which TANF recipients perform work for the direct benefit of the community which improves the employability of recipients not otherwise able to obtain employment.

(B) Non-core work activities are:

(i) job skills training directly related to employment that is training or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace~~;~~. Time spent in vocational training in excess of 12 months may be counted as job skills training, if the participant is also participating in a different approved core activity for a minimum of 20 hours per week;

(ii) education directly related to employment, in the case of a recipient who has not received a high school equivalency, that is education related to a specific occupation, job, or job offer; and

(iii) satisfactory school attendance at a secondary school or in a course of study leading to a General Educational Development (GED)

certificate, in the case of a recipient who has not completed secondary school or received such a certificate, that is regular attendance with the requirements of the secondary school, or in a course of study leading to a GED certificate.

(4) **Limitations and special rules.**

(A) A single custodial parent who has not attained 20 years of age and has not completed high school is determined to be in a work activity for the month if the recipient maintains satisfactory attendance at a secondary school or equivalent during the month.

(B) A single custodial parent or the non-incapacitated adult in a family where deprivation is based on incapacity who has a child under the age of four months is not required to participate in a work activity. The recipient can use this special rule for a lifetime limit not to exceed 12 months.

340:10-2-2. Sanction process

(a) **Applicability.** The sanction process provides for the determination of good cause and the use of penalties for individuals who refuse or fail to participate in assigned work activities.

(b) **Failure or refusal to participate.** It is the responsibility of the worker to make the determination that an individual has refused or failed to participate without good cause in an assigned work activity.

(1) Refusal to participate occurs when an applicant or recipient states orally or in writing that he or she will not participate or continue to participate in work activities. Refusal also occurs when an individual's action or inaction indicates the individual, without good cause for refusing, will not participate in the program.

(2) Failure to participate in the program includes failure to:

(A) assist in the assessment and development of employability plans ~~which~~ that includes screening for substance abuse and literacy;

(B) attend orientation, scheduled meetings, or assessments;

(C) maintain a minimum of required hours in scheduled activities;

(D) accept or maintain appropriate employment;

(E) report absences from the work activity to the worker, facility coordinator, or employer; ~~or~~

(F) comply with a substance abuse treatment plan; or

(G) follow the rules of the facility or employer.

(c) **Failure to participate without good cause.** The worker must contact the individual to determine good cause. If it is determined at this contact that good cause does exist, the worker assists the individual with either updating the employability plan or helping the individual resume the activity as soon as possible. If it is determined there is not good cause for failure to participate or no contact was completed, the worker closes or denies the cash assistance.

(d) **Determination of good cause.** All good cause situations are temporary in nature. An individual may have good cause for refusing or failing to participate in Temporary Assistance for Needy Families (TANF) Work. The worker determines whether or not good cause exists.

(e) **Procedure following denial of cash assistance.** When an application for cash assistance is denied for failure to participate in the work activity without good cause, a new application must be completed.

(f) **Procedures following termination of cash assistance.**

(1) When there has been no contact with the individual 30 calendar days after the effective date of closure, the worker makes a home visit to determine the family's circumstances and offers appropriate services, unless the worker's personal safety is in question.

(2) Individuals who agree to participate within 60 calendar days of the date of the benefit termination may have their benefit ~~recertified~~ reopened on reconsideration of the administrative action after the individual participates in an agreed upon appropriate activity for a specified length of time. If an appropriate activity is not available due to the client's previous behavior, the case remains closed. The effective date of the ~~recertification~~ reopen action is dependent upon the successful participation of the individual in an assigned work activity and the circumstances of the case.

(g) **TANF hearing.** An individual who responds to a written notice of denial or termination of cash assistance as a result of failure or refusal to participate in work activities, and the matter cannot be resolved locally, is assisted in requesting a hearing before a hearing officer in accordance with OAC 340:2-5.

(h) **Grievances and appeals by employees of Work Experience Program (WEP), Subsidized Employment Program (SEP), and On-the-Job Training (OJT) facilities.** Grievances may be filed by employees of facilities where TANF work participants are assigned to WEP, SEP, or OJT, when they believe they have been harmed by the violation of one of the assurances in paragraph (1) of this subsection.

(1) WEP, SEP, or OJT assignments must not result in the filling of any established vacancy which:

(A) results in the displacement of any currently employed worker or position, including partial displacement, such as a reduction in hours or non-overtime work, wages, or employment benefits;

(B) impairs existing contracts for services;

(C) results in the employment or assignment of a participant, or the filling of a position, when any other person is on lay-off from the same organizational unit, or when an employer has terminated any employee or otherwise reduced its work force with the effect of filling the vacancy created by hiring a participant whose wages are subsidized under this program; or

(D) infringes in any way upon promotional opportunities of any currently employed individual.

(2) If an employee or authorized representative wishes to file a grievance for any of the reasons stated in paragraph (1) of this subsection, the request is submitted in writing to the attention of the county director of the county in which the alleged violation occurred. The request:

(A) contains the date of the request, the date of the alleged violation, and a description of the alleged violation including the effect on the employee;

(B) is signed by the employee or authorized representative; and

(C) includes the mailing address and telephone number of the person signing the request.

(3) The worker contacts the individual making the request within ten calendar days from the date of receipt of the request in the local office, and attempts to resolve the grievance on an informal basis.

(A) When the grievance cannot be resolved on an informal basis within the ten calendar days, the case is referred to the county director for review and assistance in resolving the grievance.

(B) If the grievance is not resolved within ten calendar days from the date of referral to the county director, the ~~county office~~ worker notifies the employee in writing of the:

(i) point(s) still at issue in the grievance; and

(ii) right to request a fair hearing within 30 calendar days of the date of this decision.

(C) The 20-day period allowed for resolution of the grievance is part of the 90-day period allowed for disposition of the appeal if the employee appeals.

340:10-2-4. Employment

(a) **Applicability.** Temporary Assistance for Needy Families (TANF) Work activities are designed to assist the participant in obtaining employment to achieve economic self-sufficiency. Work allows participants to enhance their self-esteem and to become more independent. Every effort is made to assist participants in securing jobs which provide financial security and opportunities for advancement. The appropriate employment criteria for subsidized and unsubsidized employment are included in paragraph (1) through (5) of this subsection.

(1) Appropriate employment may be temporary, permanent, full-time, part-time, or seasonal work, as long as the daily and weekly hours of employment do not exceed those customary to the occupation.

(2) The wage must meet or exceed the federal or state minimum wage laws or the prevailing rate for similar employment, whichever is applicable. The state law applies when federal law does not cover the job.

(3) A participant is not required to accept employment if the position offered is vacant due to a strike, lockout, or other bona fide labor dispute.

(4) A participant is not required to work for an employer if this is contrary to the conditions of membership in the union governing that occupation. Employment not governed by the rules of the union to which the participant belongs may be appropriate.

(5) A participant is not required to accept employment that results in the net loss of income.

(b) **Unsubsidized employment.** The State Work Incentive Program and any employment for which the employer does not receive reimbursement for any portion of the wages paid are examples of unsubsidized employment.

(1) **State Work Incentive Program.** The State Work Incentive Program is designed to assist in employing TANF participants into entry level positions in all branches of state government. Oklahoma Department of Human Services (OKDHS), in cooperation with other state agencies and the Office of Personnel Management, coordinates job placements for those TANF participants who are referred for the program by Form 08TW023E, State Work Incentive Referral.

(A) Employment of eligible participants can be considered for positions of unclassified status for a two year period in a full-time or part-time capacity. These positions are not included within any limitation on full-time equivalent employee positions for any agency.

(B) Participants hired under this program are eligible for leave and other benefits that are available to other state employees, subject to other eligibility requirements, and may be reassigned or promoted while they are in the program.

(C) Participants hired are exempt from probationary hiring procedures. They can be considered for conversion to the permanent classified status after two years of continuous participation in the program.

(D) Requirements for placing employees in permanent status include:

(i) completing satisfactory performance ratings which are conducted during employment; and

(ii) having possession of the minimum requirements stated in the job specifications.

(2) **Other unsubsidized employment.** Unsubsidized employment includes any employment in which a participant is hired by a private or public employer and there is no reimbursement of any portion of the wages paid to the recipient.

(c) **Subsidized employment.** The Subsidized Employment Program (SEP), on-the-job training (OJT), and Supported Transitional Employment Program (STEP) are examples of subsidized employment. The employment criteria in subsection (a) apply.

(1) **SEP.** SEP is a subsidized employment program through which a TANF participant is hired in full-time employment with OKDHS reimbursing the employer for partial wages for up to four months. Public agencies, nonprofit private agencies, and private employers are eligible to participate. State agencies expressing an interest in participating in the program are informed that the subsidized employment reimbursement cannot be used to claim matching federal funds. If, for any reason in any given month, a SEP participant is paid less than the amount of his or her cash assistance at the time of entry into the program, the SEP participant receives a supplemental TANF benefit. SEP participants are entitled to all benefits from the employer which are available to other employees. Participants are assigned based on their employability plan and the availability of appropriate and willing employers.

(A) **Participant requirements.** TANF participants must be:

(i) included in the cash assistance unit; and

(ii) available for immediate employment.

(B) **Position requirements.** Position requirements must include ~~information listed in (i) through (vi)~~:

(i) ~~be~~ full-time employment with an average of 35 hours per week;

(ii) ~~be at~~ a salary not less than $10 per hour;

(iii) ~~provide~~ the same wages, benefits, and working conditions as provided to other employees who are performing a substantially equivalent job;

(iv) not considering tips as part of the wages;

(v) agreement to conform to the Equal Employment Opportunity Commission and fair employment practices, for example, nondiscrimination regarding age, race, sex, national origin, or disability; and

(vi) contracts are not written for positions:

(I) when there is a strike, lockout, or the contract would cause displacement of other employees;

(II) that involve commission sales when at least $10 per hour is not guaranteed; or

(III) that are casual, intermittent, or seasonal labor.

(C) **Recruitment of employers.** Human services center (HSC) designated staff recruits employers interested in SEP. The employer is asked to notify HSC designated staff of potential positions with job specifications and qualifications in order to match the employer with an appropriate TANF participant referral. All SEP referrals are made by HSC designated staff using Form 08TW011E, Subsidized Employment Program (SEP) Referral.

(i) The program explanation emphasizes that employers are expected to retain the SEP participant in full-time employment unless there is good cause for the dismissal. Employers who fail to continue the successful SEP participant's employment without good cause are not granted subsequent contracts. Good cause reasons for dismissal are:

(I) lay-off due to economic reasons which result in a ~~reduction in force~~ reduction-in-force;

(II) the employee is frequently absent from work or engages in disruptive or inappropriate behavior; or

(III) the employee is unable to perform at an acceptable skill level.

(ii) Before new or additional contracts are written with an employer, SEP employees or other employees in lay-off status must be recalled.

(iii) HSC designated staff has the responsibility for ensuring the employer is complying with the contract.

(D) **SEP placements.** The HSC designated staff arranges interviews between participants and potential employers. SEP participants may begin employment any time during the month. The employer is informed that reimbursement begins after the participant has completed the first 30 calendar days of employment.

(i) Following the employer's agreement to participate and selection of a TANF participant, HSC designated staff negotiates the contract, Form 08TW017E, Subsidized Employment Program (SEP) Contract, with the employer. Negotiation ~~must include~~ includes the beginning date of employment, the salary the employee will be paid, and the planned number of hours per week the participant will be employed.

(ii) Upon receipt of the contract, HSC designated staff reviews it for completeness and, if approved, signs and dates the contract. HSC designated staff delivers to the employer the employer's copy of the contract and Form 08TW018E, Subsidized Employment Program (SEP) Invoice, for requesting reimbursement.

(iii) HSC designated staff contacts the participant to complete and sign Form 08TW006E, Subsidized Employment Program (SEP) Temporary Assistance for Needy Families (TANF) Participant Agreement.

(iv) If a contract is not approved, a letter is mailed by the HSC designated staff to the employer explaining the reason for the disapproval. HSC designated staff notifies the participant by either telephone or letter that the contract was not approved.

(E) **Program procedures.** The procedures for programs listed in (i) through (iv) of this subparagraph are used.

(i) **TANF cash assistance.** Under SEP, eligibility for TANF cash assistance is frozen. During the period of participation, the TANF assistance unit cannot be determined ineligible.

(ii) **Medical benefits.** SEP participants whose TANF cash assistance is frozen, continue to be eligible for SoonerCare (Medicaid) benefits unless found ineligible for a reason other than earned income.

(iii) **Food benefits.** SEP participants whose TANF cash assistance is frozen and who are receiving Simplified Supplemental Nutrition Assistance Program (SSNAP) benefits in accordance with OAC 340:50-11-20 continue to receive SSNAP benefits without consideration of the SEP income during the period of participation as long as household composition remains the same. Once SEP participation period ends and the TANF benefit closes, the household may be eligible for transitional food benefits ~~in accordance with~~ per OAC 340:50-11-27.

(iv) **Child care.** Child care plans must be explored with each SEP participant. During the SEP participation period while the TANF cash assistance is frozen and the child is still considered a TANF recipient, the child remains predetermined eligible for child care subsidy benefits with a zero family share co-payment ~~in accordance with~~ per OAC 340:40-7-1. Once the SEP participation period ends and the TANF benefit closes, the participant's earnings are considered income, and family share co- payments are computed ~~in accordance with~~ per OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart.

(F) **Payment of employers.** Employers are eligible for:

(i) reimbursement of 100% of the employee's gross wages for the first 30 days of employment capped at a maximum of 40 hours per week at $12 per hour;

(I) Employers are eligible to apply for reimbursement 30 calendar days following the date of hire.

(II) Employers file for reimbursement by submitting Form 08TW018E directly to Family Support Services Division (FSSD) TANF Section with proof of the participant's earnings for the last six months attached.

(III) When a business changes ownership, the SEP contract transfers with the business. When change of ownership occurs mid-month, the original owner maintains the right to file a claim for reimbursement for the transfer month. The new owner may claim for subsidized wages for the remaining months of the original SEP agreement.

(ii) reimbursement of 50% of the employee's gross wages based on hourly wage up to the maximum of $12 per hour the following three months, provided employee remains employed a minimum of 35 hours per week and earning at least $10 per hour up to 40 hours per week; and

(iii) a bonus equal to 100% of the unsubsidized portion of wages up to 40 hours per week for the four month subsidized period provided the SEP employee remains employed a minimum of 35 hours per week, earning a minimum $10 per hour, and the employer retains the employee for a minimum period of six months after the subsidized agreement ends.

(G) **Supplemental payments to SEP participants.** FSSD automatically issues supplemental payments for months in which income shown on Form 08TW018E is less than the amount of the SEP participant's cash assistance prior to entering the program.

(H) **SEP contract period completions.** At the end of the fourth month of subsidized employment, TANF eligibility is reviewed for continued eligibility.

(I) **SEP contract terminations.** At any time the SEP placement is terminated during the four months of subsidized employment, TANF eligibility is reviewed for continued eligibility.

(2) **OJT.** OJT is subsidized employment in which a participant is hired by a private or public employer and, while engaged in productive work, receives training that provides knowledge or skills essential to the full performance of that job. During the OJT period, the employer receives reimbursement for a portion of the wages paid to the employee.

(A) Participants who have successfully completed the Work Experience Program, have a recent history of employment, or who have been through a job readiness activity are the primary candidates for OJT referral.

(B) Income from OJT is considered as any other earned income. Transitional child care and medical benefits are explained to the participant at the time of entry into OJT.

(3) **STEP.** STEP is a subsidized employment program which provides comprehensive support services that lead to permanent employment placements for TANF participants. These services are contracted with specified vendors who provide temporary paid work experience to program participants in a supportive work environment. When the participant is accepted into the program, his or her TANF benefit remains active with no cash benefit issued. If eligible, the participant continues to receive other program benefits.

(d) **Work Opportunity Tax Credit (WOTC).** The WOTC law permits for-profit employers to take a credit on their federal income tax when workers from certain target groups are hired. Workers in these target groups have faced significant barriers to employment. The WOTC is equal to between 25% to 40% of the first year wages, up to $9000, depending on the number of hours the employee works and the applicable target group for that person. The main objective of this program is to enable the targeted employees to gradually move from economic dependency into self-sufficiency as they earn a steady income and become contributing taxpayers, while the participating employers are compensated by being able to reduce their federal income tax liability.

(1) WOTC is available to employers for workers hired from targeted groups. The targeted groups are:

(A) TANF recipients who have received assistance for nine months out of the last 18 months;

(B) qualified veterans. Qualifed veterans are persons who have received food benefits for at least three consecutive months within the last 15 months preceding the date of hire;

(C) qualified ex-felons. Qualified ex-felons are persons who were convicted of a felony and within the last year were either convicted or released from prison;

(D) designated community residents. Designated community residents are persons who have attained age 18 but not yet 40 years of age on the hiring date

and his or her principal place of residence is within an Empowerment Zone, Enterprise Community, or a Rural Renewal County and for persons who begin work for an employer after May 25, 2007. This High-Risk Youth group has been renamed "Designated Community Resident" and expanded to include residents of Rural Renewal Counties;

(E) vocational rehabilitation recipients. Vocational rehabilitation recipients are persons with a disability who have received or are receiving vocational rehabilitation from a rehabilitation agency approved by the State or Department of Veterans Affairs;

(F) qualified summer youth employees. Qualified summer youth employees are persons at least 16 but not 18 on the hiring date and who has a principal residence in an Empowerment Zone, Enterprise Community, or Rural Renewal County hired between May 1 and September 15;

(G) qualified food benefit recipients. Qualified food benefit recipients are persons who are at least 18 but under age 40 who are:

(i) members of a household that received food benefits for the last six consecutive months prior to their hiring date; or

(ii) able-bodied adults without dependents no longer eligible for benefits who reside with a household currently receiving food benefits or a household that received food benefits for at least three months out of the last five consecutive months prior to the hiring date;

(H) qualified recipients of Supplemental Security Income (SSI). Qualified recipients of SSI are persons who have received SSI for any month during the 60 calendar days before the date of hire;

(I) long-term TANF recipients. Long-term TANF recipients are persons certified by a designated local agency as being members of families:

(i) who have received TANF payments for at least 18 consecutive months ending on the hiring date;

(ii) who have received TANF payments for a total of at least 18 months, whether consecutive or not, after August 5, 1997 if the persons are hired within two years after the date the 18 month total is reached;

(J) Hurricane Katrina employees. Hurricane Katrina employees do not require certification;

(K) unemployed veterans. Unemployed veterans are persons hired after 2008 and before 2011 who:

(i) have been discharged or released from active duty in the United States Armed Forces at any time during the five year period ending on the hiring date; and

(ii) received unemployment compensation under state or federal law for at least four weeks during the one year period ending on the hiring date; and

(L) disconnected youth. Disconnected youth are persons who are certified as:

(i) having attained age 16 but not 25 on the hiring date;

(ii) not regularly attending any secondary, technical, or post-secondary school during the six month period preceding the hiring date;

(iii) not regularly employed during the six month period preceding the hiring date; and

(iv) not readily employable by reason of lacking a sufficient number of basic skills.

(2) Through an agreement with the Oklahoma Employment Security Commission, OKDHS issues WOTC conditional certification forms for recipients of OKDHS benefits.

(3) U.S. Department of Labor Form ETA-9062, Conditional Certification Work Opportunity and Welfare-to-Work Tax Credits, and a letter from the worker stating the number of months the participant has received OKDHS benefits must be given to the participant to present to the employer on or before the first day of employment. An explanation is given to the participant about the purpose of the form and that the tax credit may help the participant get a job.

(e) **Work Experience Program (WEP).** The purpose of WEP is to provide job skills and work enhancement to TANF participants that enables them to move toward self-sufficiency and obtain unsubsidized employment following completion of the placement.

(1) **Benefits.** Benefits of the program to participants include an opportunity to establish a work history and earn a recommendation from an employer. Participants also learn to balance the demands of home and work, gain confidence by performing in a job setting, brush-up skills already acquired, learn marketable skills on-the-job, and determine interest and aptitude for a particular type of work by doing the job.

(2) **WEP assignments.** WEP assignments are approved for an initial period of 90 calendar days.

(A) No salary is paid.

(B) With respect to injuries incurred during working hours in WEP, federal law requires medical coverage be offered under either state workers' compensation law or by OKDHS. Oklahoma workers' compensation law does not cover WEP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.

(3) **WEP referrals.** Participants are referred to WEP slots based on their employability plan. The worker coordinates assignment to a WEP position with the participant. Based on the employability plan, the worker:

(A) determines which facility best meets the participant's needs;

(B) arranges an interview between the facility and the participant; and

(C) notifies the participant of the place, time, and interviewer's name.

(4) **WEP facilities.** Facilities selected for WEP placements must be capable of providing employment and have an apparent intent to hire, or be able to provide quality job skills enhancement. WEP facilities are solicited by HSC designated staff or a contracted entity who has agreed to assist with job development and placement including WEP. Local job market conditions, opportunities for employment following completion of WEP participation as well as the ability of the facility to provide the necessary supervision and skills enhancement are criteria used when soliciting a facility.

(A) WEP slots are developed to meet the employment needs of the participant as determined by the employability plan. When a facility agrees to participate in WEP, the representative of the facility is requested to provide:

(i) a written description of the type of activities the participant will be involved in;

(ii) the number of participants the facility can accept;

(iii) the hours of participation; and

(iv) any special requirements, such as uniforms or special equipment.

(B) There are two types of WEP facilities, WEP Non-profit (WEP-NP) and WEP-For-Profit (WEP-FP).

(i) WEP-NP placement is approved for public and private non-profit organizations or businesses. When a participant requires additional skills enhancement, the worker may approve a 60-day extension. Extensions are not granted when the primary purpose is to provide additional help to the facility. The criteria listed in subunits (I) through (VII) of this subsection are used as a guide in determining the appropriateness of requesting an extension beyond the initial three-month period.

(I) The participant needs the additional time for skills to be acquired to meet minimum hiring requirements.

(II) The participant demonstrates a willingness to learn, but needs additional time to develop new skills, to be competitive in the labor market.

(III) The facility has agreed to hire the participant, but will not have funds available or a job opening until a specific date.

(IV) The facility has an opening in an area different from the one the participant was working in and has agreed to hire the participant if additional time is granted for the additional development of job skills.

(V) The participant has shown improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting.

(VI) The participant has missed more than two weeks due to illness or the illness of a household member.

(VII) There are extenuating circumstances which prevented the participant from receiving full benefit of the job skills enhancement.

(ii) WEP-FP is approved for businesses or entities that operate for profit. Only one WEP-FP placement is allowed per 25 full-time employees in a for-profit business or entity. The criteria in subunits (I) through (II) of this subsection must be in effect prior to a WEP-FP placement.

(I) The placement matches the participant's employability plan and the career path chosen by the participant.

(II) The employer has committed to hire the participant on or before the completion of the three month placement.

(5) **WEP procedures.** Upon approval by the county director or HSC designated staff, the worker contacts the WEP facility to complete Form 08TW015E, Work Experience Program - Non-profit Agreement, or Form 08TW115E, Work Experience Program - For-Profit Agreement.

(A) The worker instructs the facility representative or the supervisor regarding the purpose and use of Form 08TW013E, Time and Progress Report.

(B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.

(C) Approved WEP slots that have not been utilized within a six-month period are reviewed for appropriateness. If the position is no longer feasible, HSC designated staff sends a letter to the facility stating the WEP slot is no longer active and may be re-evaluated at the facility's request.

(6) **Non-cooperation by WEP facility.** When the worker obtains information that the facility is violating the terms and conditions of Form 08TW015E, Form 08TW115E, or that participants are being treated unfairly, the county director is informed immediately. The nature of the allegations guides the necessary action which may include:

(A) suspension of subsequent assignments at the facility;

(B) immediate removal of current participants; or

(C) termination of the agreement.

(7) **Notification to participant and facility.** Ten calendar days prior to the anticipated WEP completion date, or at any time the participant becomes ineligible for WEP, the worker notifies the participant by letter or telephone. The worker notifies the facility by letter or by telephone five calendar days prior to the termination.

(8) **Changes in placements and subsequent placements.** When the facility, worker, and participant determine that placement in a different facility is more beneficial, the worker locates a new facility and arranges an interview for the participant. When the participant fails to secure employment following successful completion of WEP, a conference is held with the participant, worker,

and supervisor to determine whether a second WEP placement might be beneficial. The worker reviews the employability plan prior to allowing a participant to re-enter WEP. Consideration is given to reassignment to job search or another appropriate work activity. In making this decision, consideration must be given to the:

(A) participant's ability to secure and maintain full-time employment;

(B) opportunities for employment in the new field and in the area in which the participant received job skills enhancement;

(C) participant's efforts to secure employment; and

(D) length of time between assignments.

(f) **Community Partnership (CP).** CP is unpaid employment in which TANF recipients perform work for the direct benefit of the community. A CP may be approved for both public and non-profit agencies and organizations. A CP assignment must be limited to projects that serve a useful community purpose and are designed to improve the employability of recipients not otherwise able to obtain employment. All CPs must be approved by FSSD, TANF Section staff. Placements in CP require daily supervision. Prior training, experience, and skills of a recipient must be considered in making an appropriate CP assignment.

(1) **Benefits.** Benefits of the program to participants include an opportunity to establish the basic skills necessary to obtain employment, such as daily attendance, appropriate attire, and proper behavior in a work environment. Participants also learn to balance the demands of home and work and gain confidence by performing in a job setting.

(2) **CP facilities.** CP facilities are solicited by HSC designated staff. The ability of the CP to provide the necessary supervision and basic skills training are criteria used when soliciting a partnership.

(A) Training slots are developed to meet the employment needs of the participant as determined by the employability plan.

(B) The worker submits Form 08TW019E, Community Partnership (CP) Approval Request, to the FSSD TANF Section for approval of the training facility.

(C) When a CP agrees to participate, the facility representative is requested to provide:

(i) a written description of the type of activities participants will be involved in;

(ii) the number of participants the CP can accept;

(iii) the hours of participation; and

(iv) any special requirements, such as uniforms or special equipment.

(D) No salary is paid.

(E) With respect to injuries incurred during working hours in CP, federal law requires medical coverage be offered under either state workers' compensation law or by OKDHS. Oklahoma workers' compensation law does not cover CP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.

(3) **CP assignments.** CP assignments are approved for an initial period of no more than 60 calendar days. When a participant requires additional training, the worker may approve a 30-day extension. The criteria listed in (A) through (F) of this paragraph are used as a guide in determining the appropriateness of requesting an extension beyond the initial 60 calendar day period, but are not limited to:

(A) the participant needs the additional time for skills to be acquired to meet minimum hiring requirements;

(B) the participant demonstrates a willingness to learn, but needs additional time to develop basic job skills necessary to be competitive in the labor market;

(C) the CP has an opening in an area different from the one the participant was trained;

(D) the participant has shown improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting;

(E) the participant has missed more than two weeks of training due to illness or the illness of a household member; or

(F) extenuating circumstances which prevented the participant from receiving the full benefit of the training.

(4) **CP referrals.** Participants are referred to CP slots based on their employability plan and the availability of positions at the CP. Assignment to a CP position is coordinated between the participant, worker, and the CP. Based on the employability plan, the participant and worker determine:

(A) which CP best meets the participant's needs; and

(B) the location, date, and time to report to the CP.

(5) **Procedures.** Upon approval by FSSD TANF Section staff, the worker contacts the CP facility to complete Form 08TW020E, Community Partnership (CP) Agreement.

(A) The worker instructs the facility representative or the training supervisor regarding the purpose and use of Form 08TW013E, Time and Progress Report.

(B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the day of the month shown on the form.

(6) **Non-cooperation by CP.** When the worker obtains information that the CP is violating the terms and conditions of Form 08TW020E or participants are treated unfairly, the worker informs the county director or HSC designated staff immediately. The nature of the allegations guides the necessary action which may include:

(A) suspension of subsequent assignments at the CP;

(B) immediate removal of the current participants; or

(C) termination of the agreement.

(7) **Changes in placements and subsequent placements.** Following successful completion of CP training, the worker and participant meet to determine whether a second CP placement or other work activity might be beneficial. The worker reviews the employability plan prior to allowing a participant to enter the next work activity. In making this decision, consideration must be given to:

(A) the participant's ability to secure and maintain employment;

(B) whether the participant needs additional training or placement opportunities to enhance employment skills; or

(C) whether the participant needs any educational opportunities to enhance employment skills.

340:10-2-5. Job search activities

The primary objective of all job search activities is for applicants and recipients of Temporary Assistance for Needy Families (TANF) to obtain employment through personal contacts with employers. The worker and the participant jointly determine the number of employer contacts based on availability of child care, financial resources, jobs in the community, skills and abilities, and any other factors which affect or influence the participant's ability to obtain employment.

(1) An employer contact is defined as a face-to-face interview with an employer, the completion and return of any application to an employer, including an on-line application, or the completion of tests required for employment with the state, local, or federal government. Referrals to employers are made on Form 08TW011E, Employment Referral. The participant records employer contacts on Form 08TW010E, Employer Contact List.

(2) Job search is defined as the participant's job seeking efforts. Persons in job search activities are eligible for participant allowances and may be eligible for child care for the time they are actively looking for a job or in a group activity.

(A) The participant is given Form 08TW013E, TANF Time and Progress Report, to complete and return to the worker by the time frame shown on the form.

(i) Additional job search may be required as a part of another work activity if it would improve the participant's employment prospects.

(ii) The number of employer contacts to be made each week is included in the employability plan.

(B) If the participant has been unsuccessful in obtaining a job after a reasonable amount of time, the worker and the participant review the employability plan to determine if another activity is more appropriate.

(C) The maximum amount of time spent in job search activities cannot exceed 240 hours at 20 hours per week or 360 hours at 30 hours per week for the preceding 12 month period for any person.

340:10-2-7. Training

(a) **Scope.** Job skills training ~~includes~~ activities include vocational training and hands-on work experience to develop technical skills, knowledge, and abilities in specific occupational areas. All training programs must include qualitative measures, such as competency gains or proficiency levels, to evaluate a participant's progress and reasonable time limits for completion. Referrals are made to appropriate training facilities on Form 08TW003E, Interagency Referral and Information.

(b) **Assignments.** Any training to which the participant is assigned must meet the criteria in (1) through (4) of this subsection.

(1) The hours of any training activity are governed by the training facility but must not exceed 40 hours per week.

(2) The training is preparation for a job which meets the criteria for appropriate employment.

(3) The quality and type of training must meet local employers' requirements so participants are in a competitive position with the local labor market.

(4) Training is related to in-demand occupations which are likely to become available in Oklahoma.

~~(c) **Work Experience Program (WEP).** The purpose of WEP is to provide skill training and work enhancement to Temporary Assistance for Needy Families (TANF) participants while providing a useful public service that will enable participants to move toward self-sufficiency and obtain unsubsidized employment following completion of the placement.~~

~~(1) **Benefits.** Benefits of the program to participants include an opportunity to establish a work history and earn a recommendation from an employer. Participants also learn to balance the demands of home and work, gain confidence by performing in a job setting, brush up skills already acquired, learn marketable skills on the job, and determine interest and aptitude for a particular type of work by doing the job.~~

~~(2) **WEP assignments.** WEP assignments are approved for an initial period of 90 calendar days.~~

~~(A) No salary is paid.~~

~~(B) With respect to injuries incurred during working hours in WEP, federal law requires medical coverage be offered under either state workers' compensation law or by the Oklahoma Department of Human Services (OKDHS). Oklahoma workers' compensation law does not cover WEP participants. Medical coverage is provided by the SoonerCare (Medicaid) Program.~~

~~(3) **WEP referrals.** Participants are referred to WEP slots based on their employability plan. Assignment to a WEP position is coordinated between the participant and worker. Based on the employability plan, the worker:~~

~~(A) determines which facility best meets the participant's needs;~~

~~(B) arranges for an interview between the facility and the participant; and~~

~~(C) notifies the participant of the place, time, and interviewer's name.~~

~~(4) **WEP facilities.** Facilities selected for WEP training must be capable of providing employment and have an apparent intent to hire, or be able to provide quality training. Training facilities are solicited by OKDHS staff or a contracted entity who has agreed to assist with job development and placement including WEP. Local job market conditions, opportunities for employment following completion of WEP participation as well as the ability of the facility to provide the necessary supervision and training are criteria used when soliciting a facility.~~

~~(A) Training slots are developed which meet the employment needs of the participant as determined by the employability plan. When a facility agrees to participate in WEP, the representative of the facility is requested to provide:~~

~~(i) a written description of the type of activities the participant will be involved in;~~

~~(ii) the number of participants the facility can accept;~~

~~(iii) the hours of participation; and~~

~~(iv) any special requirements.~~

~~(B) There are two types of WEP training facilities, WEP Nonprofit (WEP-NP) and WEP For Profit (WEP-FP).~~

~~(i) WEP-NP placement is approved for public and private nonprofit and not for profit agencies, organizations, or businesses. When a participant requires additional training, the worker may approve a 60 day extension. Extensions are not granted when the primary purpose is to provide additional help to the facility. The criteria listed in subunits (I) through (VII) of this subsection are used as a guide in determining the appropriateness of requesting an extension beyond the initial three month period.~~

~~(I) The participant needs the additional time for skills to be acquired to meet minimum hiring requirements.~~

~~(II) The participant demonstrates a willingness to learn, but needs additional training, including the development of new skills, to be competitive in the labor market.~~

~~(III) The facility has agreed to hire the participant, but will not have funds available or a job opening until a specific date.~~

~~(IV) The facility has an opening in an area different from the one the participant was trained in and has agreed to hire the participant if additional time is granted for the additional training.~~

~~(V) The participant has shown improvement in all areas, but needs additional socialization skills and improved behavior patterns in a work setting.~~

~~(VI) The participant has missed more than two weeks of training due to illness or the illness of a household member.~~

~~(VII) There are extenuating circumstances which prevented the participant from receiving full benefit of the training.~~

~~(ii) WEP-FP is approved for businesses or entities that operate for profit. Only one WEP-FP placement is allowed per 25 full-time employees in a for profit business or entity. The criteria in subunits (I) through (II) of this subsection must be in effect prior to a WEP-FP placement.~~

~~(I) The placement matches the participant's employability plan and the career path chosen by the participant.~~

~~(II) The employer has committed to hire the participant on or before the completion of the three month placement.~~

~~(5) **WEP procedures.** Upon approval by the county director, the worker contacts the WEP facility to complete Form 08TW015E, Work Experience Program - Nonprofit Training Agreement, or Form 08TW115E, Work Experience Program - For Profit Training Agreement.~~

~~(A) The worker instructs the facility representative or the training supervisor regarding the purpose and use of Form 08TW013E, Time and Progress Report.~~

~~(B) It is the participant's responsibility to complete Form 08TW013E and submit it to the worker by the time frame shown on the form.~~

~~(C) Approved training slots that have not been utilized within a six-month period are reviewed for appropriateness. If the position is no longer feasible, human services center (HSC) staff sends a letter to the facility stating the WEP slot is no longer active and may be re-evaluated at the facility's request.~~

~~(6) **Non-cooperation by WEP facility.** When the worker obtains information that the facility is violating the terms and conditions of Form 08TW015E, Form 08TW115E, or that participants are being treated unfairly, the county director is informed immediately. The nature of the allegations guides the necessary action which may include:~~

~~(A) suspension of subsequent assignments at the facility;~~

~~(B) immediate removal of current participants; or~~

~~(C) termination of the agreement.~~

~~(7) **Notification to participant and facility.** Ten calendar days prior to the anticipated WEP completion date, or at any time the participant becomes ineligible for WEP, the worker notifies the participant by letter or telephone. The worker notifies the facility by letter or by telephone five calendar days prior to the termination. When a participant has been referred to WEP and an appropriate training slot cannot be provided, the worker notifies the participant of this decision.~~

~~(8) **Changes in placements and subsequent placements.** When the facility, worker, and participant determine that placement in a different facility is more beneficial, the worker locates a new facility and arranges an interview for the participant. When the participant fails to secure employment following successful completion~~

~~of WEP training, a conference is held with the participant, worker, and supervisor to determine whether a second training placement might be beneficial. The worker reviews the employability plan prior to allowing a participant to re-enter WEP training. Consideration is given to reassignment to job search or another appropriate work activity. In making this decision, consideration must be given to the:~~

~~(A) participant's ability to secure and maintain full-time employment;~~

~~(B) opportunities for employment in the new field and in the area in which the participant received training;~~

~~(C) participant's efforts to secure employment; and~~

~~(D) length of time between training assignments.~~

(~~d~~c) **Job Corps ~~nonresident~~ non-resident training program (Job Corps II).** Oklahoma's four Job Corps centers provide a nonresident Job Corps program to TANF participants who can commute to their sites. Participants referred must be ~~ages~~ between 16 through 24 years of age. Referrals are made by the worker completing Form 08MP013E, Information/Referral - Social Services. It is the responsibility of the worker to coordinate with the Job Corps center and arrange for child care.

(1) By special agreement with the Job Corps centers, Job Corps II students are provided Job Corps participant training allowances designed to meet training costs not covered by the TANF cash assistance. These allowances are not considered as income.

(2) The worker coordinates with the centers and other designated agencies, such as Oklahoma Employment Security Commission (OESC) and Workforce Investment Act (WIA), to ensure Job Corps II students leaving the center are placed in an appropriate work activity. When a Job Corps II student leaves the center, the worker meets with the Job Corps II student to make immediate plans for further implementation of the employability plan.

(~~e~~d) **Vocational training.** Up to 12 months of participation in a vocational certificate, associate's degree, bachelor's degree, or advanced degree program may count as vocational training when it qualifies a person to obtain immediate employment in a specific field. Persons participating in a vocational certificate, associate's degree, bachelor's degree, or advanced degree program as part of the employability plan may count homework or study time up to one hour for each class hour when the participant provides, at the beginning of each new class or semester, a class syllabus or a statement from the instructor, professor, or advisor which states that the additional time is:

(1) a class requirement;

(2) above and beyond work normally completed during class hours; and

(3) not used to make up hours of class that have been missed.

(~~f~~e) **Special programs and demonstration efforts with other agencies.** OKDHS may enter into special education, training, or employment efforts with federal, state, and local governments, and private for-profit, private not-for-profit organizations, and agencies. When this occurs, the ~~HSCs~~ human services center (HSC) involved ~~are~~ is expected to comply with the terms of those agreements.

(~~g~~f) **Job skills training.** Training that is directly related to employment for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace is considered job skills training.

(1) Time spent in vocational training in excess of 12 months that is an approved part of the participant's employability plan may be counted toward the required work activity hours, if the participant is also participating in a different approved core activity for a minimum of 20 hours per week.

(2) Homework or study time may count up to one hour for each class hour when the participant provides, at the beginning of each new class or semester, a class syllabus or a statement from the instructor, professor, or advisor which states that the additional time is:

(A) a class requirement;

(B) above and beyond the work normally completed during class hours; and

(C) not used to make up hours of class that have been missed.

SUBCHAPTER 3. CONDITIONS OF ELIGIBILITY - NEED

PART 1. RESOURCES

340:10-3-5. Personal property

(a) This subsection describes personal property and how it is considered in determining eligibility for Temporary Assistance for Needy Families (TANF).

(1) **Household goods and equipment.** Items essential to day-to-day living, such as clothing, furniture, and other similarly essential items of limited value, are excluded as resources.

(2) **Livestock and equipment used in a business enterprise.** A person's equity in livestock, equipment, or inventory of merchandise in a business enterprise is considered as a resource only if the person is not actively engaged in the business enterprise. Equity is not counted if the person actively participates in the business or is only temporarily inactive, for example, incapacitated and can reasonably expect and has plans to resume the business enterprise. Equity is established on the basis of oral or written information which the person has at hand and counsel with persons who have specialized knowledge about the particular resources.

(3) **Livestock and home produce used for home consumption.** Any livestock or produce grown and used by the assistance unit for home consumption is exempt.

(4) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as a resource. The person's statement that he or she has no money on

hand or on deposit is sufficient unless there are indications to the contrary. When there is information to the contrary or when the person does not have records to verify the amount on deposit, verification is obtained from bank records. Section 167.1 of Title 56 of the Oklahoma Statutes provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the person or the Oklahoma Department of Human Services (OKDHS).

(A) Checking accounts may or may not represent savings. Current bank statements are evaluated with the person to establish what, if any, portion of the account represents savings. Any income deposited during the current month is not considered.

(B) Accounts owned jointly are considered available to the person unless it can be established what part of the account actually belongs to each of the owners, the money is separated, and the joint account is dissolved.

(5) **Insurance policies and prepaid funeral benefits.**

(A) **Life insurance policies.** The cash surrender value (CSV) less any loans or unpaid interest of life insurance policies owned by members included in the TANF cash assistance is counted as a resource. Dividends which accrue and remain with the insurance company increase the amount of the resource. Dividends paid to a person are considered as income. Assignment of the face value of a life insurance policy to fund a prepaid burial contract is not counted as a resource. In this instance, the amount of the face value of the life insurance is evaluated according to (C) or, if applicable, (D) of this paragraph.

(B) **Burial spaces.** The value of a burial space for each family member whose needs are in the cash assistance or whose income and resources are considered when computing the cash assistance is excluded from resources.

(C) **Burial funds.** Revocable burial funds not in excess of $1500 for each person included in the assistance unit are excluded as a resource if the funds are specifically set aside for the burial arrangements of the person. Any amount in excess of $1500 for each person included in the assistance unit is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered prepaid burial policies.

(i) Burial funds means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the person's burial expenses.

(ii) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing burial funds as described in (i) of this subparagraph.

(iii) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the person and by the amounts in an irrevocable trust or other irrevocable arrangement.

(iv) Interest earned or appreciation on the value of any excluded burial funds is excluded if left to accumulate and become a part of the burial fund.

(v) If the person did not purchase the prepaid burial, even if the person's money was used for the purchase, the person is not the owner and the prepaid burial funds cannot be considered a resource to the person.

(D) **Irrevocable burial contract.** Oklahoma law provides that a purchaser of a prepaid funeral contract may elect to make the contract irrevocable. Irrevocability becomes effective 30 calendar days after the contract is signed.

(i) If the irrevocable election was made prior to July 1, 1986, and the person received assistance on July 1, 1986, the full amount of the irrevocable contract is excluded as a countable resource. This exclusion applies only if the person does not add to the amount of the contract. Interest accrued on the contract is not considered as added. Any break in assistance requires that the contract be evaluated at the time of reapplication.

(ii) If the effective date for the irrevocable election or application for assistance is July 1, 1986, or later, the amount in any combination of an irrevocable contract, revocable prepaid burial contract or trust, and the cash value of unassigned life insurance policies cannot exceed $10,000. When the principal amount exceeds $10,000, the person is ineligible for assistance. Accrued interest is not counted as a part of the $10,000 limit, regardless of when it is accrued.

(iii) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser or the purchaser's guardian or a person with power of attorney for the purchaser.

(E) **Medical insurance.** When a person has medical insurance whether directly purchased or available in conjunction with employment, the available benefits are applied toward the medical expense for which the benefits are paid. If an assignment of the insurance is not made to the vendor and payment is made directly to the person, the payment must be applied to the cost of medical services. Any amount remaining after payment for medical services is considered a resource.

(6) **Stocks, bonds, mortgages, and notes.** The person's equity in stocks and bonds, including United States Savings Bonds, Series A through EE, is considered a resource.

(A) The current market value less encumbrances is the equity.

(B) Except for a bond which has been held beyond the maturity date, the current value is the redemption value listed in the table on the back of the bond for the anniversary date most recently reached.

(C) If the bond has been held beyond maturity date, it has continued to draw interest.

(D) The amount which can be realized from notes, mortgages, and similar instruments, if offered for immediate sale, constitutes a resource.

(7) **Non-negotiable resources.** Installment payments received on a note, mortgage, and similar instruments, for which a buyer cannot be found, are considered as monthly income.

(8) **Vehicles, pickups, and trucks.** For each automobile, pickup, truck, motorcycle, or other vehicle, the market value of each year's make and model is established on the basis of the average trade-in value. In the event the person and worker cannot agree on the value of the vehicle, the person secures written appraisals by two persons familiar with current values. If there is substantial unexplained divergence between these appraisals or between the blue book value and one or more of these appraisals, the worker and the person jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and acceptable to both the person and worker.

(A) **Exempt vehicles.** One automobile, pickup, truck, motorcycle, or other vehicle used for the primary source of transportation for each assistance unit not to exceed an equity of $5,000 is exempted. The amount of the equity in excess of $5,000 is considered against the resource limit.

(B) **Other vehicles.** The equity in other automobiles, pickups, and trucks as well as other personal property including boats, travel trailers, motorcycles, motor homes, campers, and similar items is considered a resource. The current market value less encumbrances on the vehicle is the equity. Only encumbrances that can be verified are considered in computing equity.

(9) **Lump sum payments.** A lump sum settlement which compensates for the loss of a resource, such as an automobile, may be disregarded in the amount used to replace the loss.

(A) The person is given a reasonable amount of time to replace the loss not to exceed 30 calendar days. Extension beyond 30 calendar days may be justified in special instances when completion of the transaction is beyond the person's control.

(B) Any amount remaining after the replacement of the loss is considered as income.

(C) Income tax refunds, except for the portion that represents an earned income tax credit (EITC), must be treated as a resource and considered available to the person upon receipt.

(D) Retirement benefits received as a lump sum payment at termination of employment are considered a resource. These benefits are not treated as income because the retirement contribution was regarded as income in the month earned and withheld by the employer.

(10) **Individual Development Accounts (IDAs).** IDAs are dedicated savings accounts that are used for a qualified purpose such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the IDA administrative entity.

(A) IDAs are managed by community organizations and accounts are held at local financial institutions.

(B) Cash deposits and interest accrued from the deposits made by a person in an IDA up to $2,000 are not considered as income or resources in determining TANF eligibility.

(C) The account deposits must be made from earned income, EITCs, or tax refunds.

(11) **Saving For Education, Entrepreneurship, and Downpayment (SEED) Initiative accounts.** SEED accounts are dedicated savings accounts for persons age 13 through 18 that are used for a qualified purpose such as purchasing a first home, education or job training expenses, capitalizing a small business, or other purposes designated by the administrative entity. SEED accounts are managed by community organizations and accounts are held at local financial institutions. Cash deposits and interest accrued from the deposits made by a person in a SEED account up to $2,000 are not considered as income or resources in determining TANF eligibility.

(b) This subsection describes resources disregarded in determining need. Disregarded resources are:

(1) food benefit allotments under the Food and Nutrition Act of 2008;

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

(3) education grants, including work study, scholarships, and similar grants, if receipt is contingent upon the student regularly attending school. The student's classification, graduate or undergraduate, is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. The borrower's acknowledgment of obligation to repay, with or without interest, is considered to indicate that the loan is bona fide. If the loan agreement is not written, Form 08AD103E, Loan Verification, is completed by the borrower attesting the loan is bona fide and signed by the lender verifying the date and amount of loan;

(5) Indian payments, including judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed per capita by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded. Any income

from mineral leases or tribal business investments is disregarded as long as the payments are paid per capita. Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

(6) special allowances for school expenses made available upon petition, in writing, from funds held in trust for the student;

(7) trusts of a child(ren) included in a TANF benefit if it is determined by the worker the funds are to be used for educational purposes for the child(ren). Any court established trust must be examined to determine if the court has restricted the trust for other purposes. The worker must verify at application and redetermination if funds have been withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it can be documented the funds were used for the child(ren)'s educational purposes;

(8) any accounts, stocks, bonds, or other resources held under the control of a third party if the funds are designated for educational purposes for a child(ren) eligible for TANF, even if the child(ren)'s name is on the account and the third party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V are disregarded. Both Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000;

(10) unearned income received ~~by a child(ren) eligible for TANF~~, such as needs based payments, cash assistance, compensation in lieu of wages, or allowances from programs funded by the Workforce Investment Act (WIA), including Job Corps income. This includes WIA earned income received as wages ~~when the child(ren) is a full-time student~~;

(11) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE), Active Corps of Executives (ACE), and any other programs pursuant to the National and Community Service Trust Act of 1993 (NCSTA);

(12) payments to volunteers under the NCSTA, unless the gross amount of AmeriCorps*VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

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

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

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

(16) advance payments of EITC or refunds of EITC, as a result of filing a federal income tax return, in the month received and the following month;

(17) refunds of the state EITC, as a result of filing a state income tax return, in the month received and the following month;

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

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

(20) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.), and comparable disaster assistance provided by state, local governments, and disaster assistance organizations;

(21) interests of individual Indians in trust or restricted lands. However, any disbursements from the trust or restricted lands are considered as income;

(22) a migratory farm worker's out-of-state homestead if the farm worker's intent is to return to the homestead after the temporary absence;

(23) a non-recurring lump sum Supplemental Security Income (SSI) retroactive payment, made to a TANF recipient, in the month paid and the next following month. The amount remaining in the second month after the month of receipt is a countable resource;

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

(25) payments made to persons because of their status as victims of Nazi persecution;

(26) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the U.S.C.;

(27) reimbursements made to a foster care parent(s);

(28) payments as described in Section 1823(c) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans; and

(29) funds in education accounts established under Section 529 and 530 of the Internal Revenue Code or exempted by Section 4000 of Title 56 of the Oklahoma State Statues.

PART 3. INCOME

340:10-3-32. Determination of earned income

Earned income results from self-employment or other employment sources.

(1) **Earned income from self-employment.** If the income results from the person's activities primarily as a result of the person's own labor from the operation of a

business enterprise, the countable earned income is determined by deducting 50% of the gross income as business expenses or by using the net business profit for the most recent tax year as reported on the person's income tax return. Self-employment income that represents a household's annual support is prorated over a 12-month period, even if the income is received in a shorter period of time.

(A) **Room or board.** Earned income from a room rented in the home is determined by considering 25% of the gross amount received as business expenses. Earned income from room and board paid by a person in the home is determined by considering 50% of the gross income received as a business expense.

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

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(2) **Earned income from sources other than self-employment.**

(A) **Earned income from wages, salary, or commission.** If the income is from wages, salary, or commission, the earned income is the gross income or true wage prior to payroll deductions and withholdings. This includes earned income from contract employment. Money from the sale of whole blood or blood plasma is considered as earned income.

(B) **Earned income from work and training programs.**

(i) **Workforce Investment Act (WIA).** WIA earned income ~~received by the payee or spouse as wages is considered as any other earned income. WIA earned income of a dependent child(ren) is considered when received in excess of six months in any calendar year~~ is exempt.

(ii) **On-the-job training (OJT).** Earned income from regular employment for OJT is considered as any other earned income.

340:10-3-39. Income other than earned income

(a) **Capital investments.** Proceeds from interest or dividends from capital investments, ~~which~~ that include savings accounts, bonds, other than United States (U.S.) Savings Bonds, notes, and mortgages received subsequent to certification constitute income.

(b) **Real property held as a resource.** If the individual has income from property held as a resource, only the income after deducting the actual business expense is considered.

(c) **Life estate and homestead rights.** For income from life estate and homestead rights, ~~see~~ refer to OAC 340:10-3-4(d).

(d) **Minerals.** If the individual owns minerals, but not the surface rights, only actual income from minerals, delayed rentals, and production is considered. Evidence is obtained from documents which the individual has in hand. When the individual has no documentary evidence of the amount of income, the evidence is secured from the firm or person who is making the payment.

(e) **Home produce.** Any home produce from garden, livestock, and poultry utilized by the individual and his or her household for their consumption represents resourcefulness on the part of the individual in improving his or her situation, and is not considered in determining the amount of benefit.

(f) **Contributions.** Appreciable contributions recurrently received in cash are considered income except when the contribution is not made directly to the recipient.

(g) **Child support.** Oklahoma Child Support Services (OCSS) may send the client child support in excess of the monthly court ordered amount. When the client receives this excess amount, it is considered as unearned income. When the TANF payee is a minor parent and lives with an adult relative who receives child support for the minor parent, the child support is considered as income for the minor parent.

(~~g~~h) **Retirement, disability, and unemployment benefits.** Income received monthly from annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits are considered unearned income. Information as to present receipt and amount of current benefits is obtained from the individual's award letter or benefit verification statement, by viewing the warrant, or by use of the data exchange files. Retirement benefits received as a lump sum payment at termination of employment are considered a resource. Supplemental Security Income (SSI) does not fall under these types of benefits.

(~~h~~i) **Military benefits.** Life insurance, pensions, compensation, servicemen dependents' allowances, and similar benefits, are sources of income which the individual and dependents may be eligible to receive. In each case, information is obtained concerning the military service of the individual's son, daughter, spouse, or parent. Clearance is made with the proper veterans' agencies, both state and federal, to determine whether the benefits are available.

(~~i~~j) **Income from any agency or organization.** Financial aid provided to individuals by agencies or organizations which base their payment on financial need is not considered in determining the amount of the benefit provided duplication does not exist between such other assistance and that provided by the Oklahoma Department of Human Services (OKDHS). Financial aid given by other agencies or organizations does not constitute duplication if the financial aid is given:

(1) for a different purpose than that provided by OKDHS;

(2) for goods and services that are not included in the Temporary Assistance for Needy Families (TANF) need standard; or

(3) in an amount sufficient to make it possible for the individual to have the amount of money as determined

by the TANF need standard. In this instance, the non-duplicated amount is the difference between the monthly payment standard and the monthly need standard. Any amount of financial aid that exceeds that difference is considered as unearned income.

(~~j~~k) **Income from Vocational Rehabilitation Program through Department of Rehabilitation Services.** Assistance or services received by a TANF recipient from the Department of Rehabilitation Services which are allocated to items not covered in the TANF standards, are disregarded in determining the amount of the assistance payments. Examples of assistance or services are car fare to a rehabilitation center, extra clothing, lunches, grooming needed for a training program, and any other such complementary payments.

(~~k~~l) **Casual and inconsequential gifts.** Monetary gifts which do not realistically represent income to meet living expenses, for example, Christmas, graduation, and birthday gifts, not to exceed $30 per calendar quarter for each individual, are disregarded as income.

(1) The amount of the gifts is disregarded as received during the quarter until the aggregate amount has reached $30. At that time the portion exceeding $30 is counted as lump sum income.

(2) If the amount of a single gift exceeds $30, it is not inconsequential and the total amount is counted as income.

(3) If the recipient claims that the gift is intended for more than one person in the assistance unit, it can be divided among these persons. Gifts between members of the assistance unit are not counted.

(~~l~~m) **Grants.** Grants which are not based on financial need are considered income to the extent the grant is available for current maintenance.

(1) Any portion of the grant that is expended, designated, or intended for items not included in current maintenance is excluded.

(2) Any remaining portion of a grant excluded as not for current maintenance must have detailed case documentation to justify the exclusion.

(3) The countable amount of a grant received for a period covering more than one month is prorated over the period it is intended to cover.

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

(1) When BIA determines the account is unavailable and releases a certain amount of funds each month to the individual, the monthly disbursement is considered as unearned income.

(2) When BIA has stated the account is unavailable and the account does not have a monthly disbursement plan, but a review reveals a recent history of disbursements to the individual, guardian, or conservator, these disbursements must be resolved with BIA. These disbursements indicate all or a portion of the account may be available to the individual, guardian, or conservator. When the worker is unable to resolve the situation with BIA, the worker submits a referral to the Family Support Services Division (FSSD). When a referral is sent to FSSD, the funds are considered as unavailable with a legal impediment until the worker is notified otherwise.

(3) When disbursements have been made, a determination is made whether such disbursements were made to the individual or to a third party vendor in payment for goods or services. Payments made directly from BIA to vendors are not considered as income to the individual. Services rendered and payment made by BIA is documented.

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

340:10-3-40. Income disregards

Income that is disregarded in determining eligibility for Temporary Assistance for Needy Families (TANF) is:

(1) the food benefit allotment under the Food and Nutrition Act of 2008;

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

(3) educational assistance including grants, work study, scholarships, fellowships, educational loans on which payment is deferred, veterans education benefits, and the like if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement and is a gain to the client, it is considered income. When the educational assistance is serving the same purpose as TANF cash assistance such as when the client receives a stipend for living expenses, the stipend is countable income. The student's classification as a graduate or undergraduate is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan was from a person or financial institution in the loan business.

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

(C) If the loan agreement is not written, Form 08AD103E, Loan Verification, must be completed by the borrower attesting that the loan is bona fide and

signed by the lender verifying the date and amount of loan.

(D) When copies of written agreements or Form 08AD103E are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;

(5) Indian payments, which include judgment funds or funds held in trust, distributed per capita by the Secretary of the Interior, Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount.

(A) Any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds is disregarded.

(B) Any income from mineral leases or from tribal business investments is disregarded as long as the payments are paid per capita.

(C) Any interest or income derived from the principal or produced by purchases made with the funds after distribution is considered as any other income;

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

(7) income from trusts of a child(ren) included in a TANF benefit if it is determined by the worker that funds are to be used for educational purposes for the child(ren). Any court established trust must be examined to determine if the court has restricted the trust for other purposes. The worker must verify at application and redetermination if funds have been withdrawn. Any funds withdrawn are treated as lump sum unearned income unless it can be documented the funds were used for the child(ren)'s educational purposes;

(8) income from accounts, stocks, and bonds held under the control of a third party if the funds are designated for educational purposes for a child(ren) in a TANF benefit even if the child(ren)'s name is on the account and the third party holder is required to access the funds;

(9) benefits from state and community programs on aging from Title III and Title V. Title III and Title V are under the Older Americans Act (OAA) of 1965 amended by Public Law (P.L.) 100-175 to become the OAA as amended 2000. Each state and various organizations receive some Title V funds. These organizations include:

(A) Experience Works;

(B) National Council on Aging;

(C) National Council of Senior Citizens;

(D) American Association of Retired Persons (AARP);

(E) United States (US) Forest Service;

(F) National Association for Spanish Speaking Elderly;

(G) National Urban League;

(H) National Council on Black Aging; and

(I) National Council on Indian Aging.

(10) unearned income received by a child(ren) in a TANF benefit, such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance from a program funded by the Workforce Investment Act (WIA) including Job Corps income and WIA earned income received as wages;

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

(12) payments to volunteers under the National and Community Service Trust Act of 1993 (NCSTA), unless the gross amount of AmeriCorps*VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;

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

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

(15) any income of an adult or child(ren) in the family group living in the home and receiving Supplemental Security Income (SSI) is not considered in determining the TANF benefit. His or her individual income is considered by the Social Security Administration in determining eligibility for SSI. This includes any payment made by the Developmental Disabilities Services Division through the Family Support Assistance Payment Program on behalf of a child(ren) receiving SSI and any other earned or unearned income of the person;

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

(17) earnings of a child(ren) in a TANF benefit who is a full-time student;

(18) government rental or housing subsidies by governmental agencies, for example, Housing and Urban Development (HUD) which are received in-kind or in cash for rent, mortgage payments, or utilities;

(19) reimbursements from an employer, the Department of Labor, or the Bureau of Indian Affairs, for out-of-pocket expenditures and allowances for travel, training, meals, or supplies, which could include uniforms, to the extent the funds are used for expenses directly related to such travel, training, meals or supplies;

(20) Low Income Home Energy Assistance Program (LIHEAP) payments for energy assistance and payments for emergency situations under Emergency Assistance to Needy Families with Children;

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

(22) refunds of state EITC as a result of filing a state income tax return;
(23) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);
(24) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;
(25) federal major disaster and emergency assistance provided by Section 5515(d) of Title 42 of the United States Code (U.S.C.) and comparable disaster assistance provided by states, local governments, and disaster assistance organizations;
(26) interests of individual Indians in trust or restricted lands;
(27) income up to $2,000 per calendar year received by individual Indians, which is derived from leases or other uses of individually owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as unearned income;
(28) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;
(29) payments made to persons because of their status as victims of Nazi persecution;
(30) interest accrued from the deposits made by an person into an Individual Development Account (IDA) up to $2,000;
(31) stipends paid to students participating in the Indian Vocational Education Program (IVEP) through the Carl D. Perkins Vocational and Applied Technology Education Act;
(32) payments made from the crime victims compensation program as amended in section 1403 of the Victims of Crime Act of 1984, Section 10602 of Title 42 of the U.S.C.;
(33) reimbursements made to a foster care parent(s) or a potential foster care parent(s); ~~and~~
(34) payments as described in Section 1823(c) of Title 38 of the U.S.C. provided to certain persons who are children of Vietnam War veterans; and
(35) earned income received as wages, unearned income, cash assistance, compensation in lieu of wages, or an allowance from a program funded by WIA.

PART 5. ASSISTANCE PAYMENTS

340:10-3-57. Special considerations

(a) **Concurrent receipt of State Supplemental Payment (SSP) for the aged, blind, or disabled.** A person who is not a recipient of Supplemental Security Income (SSI) has an option to be included in a Temporary Assistance for Needy Families (TANF) assistance unit or may be a recipient of SSP if all eligibility requirements are met. The person may also be included in the TANF assistance unit pending determination of eligibility for SSP or SSI if all eligibility requirements are met.

(b) **Concurrent receipt of TANF and SSI.** A person ~~cannot be~~ is not included in a TANF benefit for the same month he or she ~~was~~ is included in an SSI payment. If it appears a person included in a TANF application or an active TANF benefit ~~might meet~~ meets the eligibility conditions for TANF and SSI, the person has a choice to have eligibility determined for TANF or SSI benefits. ~~Persons are informed of their~~ The worker informs the payee of his or her responsibility to report to the Oklahoma Department of Human Services (OKDHS) if any member of the assistance unit makes application for SSI or becomes eligible for SSI. If any assistance unit member applies for TANF or is receiving TANF when the member makes an application for SSI, the ~~member~~ payee must inform the Social Security Administration (SSA).

(1) When the only dependent child(ren) is receiving SSI, the natural or adoptive parent(s) or needy caretaker relative may receive TANF if all other factors of eligibility are met. The assistance unit ~~will consist~~ consists of the adult(s) only.

(2) When a TANF applicant is also an applicant for SSI, eligibility for TANF must be determined and, if eligible, is included in the benefit until notified of SSI eligibility.

(3) When a TANF recipient is an applicant for SSI, SSA advises OKDHS of SSI eligibility, and requests the month of TANF termination and the amount of TANF benefits paid for each month of SSI eligibility. SSA considers a recipient removed from a TANF benefit effective with, and based on, the TANF termination date provided orally by the worker. If the actual date of termination is later than the date given orally to SSA, TANF payments to SSI recipients are TANF overpayments and must be recouped.

(4) When a TANF recipient is determined ineligible for SSI the person may continue to be included in the TANF assistance unit if all other conditions of eligibility are met.

(5) When a TANF recipient is determined ineligible for SSI for reasons other than a disability determination, the person may be included in an SSP, if all other conditions of eligibility are met.

(c) **Concurrent receipt of state and tribal TANF.** A person ~~who is~~ included in a tribal TANF payment ~~cannot be~~ is not included in another TANF benefit in the same month. If the person meets the criteria of a tribal TANF service area and population, the entire ~~household~~ assistance unit must be served by tribal TANF. If the household moves out of the tribe's service area, the worker coordinates certification of state TANF benefits.

(d) **Concurrent receipt of more than one form of public assistance.** A person ~~who is~~ included in a TANF benefit ~~cannot be~~ is not included in another TANF or SSP benefit for the same period. When a TANF applicant is eligible for TANF but has received a weekly or bi-monthly TANF benefit from another state for the same month the applicant is eligible in Oklahoma, the benefit from the other state is counted as unearned income. A person who is the payee for a TANF benefit, but not included in that benefit, is not prevented from being a recipient of SSP if the SSP eligibility requirements are met. When transferring

a TANF recipient to SSP, the removal and approval date must agree.

(e) **Stepparent, spouse of needy caretaker, person acting in the role of a spouse, or parent(s) of a minor parent.** The natural or adoptive parent's income cannot be diverted to meet the needs of the stepparent or other dependents in the home, but is considered available to the TANF assistance unit. No income is considered if the stepparent, spouse of a needy caretaker, person acting in the role of a spouse, parent(s) of a minor parent, or his or her dependent is an SSI recipient. Refer (3) of this subsection for the definition of a person acting in the role of a spouse.

(1) **Stepparent or spouse of needy caretaker income.** If a stepparent of the child(ren) or the spouse of a needy caretaker for whom TANF is requested ~~is living~~ lives in the home with the child(ren), the worker computes the verified gross earned and unearned income of the stepparent or spouse of a needy caretaker, after all applicable TANF income disregards and work related expenses, ~~is computed~~ to determine the amount considered available to the assistance unit. The worker computes the stepparent's or spouse of a needy caretaker's income ~~is computed~~ by:

(A) subtracting the work related expense, one-half of the remaining gross earned income, and dependent care expense from the stepparent's or spouse of a needy caretaker's earned income for full-time or part-time employment; [OAC 340:10-3-33]

(B) adding the net earned income to the stepparent's or spouse of a needy caretaker's gross unearned income;

(C) subtracting the need standard for the appropriate number of persons, including the stepparent or spouse of a needy caretaker and dependents who are not included in the assistance unit but are living in the home and can be claimed on the stepparent's or spouse of a needy caretaker's personal income taxes;

(D) subtracting the actual amounts the stepparent or spouse of a needy caretaker paid to persons not living in the household but claimed as tax dependents. It is the stepparent's or spouse of a needy caretaker's responsibility to identify and verify tax dependents;

(E) subtracting the actual payments of alimony and child support to persons outside the household; and

(F) adding the stepparent's or spouse of a needy caretaker's remaining net income to all other gross income of persons included in the TANF assistance unit. If the income does not exceed the monthly maximum gross income, the remaining income of the stepparent or spouse of a needy caretaker is considered as a contribution to the assistance unit.

(2) **Stepparent or spouse of a needy caretaker resources.** ~~Resources~~ The worker does not consider resources owned exclusively by the stepparent or spouse of a needy caretaker ~~are not considered in determining~~ to determine the assistance unit's resource eligibility~~. Consideration is only given to~~ but does consider the assistance unit's share of resources ~~that are~~ owned jointly with the stepparent or spouse of a needy caretaker.

(3) **Person acting in the role of a spouse.** ~~Income~~ The worker must ~~be considered available to the TANF assistance unit of any non-relative adult(s) of the opposite sex not receiving TANF~~ count the income of a person acting in the role of a spouse who lives in the home with the natural or adoptive parent when he or she does not receive a TANF benefit on another case. The worker computes the income of this ~~person(s) is computed~~ person the same as stepparent income~~; however,~~. The person acting in the role of spouse is not eligible to receive the exemption of one-half of the remainder ~~and~~ or a dependent care expense ~~is not applicable~~ deduction in determining this person's countable earned income. If the parent or the person acting in the role of a spouse fails to provide information necessary to determine income eligibility, the application is denied or the cash assistance terminated. Provided, however, the income of non-relative adults of the opposite sex not receiving TANF may be excluded if the adults have separate living quarters and demonstrate no characteristics of a person acting in the role of spouse.

(4) **Parent(s) of a minor parent.** When a minor parent is living in the home with his or her natural or adoptive parent(s) and the needs of the parent(s) are not included in the assistance unit, the parent's income is considered available to the assistance unit and computed the same as stepparent income. The income of a minor parent's stepparent is not considered. The parent of the minor parent may be designated as the substitute payee for the ~~case~~ assistance unit.

(f) **Allocating or diverting income.** When family members are not included in the assistance unit, special consideration is required in determining the income available to the assistance unit.

(1) Income received by a person included in the assistance unit is not allocated or diverted to persons who are not in the assistance unit. All countable unearned and earned income of the person is considered available to the assistance unit.

(2) The net income of an alien parent excluded from the benefit because the citizenship or alienage requirement is not met is considered the same as stepparent income. The needs and income of disqualified alien siblings are not considered when determining eligibility of an otherwise eligible child(ren).

(3) The net income of a fugitive felon excluded from the benefit is considered the same as stepparent income.

(g) **Benefit reduction as a result of program violation.** The TANF benefit is reduced by 25% of the payment standard when a determination of program violation has been made. The 25% penalty is removed the next effective date when compliance is documented or the time frame for the penalty has ended. When multiple types of program violations have occurred, a 25% penalty of the payment standard is imposed for each type of violation. If the benefit reduction causes existing income to be in excess of the benefit amount, the case is closed using the reason for the benefit reduction. The amount of the payment standard reduction applies as Food Stamp Penalty Income in the Supplemental Nutrition Assistance Program

(SNAP). [OAC 340:50-7-29(b)(1)] Reasons for benefit reduction are:

(1) refusal to cooperate in an effort to obtain child support per OAC 340:10-10-5(c); ~~[OAC 340:10-10-5(c)]~~

(2) failure to apply for or provide a Social Security number per OAC 340:10-12-1;

(3) failure of a child(ren) kindergarten ~~age~~ to 18 years of age to attend school per OAC 340:10-13-1; ~~[OAC 340:10-13]~~

(4) failure to provide verification of child(ren) immunizations per OAC 340:10-14-1; and ~~[OAC 340:10-14]~~

(5) intentional program violations determined as fraud by court action or an administrative disqualification hearing or administrative hearing waiver per OAC 340:65-9-4. ~~[OAC 340:65-9-4]~~

(h) **Parent living in the home receiving SSP.** When there is a parent living in the home but not included in the TANF benefit because of receipt of SSP and not SSI, consideration is not given to that parent's individual income for the TANF benefit. When a parent in the SSP benefit becomes ineligible to continue to receive the SSP, the parent is included in the TANF benefit and all the income and resources of the parent are considered in determining eligibility for TANF. If consideration of the parent's income and resources causes the TANF benefit to be closed, and the closure of the SSP benefit was a direct result of an overall Social Security increase, the SSP benefit is placed in Special Medical Status. If the parent is living in the home but not included in the TANF benefit because of receipt of SSP and SSI, no consideration is given to the parent's income and the parent is not included in the TANF assistance unit as long as the parent remains eligible for SSI.

(i) **TANF eligibility when the child(ren) is placed in out-of-home care.** When the child(ren) is removed by a child protection action and it is reasonably anticipated the child(ren) will return to the home within four months, the natural or adoptive parent or needy caretaker relative continues eligible for TANF, if other conditions of eligibility are met.

(1) A team consisting of the worker, the Child Welfare (CW) worker, the natural or adoptive parent or needy caretaker relative, and any other appropriate partner(s) must meet to develop a mutually agreed upon plan of action. This plan addresses employability and strategies to correct the conditions which caused the child(ren) to be removed from the home.

(2) At the end of the four month period if the child(ren) has not been returned to the home, the adult(s)' needs are removed and the TANF benefits are discontinued.

(j) **Strikers.** The assistance unit is not eligible for TANF for any month the natural or adoptive parent, whether or not included in the benefit, is participating in a strike on the last day of that month. A person other than the natural or adoptive parent is not included in the benefit for any month if that person is participating in a strike on the last day of the month.

SUBCHAPTER 5. CONDITIONS OF ELIGIBILITY - AGE

340:10-5-1. Age

To be eligible for Temporary Assistance for Needy Families (TANF), a child must be under ~~the age of~~ 19 years of age. If a child is ~~being~~ removed from the benefit because he or she has reached the maximum age for eligibility under the TANF program, he or she is eligible for the month in which his or her birthday occurs. The ~~social services specialist~~ worker accepts the ~~individual's~~ parent or guardian's statement to establish the child's age, unless the information is inconsistent or there are other facts or observations which cause the ~~social services specialist~~ worker to question the ~~individual's~~ parent or guardian's statement. When such questions exist, ~~the social services specialist is required~~ verification must be obtained to verify the information. Acceptable sources of verification are listed in (1) - (2) of this section.

(1) An original or certified birth certificate, acceptable hospital certificate, or Form ~~FSS-NB-1~~ 08MA015E, ~~Hospital Report Newborn Child(ren)~~ Reporting of Newborn Child of SoonerCare Member, is considered conclusive evidence of birthdate, and is used as verification, if available. A hospital certificate is considered acceptable when it includes the:

(A) child's name and birthdate;

(B) name of the institution or geographical location of the birth;

(C) name of the parent(s); and

(D) signature of the attending physician or responsible hospital staff member such as administrator, nurse, or records supervisor.

(2) If birth information is from hospital records other than an acceptable certificate, birth scrolls, and similar records, ~~verification must be obtained through the Division of Vital Records (DVR). When an acceptable birth certificate or a DVR record, Form Adm-64, Form Letter to the Division of Vital Records, is not available,~~ two other pieces of evidence which reflect the same birthdate, with no evidence to the contrary, are acceptable as conclusive evidence and constitute a source of age verification. Evidence includes:

(A) baptismal, confirmation, or other church and parish records**.** These may be found either in the possession of the family or on record at the church;

(B) passports. Persons who have obtained visas may have in their possession documents showing the birthdate at the time the visa was issued;

(C) court records;

(D) insurance and burial policies if the date of birth at the time the policy was issued, is entered on the insurance policy;

(E) any social agency records including ~~DHS~~ Oklahoma Department of Human Services (OKDHS) records;

(F) institution records such as records of a public or private hospital, or other type of institution, or home, giving the child's birthdate at the time of admission;

(G) family records such as an entry of a child's birthdate in a family Bible or on some other similar

document if the entry is unchanged, either by erasure or overwriting;

(H) school records. Elementary and high school records are available in the school districts. School census records are available in the ~~office of the~~ county superintendent of schools office. These records are made from information given by the parent or guardian; or

(I) United States Census records. If possible, data ~~should be~~ given for more than one year is reviewed for purposes of corroboration.

SUBCHAPTER 7. CONDITIONS OF ELIGIBILITY - RESIDENCE

340:10-7-1. Residence

To be eligible to receive Temporary Assistance for Needy Families (TANF) a person must be making his or her home in Oklahoma. A person whose residence has been established in Oklahoma does not lose residency status when he or she is removed from Oklahoma against his or her will and held in another state, ~~as~~ for example, in federal prison, or has been ~~out of the state~~ out-of-state to make use of a federal facility, or to attend school.

(1) A person's statement that he or she is residing in Oklahoma voluntarily and not for a temporary purpose is acceptable if it is consistent with other known facts. If the statement is inconsistent with other known facts, further substantiation is necessary.

(2) A person applying for TANF after living in another state at any time ~~during the past 12 months~~ must not be certified until the state or states of former residence is contacted to determine how many months, if any, the person has already received TANF and if cash assistance is currently being received from that state. If so, planning must be done with that state so approval and closure are simultaneously effected in the respective states.

(3) Continuous residence is established when the case record and contact with the person show no evidence of absence from Oklahoma.

(A) **Temporary residence.** For purposes of TANF eligibility, a person is a resident of Oklahoma if he or she is living in Oklahoma voluntarily or has a job commitment or is seeking employment, even though the intent is to stay only temporarily, as long as cash assistance is not being received from another state. This includes migrant and itinerant workers who are temporarily residing in Oklahoma but maintain a homestead in another state. A person traveling through the state or visiting relatives in this state is not considered a resident.

(B) **Out-of-state visits.** A temporary absence from the state with subsequent returns to the state or intent to return when the purposes of the absence have been accomplished does not interrupt Oklahoma residence. When the purpose is temporary in nature, the person is responsible for information regarding which member(s) of the assistance unit is visiting out-of-state, for what purpose, the plan and date of the departure, and the planned date of return.

(i) An absence from the state may not continue beyond three months without a specific and current determination of the circumstances of the absence, whether the purposes of the absence have been accomplished, and the person's statement as to his or her residence. The person is considered as residing in Oklahoma until there is substantial factual evidence he or she has chosen to establish residence in another state.

(ii) If the person applies for cash assistance in another state and is determined eligible by that state, the case record must document the facts used to establish that the effective date of closure in Oklahoma corresponds with the effective date of certification in the other state, thus ensuring there is ~~not~~ no interruption in the assistance payment.

SUBCHAPTER 9. CONDITIONS OF ELIGIBILITY - RELATIONSHIP OF PAYEE TO CHILD

340:10-9-1. Relationship of payee to child

(a) **Specified degree of relationship.** To be eligible to receive Temporary Assistance for Needy Families (TANF), in addition to other qualifications, a child must be living with a person having a specified degree of relationship in a place of residence maintained by one or more of such relatives as his or her own home. An otherwise eligible person is not denied assistance solely because the home is not a fixed address or does not have a mailing address. An individual is recognized as meeting the specified degree of relationship if the individual is related within the fifth degree of kinship. It is only when the child is living with a person of one of these degrees of relationship that there is an eligible payee for the TANF benefit.

(1) **Related by blood.** Blood lines remain intact ~~and are not changed by decisions~~ in terms of legal responsibility except when parental rights are terminated or the child is legally adopted by someone else. Blood relatives, including half blood, are:

(A) parent(s) including a natural parent even if the child is legally adopted and deprivation is based on the absence of the adoptive parent(s);

(B) siblings;

(C) grandparent(s) including those denoted by prefixes of great, great-great, and great-great-great;

(D) aunt(s) and uncle(s) including those denoted by the prefixes of great and great-great;

(E) niece(s) and nephew(s) including those denoted by prefixes of grand and great-grand; and

(F) first cousin(s) and first cousin(s) once removed.

(2) **Related by marriage.** Use kinship as denoted under (1) of this Section, whether the marriage is common-law or ceremonial. Included are step-relations.

Kinship by marriage is included even after the marriage is terminated by death or divorce.

(3) **Related by adoption.** Use kinship as denoted under (1) and (2) of this subsection.

(b) **Verification of relationship.** If the individual making the application for TANF is the child's mother, no further verification is required unless the information is inconsistent with known facts or observations. If the individual making the application claims to be the natural father, no further verification is required unless information provided is inconsistent with known facts or observations. If the child's mother has alleged this person to be the natural father, relationship is not questionable. If the natural father's name is not on the birth certificate, the natural father is requested to sign a statement acknowledging paternity or provide medical evidence that substantiates the relationship. If the individual who claims to be the natural father refuses, relationship cannot be determined. If the individual making the application is someone other than the parent, the relationship to the child's parent must also be established as outlined in (a) of this Section. The individual's statement as to the relationship to the child's parent is accepted unless the information is inconsistent with known facts or observations.

SUBCHAPTER 10. CONDITIONS OF ELIGIBILITY - DEPRIVATION

340:10-10-4. Continued absence of the natural or adoptive parent(s) from the home

(a) **Determining absence.** Continued absence of the natural or adoptive parent(s) from the home constitutes a reason for deprivation of parental care.

(1) It is essential to determine if a primary caretaker exists or if the parents are equally sharing parental responsibilities.

(A) Only the parent determined as the primary caretaker is eligible to receive Temporary Assistance for Needy Families (TANF) for this child(ren).

(B) If both parents are exercising responsibility for the child(ren), providing day-to-day care, and share maintenance, physical care, and guidance for the child(ren), deprivation does not exist for this child(ren). If any one of the conditions included in the previous sentence is not met, the child(ren) is deprived of parental care.

(2) The nature of the absence must have either interrupted or terminated the parent's functioning as a provider of maintenance, physical care, or guidance for the child(ren) and the known or indefinite duration of the absence precludes counting on the parent(s) for the present support or care of the child(ren). If these conditions exist, the length of time of the absence is not considered.

(3) A parent(s) whose absence is due solely to employment, looking for employment, education, or active duty in the uniformed services of the United States, is not considered absent from the home.

(4) A parent(s) who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(b) **Identifying information.** An applicant for TANF must provide the name of the person(s) alleged as responsible for the support of a child(ren), including the legal and natural father when they are not the same, and provide identifying information such as name, address, and the employer of the person(s), if known.

~~(1)~~ The parent or caretaker relative completes and signs Form 08TA001E, Absent Parent (AP) Information Sheet and Form 03EN002E, Affidavit of Child Support Payments Received.

(~~A~~1) Absence is ~~determined~~ verified through an evaluation of the information recorded.

(~~B~~2) If the absent parent can be located at the time deprivation is being established or at subsequent reviews, the absent parent must be interviewed to determine whether deprivation exists and whether child support is being paid.

~~(2) When there is any question as to whether deprivation actually exists, the parent is advised that it may be necessary to obtain further evidence from persons acquainted with the situation.~~

(c) **Establishing need.** To establish the need for TANF, it is necessary to determine if any child support is currently being paid and, if so, the amount, how often it is paid, and the method of payment.

(1) Parents have a legal obligation to provide financial support for their child(ren), whether or not they were married to each other.

(2) An unmarried mother is legally the sole parent until paternity is established.

(3) The termination of parental rights does not stop the obligation of either parent to provide financial support for his or her minor child(ren), unless the child(ren) has been subsequently adopted.

(4) An adoptive parent's legal obligation continues even if a child(ren) is returned to the care of the natural parent.

(d) **Acknowledgment of paternity.** At any time the alleged father is located, the acknowledgment of paternity is discussed with the alleged father. The alleged father's and the mother's ~~notarized~~ signature are secured on Form 03PA209E, Acknowledgement of Paternity.

(1) If the alleged father lives in the home and acknowledges paternity orally, deprivation does not exist.

(2) If the alleged father in the home denies paternity but the mother continues to maintain that he is the father, deprivation does not exist pending legal establishment of paternity.

~~(3) If the alleged father is under the age of 18, he must not be interviewed unless his parents, legal guardian, or natural guardian are present at the interview.~~

SUBCHAPTER 13. CONDITIONS OF ELIGIBILITY - SCHOOL ATTENDANCE

340:10-13-1. School attendance

(a) **Applicability.** School attendance is a condition of eligibility. It is required for each Temporary Assistance for Needy Families (TANF) child from the age ~~he or she~~ the child is eligible for kindergarten through 18 years of age unless the ~~child(ren)~~ child is home educated according to the Oklahoma constitution and statutes. General Education Development (GED), ~~and~~ alternative high schools, or virtual schools meet this requirement. If it is determined the ~~child(ren)~~ child is not attending school, the cash assistance must be reduced by 25% of the payment standard. [OAC 340:10-3-57(h)] The 25% penalty is removed the next effective ~~the~~ date after the parent or caretaker relative provides ~~documentation~~ verification the ~~child(ren)~~ child is attending school. At application and at each ~~redetermination~~ review, school attendance is ~~documented~~ verified for each child in the family. ~~The individual's statement and school documents establishes school attendance unless the information is inconsistent or there are other facts or observations which cause the social services specialist to question the information. When such questions exist, the social services specialist is required to verify the information.~~

(b) **Ages 18 years and under 19 years.**

(1) An otherwise eligible ~~child(ren)~~ child 18 years of age is included in the assistance unit if he or she is a full time secondary school student, attending GED classes, ~~or~~ an alternative high school, or a virtual school and is expected to complete school before reaching ~~age~~ 19 years of age or will graduate during the month he or she turns ~~age~~ 19 years of age.

(2) Any other ~~child(ren)~~ child who is going to be ~~age~~ 18 years of age but is not expected to complete school before turning ~~age~~ 19 years of age or graduate during the month he or she turns ~~age~~ 19 years of age is eligible only through the month during which ~~age~~ he or she reaches 18 ~~is reached~~ years of age.

SUBCHAPTER 14. CONDITIONS OF ELIGIBILITY - IMMUNIZATIONS

340:10-14-1. Immunizations

(a) **Scope.** Immunization of minor children two months of age or older is a variable condition of eligibility. ~~Caretaker relatives~~ The parent or caretaker relative must provide proof of current immunization within 90 days of certification or when additional immunizations become due in the future unless he or she request good cause. ~~This is accomplished by~~ Proof of immunization includes providing a copy of the vaccination record issued by the local health official or a licensed physician.

(1) If the minor ~~child(ren) is attending~~ child attends a licensed child care center or home or ~~is enrolled in~~ a parochial, private, or public school, ~~no further~~ proof of current immunization is not required as each of these entities require proof of immunization or a signed certificate of exemption on file with the Oklahoma State Department of Health (OSDH) as a condition of attendance.

(2) ~~If after six months the caretaker relative,~~ When required, if the parent or caretaker relative fails to provide proof of current immunization within 90 calendar days without good cause, ~~has failed to provide proof of immunization for the minor child(ren),~~ the cash assistance must be reduced by 25% of the payment standard. The worker removes the 25% penalty ~~is removed~~ the next effective ~~the~~ date after the parent or caretaker relative provides ~~verification~~ proof of current immunization.

(b) **Good cause.** A parent or caretaker relative can request good cause ~~depending on~~ because of the medical condition of the ~~child(ren)~~ child, the religious affiliation of the ~~child(ren)~~ child, or the personal objection of the parent or caretaker relative. Good cause is approved when a:

(1) physician certifies on Form ~~FSS-TANF-1~~ 08TA017E, Immunization Certificate of Exemption, that there is a medical contraindication;

(2) religious leader, ~~or~~ parent, or caretaker relative certifies on Form ~~FSS-TANF-1~~ 08TA017E that immunizations are contrary to the teachings of the ~~child(ren)'s~~ child's religion; or

(3) parent or caretaker relative certifies on Form ~~FSS-TANF-1~~ 08TA017E that immunizations are contrary to the beliefs of the parent or caretaker relative.

[OAR Docket #11-550; filed 4-22-11]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 20. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

[OAR Docket #11-551]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Low Income Home Energy Assistance Program
340:20-1-10 through 340:20-1-14 [AMENDED]
340:20-1-17 [AMENDED]
(Reference APA WF 10-15)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; the Omnibus Budget Reconciliation Act of 1981 Public Law (P.L.) 97-35; Section 405(c)(2)(C)(i) of Title 42 of the United States Code (42 USC 405(c)(2)(C)(i)); 5 USC 552A; Sections 96.80 through 96.89 of Title 45 of the Code of Federal Regulations; and P.L. 109-58, as amended.

DATES:
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February 22, 2011

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Failure of the Legislature to disapprove the rule(s) resulted in approval on April 19, 2011.
Final adoption:
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Effective:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed permanent rule amendments to Subchapter 1 of Chapter 20 amend the rules to add: (1) an income disregard; (2) additional program factors that must be verified; (3) information regarding denial actions; (4) time frames for processing applications and requesting additional information; (5) information regarding households pre-authorized for the Low Income Home Energy Assistance Program (LIHEAP) including when payments are not made; (6) clarifying information regarding benefit amounts and notices; and (7) updated language and form names.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 1. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

340:20-1-10. Program factors

(a) **Home energy.** Home energy ~~refers to~~ means a household's source of energy used ~~for heating or cooling in~~ to heat or cool a residential dwelling.

(b) **Primary energy source.**

(1) The primary energy source during winter months is ~~the~~ fuel used ~~by the household for heating~~ to heat the home.

(2) The primary energy source during ~~the~~ summer months is ~~the~~ fuel used ~~by the household for cooling~~ to cool the home.

(3) ~~The~~ During the Energy Crisis Assistance Program (ECAP) application period, the household may choose heating or cooling as the primary energy ~~source during the Energy Crisis Assistance Program (ECAP) application period between heating and cooling programs~~.

(c) **Household.** ~~The term household refers to~~ Household means any person or group of persons who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent. There is one authorization for heating or cooling assistance per household.

(d) **Subsidized household.** ~~A subsidized~~ Subsidized household ~~is~~ means a household that receives assistance through a utility allowance to cover all or part of their energy cost, and/or ~~which~~ receives assistance in paying their rent or house payment on a regular basis. ~~The assistance can~~

(1) Assistance may be from a government agency~~,~~ such as a local housing authority, or a private person, usually a relative, who helps a person or family pay their utility bills, ~~the~~ rent or house payment, or allows them to live rent free.

(2) If apartment rental rates in college or university-owned apartment complexes are deliberately set lower than other apartments in the community in order to help the student, the household is considered a subsidized household.

(3) Eligible subsidized households with out-of-pocket utility expenses receive the same ~~heating~~ assistance benefit as unsubsidized households.

(e) **Vulnerability.** A household is vulnerable if it is responsible, either totally or partially, for the cost of home energy. A vulnerable household includes ~~a household~~ households whose primary energy source ~~of home energy~~ has been temporarily discontinued.

~~(1) **Apartment rental rates.** If apartment rental rates in college or university-owned apartment complexes are deliberately set lower than other apartments in the community in order to help the student, the household is considered a subsidized household.~~

(~~2~~f) **Non-vulnerability.** Non-vulnerable households are those that do not bear any of the expense of home energy.

(~~A~~ 1) Examples of non-vulnerable living arrangements include:

(~~i~~ A) congregate or domiciliary facilities, such as nursing facilities and college or university dormitory, fraternity, or sorority housing;

(~~ii~~ B) households whose primary energy source is totally paid by someone other than a household member; and

(~~iii~~ C) subsidized households whose heating costs are included in their rent.

(~~B~~ 2) Some subsidized households may be assessed an energy surcharge during the operation of the Low Income Home Energy Assistance Program (LIHEAP). These households ~~might~~ may be eligible for ~~heating~~ assistance if they can document assessment of the surcharge.

(~~f~~g) **Eligible households.** All eligible households must~~:~~ meet criteria in (1) through (4) or the worker must deny the application.

(1) Households must be vulnerable by being totally or partially responsible for the cost of home energy~~;~~.

(2) Households must not exceed the income and resource standards as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size~~; and~~.

(3) Households must include at least one citizen or legal alien ~~as defined in~~ per OAC 340:20-1-8 and may include an illegal alien~~;~~.

(4) The person making the application must provide proof of identity per OAC 340:20-1-13(4).

(5) Each household member must provide his or her Social Security number (SSN) per OAC 340:20-1-13(3) and 340:65-3-1(f). When the household does not provide a SSN for a household member, the worker counts that person's income but does not include him or her in household size.

(~~g~~h) **Benefit amount.** Funding for LIHEAP is contingent on the receipt of federal funds and authorized amounts vary from year-to-year. Benefit amounts are estimated and reserved for winter heating, summer cooling, and ECAP on a yearly basis after the amount of available funding is known. OKDHS Appendix C-7-A, Estimated LIHEAP Benefit Level For All Households, provides estimated benefit amounts for each program. Adjustments, as needed, may be made to this estimated benefit amount throughout the fiscal year because of changes in available funding or anticipated need. The household benefit amount is based upon the household's size, income, and ~~type of fuel~~ primary energy source. The benefit amount ~~is not changed~~ does not change during the program year due to changes in household composition, income, or ~~fuel type~~ primary energy source. ~~It is adjusted after the end of the heating application period if the total number of households finally approved for heating assistance in relation to the total federal funding available for heating assistance payments requires an adjustment. There is no difference in the benefit levels between subsidized and unsubsidized households. The benefit level for heating, cooling, and ECAP is determined based on the availability of funding. Workers are notified of the benefit level for each program at the start of the application period for that program.~~

340:20-1-11. Income and liquid resources

(a) **Income.** All gross earned and unearned income, except for those income sources shown in (b) of this Section, received by the household is considered in determining financial eligibility ~~except for those income sources shown in (b) of this Section~~. Eligible households must meet the income standard less the earned income deduction as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size.

(1) Income ~~that is~~ received on an annual basis is prorated over 12 months to ~~arrive at~~ determine the average monthly income.

(2) If the income is not received on a regular monthly basis, refer to OAC 340:10-3-31.

(3) Total income is rounded to the nearest dollar.

(4) When a person's income is reduced due to recoupment of an overpayment or garnishment, the gross amount before the recoupment or garnishment is considered.

(5) Countable income is computed as outlined in (A) through (D) of this paragraph.

(A) For each employed household member, subtract the earned income deduction as shown on OKDHS Appendix C-7. If the employed household member is self-employed, business expenses are allowed as described at (a)(6) of this Section.

(B) Add the unearned income of all household members.

(C) Subtract all applicable deductions as shown in (c) of this Section.

(D) The remaining amount is the amount considered available to the household members eligible for the Low Income Home Energy Assistance Program (LIHEAP).

(6) When a household member is self-employed, the net income as shown on the tax return is used as the income for this person.

(A) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) to determine the net monthly self-employment income.

(i) The gross self-employment income, including capital gains, is computed using the client's self-employment business records.

(ii) If the client declares they incurred business expenses, the worker then subtracts 50% of the gross self-employment income as business expenses. If the household did not incur business expenses, a business expense deduction is not given.

(iii) The worker ~~then~~ divides the net self-employment income by the number of months to be averaged ~~as described in~~ per OAC 340:50-7-30.

(B) The monthly net self-employment income is added to all other earned income received by the household.

(7) When an undocumented alien is part of an eligible household, the countable portion of his or her income is computed as outlined in (A) through (E) of this paragraph.

(A) For each employed household member, subtract the earned income deduction as shown on OKDHS Appendix C-7.

(B) Add the unearned income of the undocumented alien.

(C) Subtract the need standard on OKDHS Appendix C-1, Schedule of Maximum Income, Resource, and Payment Standards Schedule IX, for the appropriate number of persons. Persons counted for the need standard are the undocumented alien and his or her undocumented alien dependents who:

(i) are claimable for federal personal income taxes;

(ii) live in the same household; and

(iii) are not included in determining the LIHEAP benefit level because they are undocumented aliens.

(D) Subtract all applicable deductions as shown in (c) of this Section.

(E) The remaining amount is the amount considered available to the household members eligible for LIHEAP.

(b) **Income disregards.** In determining income, disregard:

(1) the food benefit amount under the Food and Nutrition Act of 2008;

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

(3) educational assistance including grants, work study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement and is a gain to the client, it is considered income. The student's classification, whether graduate or undergraduate, is not a factor;

(4) loans, regardless of use, if a bona fide debt or obligation to pay can be established.

(A) Criteria to establish a loan as bona fide includes an acknowledgment of obligation to repay or evidence that the loan is from a person or financial institution in the loan business.

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

(5) Indian payments including judgment funds or funds held in trust and distributed per capita by the Secretary of the Interior Bureau of Indian Affairs (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior.

(A) ~~Also, disregard~~ Disregard any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds.

(B) ~~Any~~ Disregard per capita payments, for example, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, ~~are disregarded~~ as long as they meet the distribution requirements as stated in this paragraph.

(C) ~~Any~~ Consider as income interest or income derived from the principal or produced by purchases made with the funds after distribution ~~is considered as any other income~~;

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

(7) benefits from State and Community Programs on Aging [Title III]. Income from the Older American Community Service Employment Act [Title V], including American Association of Retired Persons (AARP) and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income;

(8) unearned income received by a child receiving Temporary Assistance for Needy Families (TANF), such as a needs based payment, cash assistance, compensation in lieu of wages, or allowance, from a program funded by the Workforce Investment Act (WIA) including Job Corps income, and WIA earned income received as wages, not to exceed six months in any calendar year;

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

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

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

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

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

(14) earnings of a minor dependent child who is a full-time student;

(15) rental or housing subsidies by governmental agencies, for example, United States Department of Housing and Urban Development (HUD), received in-kind or in cash for rent, mortgage payments, or utilities;

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

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

(18) refunds of state EITC as a result of filing a state income tax return;

(19) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the IN RE Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.) are not considered as income or as a resource in determining eligibility for or the amount of the benefit;

(20) payments received for Emergency Assistance to Needy Families with Children;

(21) payments made by others on the household's behalf;

(22) in-kind benefits received by an employee from an employer in lieu of wages or in conjunction with wages;

(23) payments made under the Radiation Exposure Compensation Act (P.L. 101-426) enacted October 15, 1990;

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

(25) interests of individual Native Americans in trust or restricted lands;

(26) income up to $2,000 per year received by individual Native Americans, which is derived from leases or other uses of individually-owned trust or restricted lands. Any remaining disbursements from the trust or the restricted lands are considered as income;

(27) payments made to persons because of their status as victims of Nazi persecution; ~~and~~

(28) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (USC) provided to certain persons who are children of Vietnam War veterans; and

(29) Family Support Assistance Payment Program payments paid to persons by the OKDHS Developmental Disabilities Services Division (DDSD).

(c) **Income deductions.** Certain deductible expenses from income may be applied when applicable, such as:

(1) out-of-pocket non-reimbursed medical expenses paid by persons age 60 and older or persons considered disabled per OAC 340:50-5-4 and ~~OAC~~ 340:50-7-31(b)(3);

(2) legally binding child support paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member; and

(3) the earned income deduction as shown on OKDHS Appendix C-7 for each employed household member. In addition, if a household member is self-employed, see (a)(6) of this Section for self-employment deductions.

(d) **Resources.** Liquid resources, such as cash on hand, checking or savings accounts, certificates of deposits, stocks or bonds, cannot exceed the allowable resource level as shown on OKDHS Appendix C-7. The applicant's statement is accepted as verification unless the information received is inconsistent or questionable.

340:20-1-12. Applications

Households apply for the Low Income Home Energy Assistance Program (LIHEAP) using computer-generated Application for Low Income Home Energy Assistance or Form 08LH002E, Application for Low Income Home Energy Assistance Program (LIHEAP) - Walk-In Application, with the exception of households that have been pre-authorized.

(1) The computer-generated application is automatically mailed in November of each year for winter heating and June of each year for summer cooling to households receiving Supplemental Nutrition Assistance Program (SNAP) benefits, Temporary Assistance for Needy Families (TANF), and State Supplemental Payment (SSP) at the time of the mailing. The household must complete, sign, and return the application prior to approval or denial.

(2) Households making an initial application for LIHEAP who are not receiving another benefit, require an "N" number. Households requiring an "N" number must apply for LIHEAP through their local human services center (HSC) using Form 08LH002E.

(3) Households applying for the Energy Crisis Assistance Program (ECAP), must complete, sign, and return Form 08LH002E regardless of ~~whether the~~ other household ~~is receiving other~~ benefits.

(4) Certain households may be pre-authorized for the LIHEAP winter heating or summer cooling programs without filing an application. Prior to pre-authorizing benefits, the system checks the household's eligibility using pre-authorization guidelines ~~at~~ per OAC 340:20-1-19 and ~~OAC~~ 340:20-1-20.

(5) A new application is not necessary when a worker is notified of a change of "service" address. The worker updates the address and vendor information on the case.

(6) In order to ensure that payments are made to the correct energy supplier for gas and electricity, the household must provide the account name and number for the appropriate utility bill. For households using gas or electricity, it is necessary to see the household's most recent paid or unpaid bill or to obtain verification from the utility supplier.

340:20-1-13. Verification

Prior to approving a household for the Low Income Home Energy Assistance Program (LIHEAP), program factors in (1) through (4) must be verified. When the applicant does not provide the verification at the time of application, the worker gives the applicant ten calendar days to provide it.

(~~a~~1) **Income and resources eligibility.** ~~Income is verified for the Low Income Home Energy Assistance Program (LIHEAP)~~ The worker verifies income using the ~~same~~ procedures ~~as for Temporary Assistance for Needy Families (TANF) at OAC 340:10-3~~ per OAC 340:20-1-11.

(~~1~~A) If all members of the household are included in TANF, State Supplemental Payment, or food benefits, verification of income and resources is established by that case record.

(~~2~~B) All other applications have eligibility determination based on current month's income and resources of the total household.

(~~b~~2) **Vulnerability determination.** To determine vulnerability, a household must show that it is subject to the expense of home energy.

(~~1~~A) A household ~~which pays~~ paying energy costs directly to suppliers establishes vulnerability by billing information on the utility statement.

(~~2~~B) A household whose energy cost is included in the shelter payment must provide proof it is subject to the expense of home energy. Proof may include a statement from the landlord or a rent receipt designating inclusion of fuel cost.

(~~3~~C) Subsidized households whose heating costs are included in their rent but are assessed an energy

surcharge must provide documentation of the assessed surcharge. These households are ~~then~~ considered partially vulnerable and ~~are~~ eligible for LIHEAP, if they meet other eligibility criteria.

(3) **Social Security numbers (SSN).** A household must provide a SSN for each household member when applying for LIHEAP including winter heating, energy crisis, and summer cooling. Household members for whom a SSN is not available must be referred to the appropriate Social Security Administration (SSA) office for SSN enumeration per OAC 340:65-3-1.

(4) **Identity.** The identity of the person making application must be verified. Identity may be verified through readily available documentary evidence, or if evidence is unavailable, through a collateral contact. Any documents which reasonably establish the applicant's identity must be accepted and no requirement for a specific type of document, such as a birth certificate, may be imposed. Examples of acceptable documentary evidence that the applicant may provide include, but are not limited to:

(A) a driver license;

(B) a work or school identification (ID);

(C) an ID for health benefits, other assistance, or social service program;

(D) a voter registration card;

(E) wage stubs; or

(F) a birth certificate.

340:20-1-14. Actions, method of payment, and notifications

Contingent upon the receipt of federal funding, one payment is made during the federal fiscal year to or on behalf of households included in paragraph (1) of this Section unless a situation arises ~~which~~ that causes two payments to be made. Two or more payments may be made when there is a delay in federal funding or the release of contingency funds by the President.

(1) **Approvals.** Maximum household benefit levels are determined by ~~fuel type~~ the primary energy source, household size, and household income. ~~Normally~~ Generally, one direct payment is made to designated energy suppliers on behalf of approved households. ~~The payment is~~ Payments are made on a weekly basis. The amount of the payment is the original household benefit level as adjusted, if necessary, based upon the total encumbrance for ~~heating~~ assistance in relation to federal funds available for payments.

(2) **Direct payments.** The same payment schedule in paragraph (1) of this Section applies ~~for~~ to unsubsidized renters and roomers with utilities included in their rent, and for households whose energy source is wood, coal, heating oil, or kerosene, except when payments are made directly to approved households.

(3) **Closures.** The worker authorizes closure of cases in which the household is no longer eligible. Closure is not authorized before the worker has contacted the designated energy supplier and determined that the household has no outstanding debt with the supplier. If there is an outstanding debt, the case is not closed. The case automatically closes after the household's program benefit level has been paid.

(4) **Denials.** The worker denies any application that is incomplete. Reasons an application is considered incomplete include submitting an unsigned application or failing to verify program factors per OAC 340:20-1-10. Prior to application denial, the worker must allow the applicant ten calendar days to provide needed verification.

(5) **Timeliness.** Applications are considered timely processed when approved or denied within ten calendar days of:

(A) the date of application when all verification is provided at the time of application; or

(B) giving or mailing Form 08AD092E, Client Contact and Information Request, to the applicant requesting needed verification.

(6) **Households pre-authorized for the Low Income Home Energy Program (LIHEAP).** Selected households may be pre-authorized for winter heating or summer cooling when the household continues to meet pre-authorization requirements per OAC 340:20-1-19 and 340:20-1-20. Households are mailed a pre-authorization notice prior to the application period. The notice advises the household:

(A) of the utility supplier and account number the Oklahoma Department of Human Services (OKDHS) plans to pay based on the prior year's certification; and

(B) OKDHS will not pay a different utility supplier based on this pre-authorization.

(~~4~~7) **Computer-generated notices.** Computer-generated notices are mailed to the applicant or recipient showing ~~the action~~ actions taken.

(A) LIHEAP-37-A, Notice of Eligibility/Authorization, is mailed to the applicant.

(B) LIHEAP-37-C, Notice of Eligibility, is mailed to the recipient. This notice is mailed for ~~each~~ authorization ~~for a~~ of each roomer or renter when fuel is included as a part of the shelter payment, and for households whose fuel source is wood, coal, kerosene, or oil.

(C) LIHEAP-37-D, Notice of Payment, is mailed to the recipient as notification that payment has been made to the energy supplier on his or her behalf.

(D) LIHEAP-37-E, Notice of Denial, is mailed to the applicant when an application has been denied.

(E) LIHEAP-37-F, Notice of Closure, is mailed to the recipient when the worker closes an authorization.

(F) PSNEN37K, Utility Account Verification and Pre-Approval Notice, is mailed to clients who were pre-authorized for ~~Low Income Home Energy Assistance Program (~~LIHEAP~~)~~ winter heating ~~assistance benefits~~ or summer cooling. ~~The notice advises the recipient that his or her heating assistance eligibility has been predetermined.~~

(G) LIHEAP-37-M, Energy Crisis Assistance Program Notice of Payment, is mailed to the recipient as notification that payment ~~has been~~ was made to the supplier on his or her behalf.

(~~5~~8) **Worker-generated notices.** The worker mails or issues Form 08LH003E, Notice of Eligibility for Energy ~~Crisis~~ Assistance, to the energy provider or to the recipient for delivery to the energy provider unless the provider is specifically exempted by the Family Support Services Division. The notice is issued by the worker whenever the household meets eligibility requirements for crisis assistance.

340:20-1-17. Energy crisis assistance

(a) **Energy crisis assistance.** Energy crisis situations are handled year round on a case-by-case basis for households with a 72-hour cut-off notice and a verified life-threatening medical situation. Clients in a crisis situation must make application by contacting the local human services center (HSC). Family Support Services Division (FSSD) Low Income Home Energy Assistance (LIHEAP) Section staff approves applications for life threatening situations outside the normal application period for Energy Crisis Assistance Program (ECAP) and when the heating or cooling program cannot be used to pay the bill.

(1) If a household is approved for assistance to resolve the crisis situation, the application is processed within 48 hours from the time the HSC receives the application.

(2) When the crisis situation is verified by a designated authority as life-threatening and the household qualifies for assistance, the application must be processed so that assistance is provided to resolve the crisis situation within 18 hours following receipt of the application. Authority for designating a crisis situation as life-threatening is limited to a:

(A) physician;

(B) public health official;

(C) licensed practitioner of the healing arts; or

(D) HSC county director.

(b) **Energy Crisis Assistance Program ~~(ECAP)~~.** Based upon previous years' program experience, reasonable funds are reserved until March 15 of each year for ECAP. All ECAP applications must be made on Form 08LH002E, Low Income Home Energy Assistance Program (LIHEAP) - Walk-In Application.

(1) **Eligibility criteria.**

(A) Households with an energy crisis must not exceed the income and liquid resource standards on Oklahoma Department of Human Services (OKDHS) Appendix C-7, Low Income Home Energy Assistance Program Income and Resource Level by Household Size. Income and resource criteria for ECAP are the same as for heating and cooling assistance ~~found in~~ per OAC 340:20-1-11.

(B) ~~The household must have had~~ Household service was discontinued or terminated by the seasonal primary energy supplier, or received:

(i) notice of a scheduled cut-off within 72 hours;

(ii) notice of a refusal to provide additional energy needs by the supplier when supply of fuel will be depleted within 72 hours or less; or

(iii) information regarding fee for a new connection.

(C) ~~For a household to be eligible for ECAP, some precipitating factor must exist which caused the household's inability to pay their energy bill.~~ The worker must ascertain why the energy bill has not been paid. There must be a precipitating factor that caused the household to choose between paying the energy bill and another vital household need. ~~Factors~~ Acceptable factors preventing payment of the energy bill include, but are not limited to, situations causing the household to make a choice between paying the energy bill and:

(i) purchasing sufficient food for the household;

(ii) paying for emergency situations such as medical expenses or disaster recovery; or

(iii) providing clothing for children in the household.

(D) The worker must verify that the energy crisis need cannot be met by available income and liquid resources, even if income and liquid resources are equal to or below the standard.

(E) If the energy supplier refuses to establish or restore service for the amount of the ECAP payment, combined with whatever other resource is available or can be developed, the ECAP payment cannot be authorized.

(F) In instances where the maximum amount of ECAP and other available emergency programs do not meet the crisis, the case must be documented as having a feasible plan for maintaining or restoring service before an ECAP payment can be authorized.

(2) **Administrative procedures.**

(A) The authorized benefit for ECAP is limited to the amount necessary to connect, restore, or maintain energy service to the household up to the established maximum for the program year.

(B) OKDHS makes payments for crisis assistance directly to energy suppliers with rare exceptions.

(C) The authorized benefit cannot include the cost of propane or butane tank delivery.

(D) Payment may only be authorized for the seasonal primary source of energy, although it is possible for the primary energy source to change in some situations. If an interim period of ECAP assistance is implemented, the client may choose the primary energy source.

[OAR Docket #11-551; filed 4-22-11]

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

[OAR Docket #11-563]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Scope and Applicability
340:25-1-1.1 [AMENDED]
340:25-1-5.1 [AMENDED]
Subchapter 5. Operational Policies
Part 9. Disclosure of Information
340-25-5-67 through 340:25-5-67.1 [AMENDED]
Part 15. Case Initiation, Case Management, and Case Closure
340:25-5-114 [AMENDED]
340:25-5-117 [AMENDED]
340:25-5-123 [AMENDED]
340:25-5-124.2 [AMENDED]
Part 17. Past Support
340:25-5-140.1 [AMENDED]
Part 20. Medical Support
340:25-5-168 [AMENDED]
340:25-5-169 [AMENDED]
Part 21. Establishment
340:25-5-178 [AMENDED]
340:25-5-179.1 [AMENDED]
Part 22. Review and Modification
340:25-5-198.1 [AMENDED]
340:25-5-198.2 [AMENDED]
Part 23. Enforcement
340:25-5-203.1 [AMENDED]
Part 25. Federal Offset Programs
340:25-5-215 [AMENDED]
Part 27. State Tax Refund Offset Program
340:25-5-235 [AMENDED]
Part 33. Interstate and International Cases
340:25-5-270 [AMENDED]
Part 37. Recovery.
340:25-5-312 [AMENDED]
Part 39. Accounting and Distribution
340:25-5-350.1 [AMENDED]
340:25-5-351 [AMENDED]
(Reference APA WFs 10-05, 10-10, and 10-21)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 6402(c) of Title 26 of the United States Code; Section 285.3 of Title 31 of the Code of Federal Regulations; Section 653, 654, 654a, 654b, 657, and 664 of Title 42 of the United States Code; Section 302.31, 302.32, 302.33, 302.38, 302.60, and 303.6, 303.72, 307.11, 307.13, Part 310 of Title 45 of the Code of Federal Regulations; Section 114 of Title 43 of the Oklahoma Statutes; Section 724.1 of Title 3A of the Oklahoma Statutes; Sections 171, 185, 237A through 237.2, 237.7, 238, and 238.1 of Title 56 of the Oklahoma Statutes; Section 237 of Title 56 of the Oklahoma Statutes; Sections 205.2 and 205.3 of Title 68 of the Oklahoma Statutes; and Oklahoma Administrative Code 340:25-5-305; Section 1738B of Title 28 U.S.C.; and Title 68 of the Oklahoma Statutes (House Bill 3166).
DATES:
Comment period:
January 18, 2011 through February 17, 2011
Public hearing:
None requested
Adoption:
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Submitted to Governor:
February 23, 2011
Submitted to House:
February 23, 2011
Submitted to Senate:
February 23, 2011
Gubernatorial approval:
March 29, 2011
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 20, 2011.
Final adoption:
April 20, 2011
Effective:
July 1, 2011
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 5. Operational Policies
Part 37. Recovery
340:25-5-312 [AMENDED]
(Reference APA WF10-05)
Gubernatorial approval:
April 28, 2010
Register publication:
27 Ok Reg 1685
Docket number:
10-881
Superseded rules:
Subchapter 5. Operational Policies
Part 39. Accounting and Distribution
340:25-5-351 [AMENDED]
(Reference APA WF 10-10)
Gubernatorial approval:
August 13, 2010
Register publication:
28 Ok Reg 49
Docket number:
10-1183
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapters 1 and 5 of Chapter 25 amend the rules to: (1) supersede emergency rules submitted in February and May 2010 that reduce the fiscal impact on families when Oklahoma Child Support Services (OCSS) is recovering an overpayment from current child support collections and retaining interest collections assigned to the State; (2) implement policy changes for House Bill 3166; (3) implement policy changes recommended during the OCSS annual policy review process; and (4) make non-substantive housekeeping changes to improve the clarity of rules.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 1. SCOPE AND APPLICABILITY

340:25-1-1.1. Definitions

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

"Address of record" means an address for a party or a custodial person in the Central Case Registry of Oklahoma Child Support Services (OCSS) that is used for service of process in support, custody, and visitation actions. An address of record may be different from the party's or custodial person's physical address.

"Alleged father" means *a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined*. [10 O.S. § 7700-102]

"Alternative health coverage" means health care services other than health insurance, including, but not limited to, Indian Health Services (IHS) or Defense Eligibility Enrollment Reporting System (DEERS), which is available to either parent under which medical services could be provided to the dependent child(ren).

"Annual notice" means the yearly notice provided for in Section 237A of Title 56 of the Oklahoma Statutes to notify the noncustodial parent and custodial person of the amount due, actions that may be taken to enforce the child support obligation, actions required of the noncustodial parent and custodial person, and other related information and instructions.

"Arrears," "arrearage," or **"past-due support"** means the total amount of unpaid support obligations that has accrued under a support order. See also the definition for "delinquency" in this Section.

"Assignment" means any transfer of rights to support to the State of Oklahoma under Sections 608 and 671 of Title 42 of the United States Code or any transfer of rights to medical support and to payment of medical care from any third party under Section 433.146 of Title 42 of the Code of Federal Regulations.

"Authorized representative" means a person designated by a custodial person, noncustodial parent, or biological parent according to OAC 340:25-1-3.1.

"Biological parent" means the natural parent of a child.

"Case" means the relationship of a particular group of people bound by legal rights and duties for the support of a child(ren) who is receiving or has received child support services and all of the records and actions associated with the group.

"Cash medical support" ~~*means*~~ means *an amount ordered to be paid toward the cost of health coverage provided by a public entity or by a person other than the parents through employment or otherwise*.

"Central Case Registry" means Oklahoma's repository for Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code (IV-D) cases and child support orders established or modified in Oklahoma after October 1, 1998. It includes, but is not limited to, information required to be transmitted to the Federal Case Registry under Section 654a of Title 42 of the United States Code. OCSS maintains the Central Case Registry under Section 112A of Title 43 of the Oklahoma Statutes.

"Centralized Support Registry" means a repository maintained by OCSS to receive, allocate, and distribute support payments, including child support, spousal support when paid in conjunction with child support, and related support payments under Section 413 of Title 43 of the Oklahoma Statutes. It serves as Oklahoma's State Disbursement Unit under Section 654b of Title 42 of the United States Code. The Centralized Support Registry processes payments:

(A) *in all cases in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes* until all monies owed for child support are no longer owed;

(B) *in all other cases in which support is being paid by income withholding*; and

(C) when a court orders payments to be made through the Centralized Support Registry. [43 O.S. § 413]

"Child support order" means an obligation addressing monetary support, cash medical support, medical support for the child(ren), and support arrearage and arrearage payments, if any.

"CSED" means the Child Support Enforcement Division of the Oklahoma Department of Human Services and is also known as Oklahoma Child Support Services (OCSS). OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. OCSS includes all of these offices and their employees and agents.

"Current child support" means the base child support obligation and the proportional share of health insurance costs, fixed medical costs, transportation expenses, and annualized child care costs. Current child support does not include cash medical support.

"Custodial person" or **"custodian"** means the person who has primary physical custody of the child(ren).

"Delinquency" means *any payment under an order for support which becomes due and remains unpaid.* [12 O.S. §1170 and 56 O.S. § 237.7]

"District office" means a child support services office operated by OKDHS or through contract or agreement with OKDHS to serve a specific area of the state.

"Family violence" means domestic abuse or child abuse, including physical or emotional harm.

"Fixed medical" means fixed periodic payments for ongoing medical costs not paid or reimbursed by insurance, or included in a cash medical support order.

"Full-service case" means a child support case for which OCSS provides all appropriate IV-D services as described in OAC 340:25-1-1.2.

"Health insurance" means insurance coverage that provides routine and major medical expenses, including but not limited to: preventive care, office visits, hospitalization, and medication coverage, that may be provided through a fee for service, health maintenance organization, or preferred provider organization, or other private or public organization, other than SoonerCare (Medicaid).

"High-volume administrative enforcement cases in interstate actions" means, on request of another state, the identification by a state, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the state through levy or other appropriate processes. [42 U.S.C. § 666]

"Income assignment" means an assignment, by operation of law or by court or administrative order, of a portion of the monies, income, or periodic earnings due and owing by the

noncustodial parent to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both. The terms "income assignment" and "income withholding" may be used interchangeably. [12 O.S. § 1170 and 56 O.S. § 237.7]

"Interstate case" means a case in which at least one party resides in another state or country, or a support order was entered in another state or country.

"Intrastate case" means a case existing or occurring within the boundaries of a single state.

"IV-A" means Title IV, Part A, of the Social Security Act, codified in Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering the federal-state Temporary Assistance for Needy Families (TANF) Program.

"IV-B" means Title IV, Part B, of the Social Security Act, codified in Part B of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering child welfare services.

"IV-D" means Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code, generally relating to child support.

"IV-D case" means a child support case receiving IV-D services.

"IV-D programs and services" means programs and services under Title IV, Part D, of the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"IV-E" means Title IV, Part E, of the Social Security Act, codified in Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code, covering foster care.

"IV-E foster care" means federal and state funded placement of a child(ren) removed from a home whose family members meet the eligibility criteria for federal participation for IV-E foster care.

"Medicaid" ~~or **"Title XIX"**~~ means medical assistance provided under a state plan approved under Title XIX of the Social Security Act, codified in Subchapter XIX of Chapter 7 of Title 42 of the United States Code including SoonerCare, State Children's Health Insurance Program (S-CHIP), and Insure Oklahoma. In Oklahoma, the Oklahoma Health Care Authority (OHCA) provides Medicaid services for eligible adults and children.

"Medical enforcement only case" or **"MEO case"** means a child support case for which OCSS provides only IV-D services related to securing and enforcing medical support to non-TANF SoonerCare (Medicaid) recipients.

"Medical support" means health insurance, alternative health coverage, cash medical support, or a combination of these for the benefit of a minor child(ren).

"Member of military service" or **"servicemember"** means any member of the uniformed service on active duty, including the Army, Navy, Air Force, Marine Corps, and Coast Guard. Also included are members of the National Guard called to active service, certain members of the Public Health Service, and the National Oceanic and Atmospheric Administration, members of the Reserves when ordered to report for active military duty, and United States citizens serving with the military of other countries if their service is similar to military service. [50A U.S.C. §§ 511, 514, and 516] A servicemember may be a noncustodial parent or a custodial person.

"Non-cash support" means *support provided to a family in the nature of goods or services, rather than in cash, but which has a certain and specific dollar value.*

"Noncustodial parent" means a parent who does not have primary physical custody of the child(ren).

"Non-IV-D case" means a private child support case not receiving IV-D services.

"Non-IV-E foster care" means state funded placement of a child(ren) removed from a home where the child(ren) does not meet federal IV-E participation requirements.

"Non-TANF SoonerCare (Medicaid)" means a case in which a parent or custodial person receives Title XIX Medicaid services for the minor child(ren).

"Notice of Income Assignment" means the tool used to ~~effect~~ affect the income withholding process. This document is used to notify employers and other withholders to deduct child support payments from noncustodial parents' income and to send the payments to Oklahoma's Centralized Support Registry for distribution. The terms "income withholding" and "income assignment" may be used interchangeably.

"OAH" means the OKDHS Legal Division Office of Administrative Hearings: Child Support, which ~~conducts~~ employs and assigns administrative law judges to conduct child support administrative hearings.

"Obligee" or **"person entitled"** means:

(A) *a person to whom a support debt or support obligation is owed*;

(B) *the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services*; *or*

(C) *a person designated in a support order or as otherwise specified by the court.* [56 O.S. § 237.7]

"Obligor" means the person who is required to make payments under an order for support. [12 O.S. § 1170 and 56 O.S. § 237.7]

"OCSS" means Oklahoma Child Support Services. OCSS includes a central state office, district offices, and other offices that may be administered through contract or cooperative agreements with district attorneys, Community Action Program (CAP) agencies, and others. OCSS includes all of these offices and their employees and agents. OCSS is formerly known as the Child Support Enforcement Division of the Oklahoma Department of Human Services.

"Offset" means an amount of money intercepted from a noncustodial parent's state or federal tax refund, or from an administrative payment such as federal retirement benefits, to satisfy a child support debt.

"OKDHS" means the Oklahoma Department of Human Services. OKDHS is the state agency designated to administer the child support program for the State of Oklahoma.

"Oklahoma Health Care Authority (OHCA)" means the Oklahoma agency that administers the Medicaid and SoonerCare programs for adults and children who meet eligibility requirements. OHCA operates under the authority of Title XIX

of the Social Security Act and Sections 5003, et seq. of Title 63 of the Oklahoma Statutes.

"Overpayment" means a payment to a custodial person, noncustodial parent, or other entity by OCSS to which the entity or person is not entitled.

"Participant in a case" means a child, parent or alleged father, or custodial person associated with a child support services case.

"Past support" means past-due support or support for a prior period. ~~See~~ Refer to the definition for "arrears" in this Section.

"Payment plan" includes, but is not limited to, a plan approved by the court or the support enforcement entity that provides sufficient security to ensure compliance with a support order or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of past-due support and, if applicable, current and future support. [43 O.S. § 139.1 and 56 O.S. § 237.7] A payment plan is intended to incrementally reduce arrears.

"Payor" means *any person or entity paying monies, income, or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.* [12 O.S. § 1170 and 56 O.S. § 237.7]

"Presumed father" means *a man who, by operation of law* under Section 7700-204 of Title 10 of the Oklahoma Statutes, *is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding*. [10 O.S. § 7700-102]

"Social Security Act" means Public Law 74-271, approved August 14, 1935, as currently in effect.

"State's attorney" means a lawyer employed in the child support program to represent the state in rendering services pursuant to the Social Security Act, codified in Part D of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

"Support" means all payments or other obligations due and owing to the custodial person or person entitled by the noncustodial parent under a support order, and may include, but is not limited to, child support, medical insurance or other health benefit plan premiums or payments, child care obligations, support alimony payments, and other obligations as specified in Section 118A through 119 of Title 43 of the Oklahoma Statutes. [56 O.S. § 237.7]

"Support for a prior period" means the amount of child support ordered under the child support guidelines in Sections 118 through 119 of Title 43 of the Oklahoma Statutes in paternity orders and in TANF notice of support debt orders for past months when no child support order was in effect.

"Support order" means a *judgment, decree, order or directive, whether temporary, final, or subject to modification, issued by a tribunal for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.* [43 O.S. § 601-101]

"TANF" means Temporary Assistance for Needy Families. TANF replaces Aid to Families with Dependent Children (AFDC).

"Tribunal" means a court or administrative agency authorized to establish, enforce, or modify support orders, or determine parentage. [43 O.S. § 601-101]

"UIFSA" means the Uniform Interstate Family Support Act. In Oklahoma, UIFSA is codified at Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes.

"Unreimbursed public assistance" means money paid as cash assistance from IV-A and IV-E programs that has not ~~yet~~ been recovered.

"UPA" means the Uniform Parentage Act. In Oklahoma, the UPA is codified in Sections 7700-101 through 7700-902 of Title 10 of the Oklahoma Statutes.

340:25-1-5.1. Administrative complaint procedure

(a) **Purpose and scope.**

(1) The administrative complaint procedure is for Oklahoma Department of Human Services (OKDHS), Oklahoma Child Support Services (OCSS) IV-D customers ~~of Oklahoma Child Support Services (OCSS) of the Oklahoma Department of Human Services (OKDHS)~~. OCSS:

(A) represents the state's economic interest in children;

(B) does not represent ~~either parent, a custodian, or the child~~ parents, custodial persons, or children. Parents and ~~custodians~~ custodial persons may apply for OCSS services, and OCSS enforces the duties of parents to support their children; and

(C) considers parents and ~~custodians~~ custodial persons as customers, ~~whom OCSS~~ and treats them with dignity and respect.

(2) The administrative complaint procedure is established under Section 303.35 of Title 45 of the Code of Federal Regulations and is available to Oklahoma customers ~~in Oklahoma~~ and those from other states. The purpose is to provide:

(A) OCSS customers an opportunity to raise concerns about services or treatment ~~they receive~~ received, request an administrative review, and take appropriate action when there is evidence that an error occurred, or an action should have been taken on their case;

(B) customers a fast and effective procedure for reviewing issues that have no other review process. The intent of the complaint procedure is to provide customers a process ~~for having~~ to have their cases reviewed and not to require formal administrative hearing processes or adjudication of complaints; and

(C) an informal rather than a formal hearing process. It does not replace or extend other child support enforcement processes, such as court processes, that are established by federal or state statutes, rules, or regulations. The complaint process is intended to remedy errors, not to allow individuals to dictate action in a case.

(b) **Procedure.**

(1) **Step 1.** OCSS encourages any customer ~~who has~~ with a complaint about an OCSS district office or state

office center to address the complaint orally or by letter, fax, or e-mail to the OCSS ~~state or district~~ district or state office for resolution. Interstate customers express their concerns to the IV-D agency in the state ~~in which~~ where they applied or were referred for services.

(2) **Step 2.**

(A) If the customer receives no response or is dissatisfied with the response ~~or receives no response~~ from the OCSS ~~state or district~~ district or state office, the customer may contact Oklahoma Child Support Services, Attention: Center for Customer Services (CCS), P.O. Box 53552, Oklahoma City, Oklahoma 73152, or ~~by~~ fax to 405-522-3685, or ~~by~~ e-mail ~~to =csed~~ocss.customeroutreach@okdhs.org, or ~~by~~ telephone ~~to~~ 405-522-5871. The customer may describe the complaint on Form ~~03EN011E~~ 03EN012E, Child Support Comments, (available upon request ~~over~~ by telephone, at a district office, or on the OKDHS Internet~~), or Form 03EN012E (available on the Internet), which~~ that elicits the information listed in (i) through (ix), or ~~in a~~ by letter, fax, or e-mail, including:

(i) first and last name;

(ii) standing of the person submitting the complaint, for example, the noncustodial parent, custodial person, biological parent, or an attorney of record or authorized representative on behalf of the noncustodial parent, custodial person, or biological parent;

(iii) the first and last names, mailing address, and telephone number of the attorney of record or authorized representative, if any;

(iv) Social Security number;

(v) child support case number;

(vi) mailing address;

(vii) telephone number;

(viii) an explanation, including names of people and locations, dates, and times of incidents; and

(ix) a description of the desired action to resolve the complaint.

(B) The CCS refers complaints about cases to the OCSS district office or state office center for administrative review. The district office or state office center conducts the administrative review and notifies the customer of the ~~results of the review~~ review's results and any actions taken within five days after CCS sends the written complaint ~~is received in the CCS~~. The method of notification is requested by the customer. If contact in the manner requested by the customer is unsuccessful, written notification is made.

(3) **Step 3.** If the customer is dissatisfied with the response, the customer may ask for further review by submitting a request to the CCS. This request for review may be made by telephone, letter, fax, or e-mail.

(A) The division director or a designee reviews the complaint, the administrative review of the complaint, and any action taken.

(B) Within five days after CCS receives the written request for further review ~~is received in CCS~~, OCSS notifies the customer and the district office or state office center of the results and any actions taken. The method of notification is requested by the customer. If contact in the manner requested by the customer is unsuccessful, written notification is made. The result of this review is the final decision of OCSS.

SUBCHAPTER 5. OPERATIONAL POLICIES

PART 9. DISCLOSURE OF INFORMATION

340:25-5-67. Information disclosure

(a) **Confidentiality.** *All applications, information and records concerning any applicant or recipient obtained pursuant to law or as authorized by law by the Department of Human Services or any other public or private entity shall be confidential.* [56 O.S. § 183]

(1) All files and records concerning the assistance or services provided under the child support program or concerning an alleged father of a child born out of wedlock are confidential except as otherwise authorized by law. [56 O.S. § 237]

(2) Any information Oklahoma Child Support Services (OCSS) obtains from federal or state agencies is subject to limitations on disclosure imposed by laws governing the information received from those agencies. OCSS does not disclose or use the contents of any child support records, files, papers, or communications for purposes other than those directly connected to the administration of the child support program.

(3) Nothing in this Section authorizes disclosure of the location of a case participant with a family violence indicator ~~set under~~ per OAC 340:25-5-67.1.

(b) **Authorized disclosure.** Information, when requested per OAC 340:25-5-68, may be shared with:

(1) persons duly authorized by the United States in connection with the performance of their official duties, [56 O.S. § 183] including, but not limited to:

(A) exchange of information to the extent necessary to carry out the state agency IV-D program responsibilities directly and through statewide automated data processing and information retrieval networks within the Oklahoma Department of Human Services (OKDHS), with authorized representatives of OKDHS divisions and other state agencies, ~~of the State of Oklahoma and~~ other states and countries, and ~~with~~ federal and tribal agencies ~~and other countries~~;

(B) exchange of information directly and through statewide automated data processing and information retrieval networks with representatives of OKDHS and other state agencies administering programs under Titles IV-A, IV-E, and XIX of Subchapter IV of Chapter 7 of Title 42 of the United States Code, to the

extent necessary to carry out state agency Titles IV-A, IV-E, and XIX responsibilities;

(C) release of information received from the Federal Parent Locator Service, through the State Parent Locator Service, to an authorized person under Section 663 of Title 42 of the United States Code representing:

(i) agencies administering or enforcing programs under Titles IV-B and IV-E of Subchapter IV of Chapter 7 of Title 42 of the United States Code to the extent necessary to carry out state agency Titles IV-B and IV-E responsibilities; and

(ii) the United States or the State of Oklahoma for purposes of enforcing or prosecuting any federal or state law with respect to the unlawful taking or restraint of a child, or any court or agent of such court having jurisdiction to make or enforce a child custody or visitation determination; and

(D) release of Social Security numbers for child support purposes, such as locating the parents, submitting cases for federal administrative and income tax refund offset, state income tax refund offset, financial institution data match, enrolling children as beneficiaries of health insurance coverage, and processing interstate child support services;

(2) parties to a child support case, their attorneys, interpreters, and authorized representatives, who may only access:

(A) pay records and payment calculations;

(B) documents, exhibits, worksheets, and supporting documents filed with the court and any administrative documents that are part of the order, such as guideline worksheets and financial affidavits;

(C) specific case activity in the course of providing child support enforcement services, such as the number and dates of locate attempts, and establishment and enforcement of child support or medical support orders;

(D) information required by Titles 43 or 56 of the Oklahoma Statutes ~~to be~~ disclosed for the purpose of reviewing, establishing, or modifying a support order; and

(E) information necessary to enroll children as beneficiaries of court-ordered health insurance coverage;

(F) address of record for service of process under Section 112A of Title 43 of the Oklahoma Statutes. The address of record must only be released ~~in accordance with~~ per OAC 340:25-5-340.1;

(3) employers and plan administrators, who may only access information necessary to enroll children as beneficiaries of court ordered health insurance coverage; and

(4) persons as directed by court order or by a subpoena ~~that has been~~ approved by a child support attorney.

340:25-5-67.1. Family violence

(a) A family violence indicator is a designation placed on a participant in a IV-D or non-IV-D case by the Oklahoma Child Support Services program (OCSS) of the Oklahoma Department of Human Services (OKDHS) ~~Child Support Enforcement Division (CSED) that indicates~~ indicating the participant is associated with child abuse or domestic violence. The family violence indicator is used to restrict disclosure of the location of a participant who is reported to ~~CSED~~ OCSS as being at risk of family violence.

(b) ~~CSED~~ OCSS considers as reasonable evidence of family violence, and enters a family violence indicator on appropriate persons, when:

(1) a parent or custodian states that he or she or the child(ren) is at risk of emotional or physical harm from another person in the same child support case; or

(2) OKDHS has knowledge of a court-ordered protective order or other information that family violence exists.

(c) ~~CSED~~ OCSS makes available to custodial persons and noncustodial parents Form 03EN008E, Family Violence - Address of Record Statement, to collect address of record information and explain how the information is used. The custodial person or noncustodial parent may use Form 03EN008E to:

(1) request that his or her home address, or location information, not be released to another parent or party in a child support case because release could result in family violence to the requesting person or ~~the requesting person's~~ his or her children; or

(2) designate an address of record ~~under~~ per OAC 340:25-5-340. ~~CSED~~ OCSS may release the address of record ~~under~~ per OAC 340:25-5-340.1.

(d) The presence or absence of a family violence indicator on a case does not guarantee ~~the safety of anyone~~ anyone's safety. ~~CSED~~ OCSS is not liable for harm arising from the use or non-use of a family violence indicator.

(e) ~~CSED~~ OCSS may remove a family violence indicator from a case participant when ~~CSED~~ OCSS receives:

(1) a written request from the participant;

(2) information that the family violence indicator was entered in error; or

(3) a court order to remove the family violence indicator~~; or~~

~~(4) information that OKDHS has denied a claim from a case participant under OAC 340:10-10-6 for a good cause exception for refusing to cooperate in obtaining child support~~.

(f) Upon order of a court having the authority to make or enforce child custody or visitation determinations ~~under~~ per Section 663 of Title 42 of the United States Code, ~~CSED~~ OCSS may:

(1) request the federal Office of Child Support Enforcement to override a family violence indicator in a single instance; and

(2) authorize release of the person's home address or location to the court.

(g) Interstate cases follow OAC 340:25-5-270.

PART 15. CASE INITIATION, CASE MANAGEMENT, AND CASE CLOSURE

340:25-5-114. Procedures for determining and processing noncooperation on TANF and non-TANF SoonerCare (Medicaid) cases

(a) **Cooperation of custodial persons.** The custodial person must cooperate with the Oklahoma Child Support ~~Enforcement~~ Services (OCSS) ~~Division (CSED)~~ program in establishing paternity or in establishing, modifying, or enforcing a support order ~~under~~ per Section 654 of Title 42 of the United States Code and Section 264.30 of Title 45 of the Code of Federal Regulations. A custodial person receiving:

(1) Temporary Assistance for Needy Families (TANF) must assign ~~any~~ rights to support to the Oklahoma Department of Human Services (OKDHS) ~~under~~ per Section 608 of Title 42 of the United States Code; and

(2) non-TANF SoonerCare (Medicaid) benefits for minor child(ren) must assign medical support rights to ~~OKDHS~~ the Oklahoma Health Care Authority (OHCA) ~~any rights to medical support under~~ per Section 433.146 of Title 42 of the Code of Federal Regulations.

(b) **Noncooperation of custodial persons receiving TANF.** When a custodial person fails to cooperate, ~~CSED~~ OCSS reviews the case to determine noncooperation. If ~~CSED~~ OCSS determines noncooperation, ~~CSED~~ OCSS notifies OKDHS Family Support Services (FSS) staff in the ~~county office~~ appropriate human services center (HSC). OKDHS FSS staff in the ~~local~~ contacted ~~human services center (~~HSC~~)~~ update the computer document for noncooperation with ~~CSED~~ OCSS and a computer-generated notice ~~under~~ per OAC 340:65-5-1 is sent ~~to advise~~ advising the recipient of any decrease in benefits due to noncooperation.

(1) For ~~CSED~~ OCSS to make a noncooperation determination on a TANF case, the cooperation must be essential for the next step in providing child support ~~enforcement~~ services, per OAC 340:10-10-5 and 340:10-10-7.

(2) Noncooperation is indicated when the custodial person:

(A) fails to appear at a district office to provide information or evidence relevant to the case;

(B) refuses to complete and sign documents necessary to take legal action against the noncustodial parent(s) when requested to do so by the district office;

(C) fails to comply with an order to submit oneself and the child(ren) to genetic testing to determine paternity;

(D) fails to appear as a witness at an administrative or district court hearing or other proceeding;

(E) fails to provide information, or attest to lack of information, under penalty of perjury;

(F) fails to forward to ~~CSED~~ OCSS all child support payments received from the noncustodial parent(s)~~,~~ or those received from entities other than the Centralized Support Registry;

(G) refuses to make a repayment agreement or to comply with a repayment plan when child support receipts are retained; or

(H) pursues private legal action affecting paternity, child support, medical support, or child care, or authorizes payments made other than through the Centralized Support Registry without giving ~~CSED~~ OCSS notice and fails to keep ~~CSED~~ OCSS informed of the status of the case.

(3) OKDHS FSS staff in the local HSC determine whether good cause for noncooperation with ~~CSED~~ OCSS exists ~~based on~~ per OAC 340:10-10-6.

(c) **Noncooperation of custodial persons on non-TANF SoonerCare (Medicaid) cases.** When the OCSS district office receives an OHCA referral on a non-TANF or existing case update with a pending good cause indicator (PGC), OCSS district office makes the determination whether good cause exists for noncooperation per OAC 317:35-5-7.

340:25-5-117. Initiation of IV-D cases

(a) **IV-A, IV-E foster care, non-TANF SoonerCare (Medicaid), and child care subsidy referrals.**

(1) Oklahoma Child Support Services (OCSS) automatically initiates child support cases without additional application for certified IV-A, IV-E foster care, non-TANF (Temporary Assistance for Needy Families) SoonerCare (Medicaid), and child care subsidy referrals.

(2) Custodial persons who apply for non-TANF SoonerCare (Medicaid) on behalf of themselves and their child(ren) must assign medical support rights to the state ~~under~~ per Section 1396k of Title 42 of the United States Code.

(A) A referral from the Oklahoma Health Care Authority (OHCA) means receipt of data that includes verified information with no errors or duplications that is sufficient for OCSS to initiate a child support case.

(~~A~~B) These custodial persons must cooperate ~~in~~ establishing paternity and obtaining medical support unless an exception exists ~~under~~ per Sections 1396a(l)(1)(A), 1396k, or 1396r-6 of Title 42 of the United States Code.

(~~B~~C) OCSS must open a IV-D medical enforcement only case ~~as described in~~ per OAC 340:25-5-169. OCSS may open a full-service case to provide all appropriate IV-D services ~~as described in~~ per OAC 340:25-1-1.2 at the custodial person's request.

(3) When OCSS receives a referral from the Family Support Services (FSS) worker per OAC 340:40-7-9, OCSS must open a full-service case if any of the applicant's ~~child~~ children in the household ~~is~~ are certified for a child care subsidy ~~under OAC 340:40-7-9~~.

(4) When OCSS receives a non-TANF SoonerCare (Medicaid) referral from the ~~FSS worker~~ OHCA in which assigned court-ordered or cash medical support child support is owed, OCSS must open a full-service case ~~under~~ per OAC 340:25-5-169.

(5) Custodial persons who apply for non-TANF SoonerCare (Medicaid) on behalf of their child(ren) only are not required to cooperate in establishing paternity and obtaining medical support. Therefore, except when (a)(3) of

this Section applies, OCSS does not provide child support services unless the custodial person has made a request for a full-service case or the case is for medical enforcement only.

(b) **Termination of IV-A, IV-E foster care, and non-TANF SoonerCare (Medicaid) benefits.** When a family is no longer eligible for assistance under IV-A, IV-E foster care, or SoonerCare (Medicaid) programs, all appropriate IV-D services continue without application ~~under~~ per Section 302.33 of Title 45 of the Code of Federal Regulations. Non-TANF SoonerCare (Medicaid) cases previously limited to medical support continue as full-service cases. If a custodial person refuses continued IV-D services and subsequently requests services, the person must submit a completed and signed Form 03EN001E, Application for Child Support Services, even if OCSS has an active case because of unreimbursed assistance owed to the state.

(c) **Referrals from other jurisdictions.** OCSS accepts cases referred:

(1) by any state or tribal IV-D agency and from other countries when the noncustodial parent resides in Oklahoma. OCSS does not require an application for cases referred from another IV-D agency;

(2) by interstate referrals for judgment only collections if the case was opened in the initiating state during the minority of any child on the case; and

(3) when Oklahoma is an appropriate jurisdiction to establish, enforce, modify, or determine the controlling order ~~under~~ per the Uniform Interstate Family Support Act in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes, whether or not the noncustodial parent resides in Oklahoma.

(d) **Responses from noncustodial parents who sign an acknowledgment of paternity.** OCSS opens full-service cases for noncustodial parents who have filed Form 03PA209E, Acknowledgment of Paternity, with the Oklahoma State Department of Health, Division of Vital Records, and requested child support services by completing and signing Form 03EN001E in response to outreach letters sent to them ~~as described in OAC 340:25-5-110.1~~.

(e) **Other IV-D cases.** Except as provided in (a), (c), and (d) of this Section, an applicant must submit a completed and signed Form 03EN001E to receive all appropriate child support services or ~~to receive~~ locate only services.

340:25-5-123. Case closure system

(a) Except as provided in (b) and (c) of this Section, Oklahoma Child Support Services (OCSS) closes cases eligible for closure ~~under~~ per Section 303.11 of Title 45 of the Code of Federal Regulations (CFR).

(b) A child support case may not be closed when~~:~~ there is a pending paternity, establishment, or modification action filed with the court by OCSS and the non-applicant has been served, unless the pending action is withdrawn or dismissed at the discretion of the OCSS state's attorney

~~(1) court-ordered support is owed to the state; and~~

~~(2) current child support is being collected by income assignment~~.

(c) A child support case may be closed when any of the criteria in (1) through ~~(5)~~ (4) of this subsection applies~~.~~:

(1) Less than $500 in court-ordered support is owed to the state, unless there has been:

(A) a collection during the past six months; or

(B) a federal or state income tax refund intercept in the past 18 months.

(2) The custodial person is participating in the Oklahoma Department of Human Services (OKDHS) Child Care Subsidy Program, is not receiving Temporary Assistance for Needy Families (TANF) or non-TANF SoonerCare (Medicaid), requests closure, and (A) and (B) of this paragraph apply.

(A) There is a child support order.

(B) The custodial person is receiving the full amount of the current monthly child support obligation and has reported to the person's Family Support Services worker receipt of this child support income.

(3) The custodial person is participating in the OKDHS Child Care Subsidy Program, is receiving non-TANF SoonerCare (Medicaid) benefits for a child(ren) only, requests closure, and all the criteria in (2) of this subsection ~~applies~~ apply.

(4) The noncustodial parent is receiving Supplemental Security Income, has no income or assets to pay arrears, and the child support order is set at or modified to ~~$0.00~~ $0 per month due to the parent's disability and lack of income.

(d) A child support case may be closed when the custodial person ~~is receiving~~ receives non-TANF SoonerCare (Medicaid) child-only benefits ~~for a child(ren) only~~ when:

(1) the case is received from Oklahoma Health Care Authority as a referral, but OCSS learns the custodial person desires to decline child support services and no service of process is initiated on a legal action filed by OCSS to establish or enforce the child support order, including the medical support portion; or

(2) the custodial person:

(~~1~~A) cannot be located ~~under~~ per Section 303.11(b)10 of Title 45 of CFR; or

(~~2~~B) fails to cooperate and an action by the custodial person is essential for the next step in providing child support services ~~under~~ per Section 303.11(b)(11) of Title 45 of CFR.

(e) When OCSS closes a non-public assistance child support case, OCSS terminates the Order/Notice to Withhold Income for Child Support with the employer per OAC 340:25-5-201.1.

(f) ~~Under~~ Per Section 302.33 of Title 45 of the CFR when IV-A TANF, IV-E foster care, and non-TANF SoonerCare (Medicaid) services are discontinued, OCSS notifies the recipient that OCSS maintains a full-service child support case unless the custodial person ~~affirmatively~~ declines services in writing. If the custodial person declines services in writing, OCSS closes the case. If the custodial person fails to respond, OCSS maintains a full-service child support case.

340:25-5-124.2. Tribal case ~~assignments and transfer~~ referral of cases to an Oklahoma tribal child support office

(a) **Definitions.** The following words and terms, when used in this Section, ~~shall~~ have the following meanings:

(1) **"Native American"** means a person who is an enrolled member of a federally recognized Indian tribe.

(2) **"Tribal child support office program"** means a federally recognized comprehensive IV-D child support program in Oklahoma.

(b) **Scope.** The tribal child support programs:

(1) provide child support services to tribal members as outlined in their tribal codes; and

(2) do not provide child support services when the child(ren) is in a deprived or delinquent state juvenile court action.

(c) **Tribal case referrals ~~and transfers~~ from Oklahoma Child Support Services (OCSS) to tribal child support programs.**

(1) ~~Under the requirements of~~ Per OAC 340:25-5-124, Oklahoma's Interstate Central Registry and Oklahoma's Centralized Support Registry, also known as the State Disbursement Unit, assign to a district child support office incoming interstate referrals, ~~and~~ Form 03EN001E, Application for Child Support Services, and Form 03AD020E, Request for Paternity Testing and Services Notice of Applicant Responsibilities, with a:

(A) Native American noncustodial parent;

(B) tribal child support order; or

(C) tribal employer.

(2) OCSS retains cases with tribal members and tribal child support orders unless:

(A) the applicant of the OCSS case applies for child support services with a tribal child support program ~~and requests a transfer of the OCSS case to a tribal child support program~~, and the OCSS case meets the eligibility requirements as determined by the tribal child support program; ~~or~~

(B) the noncustodial parent is a tribal employee, and the employer refuses to honor the OCSS~~'~~ income withholding order~~,~~; or

(C) the child is in a deprived or delinquent juvenile court case in tribal court and not subject to a state court deprived or delinquent juvenile action.

(3) Upon confirmation from a tribal child support program that the OCSS case applicant has applied for tribal child support services and there is no pending litigation, the district office provides copies of relevant documents from the district office case file to that tribal child support program and retains the district office case file.

(4) OCSS maintains a case record when state assistance is being provided to the child or assistance has been provided in the past and there is assigned child support or cash medical support owed per OAC 340:25-5-117.

(d) **Tribal case referrals ~~Referrals and transfers~~ from tribal child support programs to OCSS.** OCSS accepts case referrals ~~and transfers~~ from a tribal child support program when:

(1) there is lack of jurisdiction to proceed in the tribal court system;

(2) a current customer with a tribal child support program applies for services with OCSS; or

(3) a noncustodial parent leaves tribal employment and the applicant on the former OCSS case does not apply for services with the tribal child support program.

(e) **Registration of tribal child support orders.** OCSS registers tribal child support orders in state courts ~~under~~ per The Full Faith and Credit for Child Support Orders Act (FFCCSOA) in Section 1738B of Title 28 of the United States Code and may establish and enforce a child support order in tribal or federal courts ~~that are~~ outside the tribal programs' service area.

PART 17. PAST SUPPORT

340:25-5-140.1. Interest

(a) **General.** ~~The~~ Oklahoma Child Support Services ~~Enforcement Division (CSED)~~ (OCSS) collects and enforces interest on delinquent Oklahoma court-ordered child support payments ~~under~~ per Section 114 of Title 43 of the Oklahoma Statutes.

(b) **Support for a prior period.** ~~CSED~~ OCSS collects interest on support for a prior period ~~established under~~ per OAC 340:25-5-179.1 from the date of the order.

(c) **Accrual date.** Interest accrues on any unpaid portion of the monthly current child support obligation on the first day of the month following:

(1) the due date specified in the court order; or

(2) the entry date of the child support order when a support order does not specify a due date.

(d) **Grace period and accrual.** ~~CSED~~ OCSS may allow a grace period ~~during which~~ when interest is not charged. Interest accrues from the date the arrears are in excess of one month's current support.

(e) **Interest on cash medical support.** OCSS does not calculate or collect interest on unpaid cash medical support.

(~~e~~f) **Servicemember relief.**

(1) Upon a servicemember's written request, an interest rate cap of six percent applies to child support arrearages of members of the military service incurred prior to the start of military service ~~under~~ per Section 527 of Title 50A of the United States Code.

(2) The servicemember must provide a written request for reduced interest and a copy of the military orders calling the servicemember to service and any orders further extending military service to ~~CSED~~ OCSS ~~not~~ no later than 180 days after the date of the servicemember's termination or release from military service ~~a written request for reduced interest and a copy of the military orders calling the servicemember to service and any orders further extending military service~~.

(3) Upon receipt of these documents, ~~CSED~~ OCSS applies the six percent interest rate to child support

arrearages existing as of the date ~~on which~~ when the servicemember is called to military service and throughout the active military service.

(4) ~~CSED~~ OCSS may initiate a court action to challenge the claim that the servicemember's military duty has materially affected his ability to pay an interest rate over six percent.

(~~f~~g) **Interest rate.**

(1) ~~CSED~~ OCSS calculates simple interest ~~under~~ per Section 114 of Title 43 of the Oklahoma Statutes.

(2) For orders established in other states, the law of the state entering the order determines the amount and rate of interest due until a determination of controlling order is made.

(3) For orders established in Oklahoma, Oklahoma law determines the amount and rate of interest due.

(4) When there are multiple child support orders and Oklahoma is determining the controlling order, ~~CSED~~ OCSS determines the rate of interest ~~to be~~ charged ~~as described in~~ per Section 601-604 of Title 43 of the Oklahoma Statutes.

(~~g~~h) **Order silent as to interest.** When an order that settles or determines a past-due child support ~~arrearage~~ amount is silent as to interest, the party with the right to collect has not waived the interest.

(~~h~~i) **Enforcement.** Accrued interest is considered child support. Interest is included in enforcement remedies.

(~~i~~j) **Incoming interstate cases.** In the absence of an Oklahoma order, ~~CSED~~ OCSS collects interest on incoming interstate cases when an initiating state calculates the interest owed and requests that ~~CSED~~ OCSS collect it.

(~~j~~k) **Outgoing interstate cases.** Before requesting a responding state to enforce a child support order(s) entered in a state other than the responding state, ~~CSED~~ OCSS calculates the arrears including the accrued interest claimed.

(~~k~~l) **Application of payments to interest.** ~~CSED~~ OCSS applies payments to interest ~~as described in~~ per OAC 340:25-5-351.

(~~l~~m) **Waiver of interest.** ~~CSED~~ OCSS acknowledges the rights of the custodial person and noncustodial parent to mutually agree to waive, with approval of the court, all or a portion of the interest due to the custodial person. ~~CSED~~ OCSS may negotiate the right to collect all or part of the interest owed to the State of Oklahoma. Settlements of interest must be memorialized in a court order and may include:

(1) a noncustodial parent's lump sum partial payment or a series of payments; or

(2) an agreement for the noncustodial parent to pay:

(A) a specified number of current child support payments in the future; or

(B) ~~in-kind payments~~ non-cash support.

(~~m~~n) **Reopening closed cases.** ~~CSED~~ OCSS does not reopen closed child support cases at the request of a customer for the purpose of collecting interest.

PART 20. MEDICAL SUPPORT

340:25-5-168. Establishment of medical support

(a) **Scope and applicability.** Oklahoma Child Support Services (OCSS) refers to federal and state law for establishment of a medical support order ~~pursuant to~~ per:

(1) Section 666 of Title 42 of the United States Code;

(2) Sections 302.33, 302.56, 303.7, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; and

(3) Section 6058A of Title 36, Sections 112, 118 through 118I, 118.2, and 119 of Title 43, and Section 237 of Title 56 of the Oklahoma Statutes.

(b) **Medical support provision of child support order.** A child support order established by OCSS must contain a medical support provision.

(c) **Calculating the cost of medical support.** To calculate the actual premium cost of health insurance, OCSS:

(1) deducts from the total insurance premium, the cost of coverage for the parent;

(2) deducts from the total insurance premium, the cost of coverage for any other adults in the household, when that cost information is available;

(3) divides the remainder by the number of dependent children covered; and

(4) multiplies the amount per child by the number of children in the child support case under consideration.

(d) **Standards for medical support provision.** When choosing a medical support provision, OCSS requests the court to apply the standards in (1) through (3) of this subsection.

(1) Health insurance must be reasonable in cost, meaning that the actual out-of-pocket premium cost paid does not exceed five percent of the gross income of the parent ~~who is~~ ordered to provide health insurance.

(2) Health insurance must be accessible, meaning the health care providers must be available to meet the child(ren)'s individual health care needs, and must be located no more than 60 miles one-way from the primary residence of the child(ren).

(3) Health insurance must provide coverage for both routine and major medical expenses, including but not limited to: preventive care, office visits, hospitalization, and medication coverage in compliance with Oklahoma Insurance Department per OAC 365:10-5-3(14) and 10-5-5(f). Limited Insurance Coverage per OAC 365:10-5-5(k) does not satisfy this requirement. Annual deductibles must be reasonable and relate to the medical circumstances of the child(ren).

(e) **Exceptions to standards for medical support provision.** When the parents agree or it is otherwise appropriate, OCSS requests the court make an exception to the standards for health coverage ~~based on~~ when:

(1) the reasonable cost of health insurance exceeds five percent of the gross income of the parent ordered to provide health insurance; or

(2) the closest insurance provider exceeds 60 miles one-way from the primary residence of the child(ren).

(f) **Hierarchy of medical support provisions.** The provision for medical support must be consistent with one of the priorities listed in (1) through (4) of this subsection.

(1) Health insurance is provided through a parent's employer or other available group health insurance plan.

(2) No coverage is available under paragraph (1) of this subsection, and a private insurance policy or group health insurance is available to the child(ren) through another source, such as a third party custodian or spouse of a parent, OCSS seeks:

(A) ~~seeks~~ an order for the parent to provide health insurance when insurance is provided through the spouse of a parent; or

(B) ~~seeks~~ an order for the third party custodian to provide health insurance when insurance is provided through a third party custodian and the third party custodian has requested an order to provide the coverage.

(3) No health coverage is available under paragraphs (1) or (2) of this subsection, and alternative health coverage including, but not limited to, Indian Health Services (IHS) and Defense Eligibility Enrollment Reporting System (DEERS) is available to the child(ren).

(4) If none of the provisions in paragraphs (1) through (3) of this subsection are available at reasonable cost or are not accessible, the custodial person is required to make application for the child(ren) for health coverage through a government medical assistance program, such as SoonerCare (Medicaid).

(g) **Health coverage preference.** When health coverage meeting standards in subsection (d) of this Section is available to both parents, OCSS requests the court give priority to the preference of the custodial person.

(h) **Exceptions to hierarchy.** OCSS requests a cash medical order instead of an order for health coverage by the noncustodial parent under paragraphs (1) or (2) of subsection (f) of this Section when:

(1) the court determines an order for health insurance is inappropriate due to family violence concerns; or

(2) the obligor is an applicant for a governmental medical assistance program, such as Insure Oklahoma, State Children's Health Insurance Program (S-CHIP), or SoonerCare (Medicaid).

(i) **Cash medical support.**

(1) When paragraph (4) of subsection (f) of this Section is chosen as the provision for medical support, OCSS requests the court order cash medical support to be paid by the noncustodial parent(s) until insurance is provided under paragraphs (1) through (3) of subsection (f) of this Section.

(2) OCSS refers to the Cash Medical Income Guidelines Table as found in the child support computation form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network site ~~under~~ per Section 120 of Title 43 of the Oklahoma Statutes to determine the cash medical support amount.

(3) OCSS computes a cash medical order by applying the Cash Medical Income Guidelines Table, using the combined gross income for the parents of the child in the case under consideration and the number of children in the instant case.

(A) When the combined gross income is at or below the income amount for the number of children in the case, OCSS requests the court order a cash medical order at ~~$0.00~~ $0 per month~~;~~.

(B) When the combined gross income exceeds the income amount for the number of children in the case, OCSS computes the requested cash medical order by:

(i) multiplying the amount of ~~$115.00~~ $115, representing the average monthly cost of health care for an uninsured child(ren), by the number of children in the case that are not covered by insurance; and

(ii) ~~pro-rating~~ prorating the result by the percentage of income for each parent~~;~~.

(C) The noncustodial parent's share of the cash medical amount is added to the child support obligation.

(D) When neither parent is the obligor or noncustodial parent due to equally shared physical custody and the application of the parenting time adjustment, OCSS requests the court set cash medical support as follows:

(i) if the child(ren) receives SoonerCare or other governmental medical assistance, the parent who is not the applicant for governmental medical assistance is ordered to pay the cash medical support;

(ii) if the child(ren) does not receive SoonerCare or other governmental medical assistance, the cash medical amount is calculated for each parent and the amounts are offset. The parent owing the larger amount is ordered to pay the net cash medical support.

(4) Unless the parties agree or the court orders a greater amount, the prorated cash medical support amount must not exceed five percent of the gross income of the parent who is ordered to pay cash medical support.

(5) OCSS seeks cash medical support only as part of a prospective order for child support. OCSS does not include a cash medical support amount in a judgment for support for a prior period ~~pursuant to~~ per OAC 340:25-5-179.1.

(6) In a child support modification action, OCSS requests a cash medical support order be effective the first day of the month following the date the modification order is entered.

(j) **Termination of cash medical support.**

(1) When OCSS receives notice that the parent ordered to pay cash medical support has enrolled the child(ren) in health insurance, OCSS sends a Notice of Proposed Termination of Cash Medical Support to all parties in the case by regular mail. When a party believes the child(ren) is not actually covered by health insurance, a party may request a review of the termination of cash medical support within ~~10~~ ten days from the date of mailing of the notice.

(2) When a party requests a review to contest the Notice of Proposed Termination of Cash Medical Support, OCSS reviews the case within ~~10~~ ten days of receipt of

the request and determines if termination of cash medical support is proper based on information provided by the contesting party. OCSS notifies the parties of the review decision.

(3) When the parties disagree with the review decision, the parties have 15 days from the date of mailing the review decision to request a hearing on the termination of cash medical support.

(4) OCSS files a Notice of Termination of Cash Medical Support with the proper court when:

(A) no party requests a review within the ~~10~~ ten-day time period; or

(B) no party requests a hearing after OCSS notifies them of the review decision.

(5) OCSS does not proceed with a separate termination of cash medical support when the child support and medical support order is modified within 30 days of notification that the child(ren) is enrolled in health insurance.

(6) When a cash medical support order is terminated within a modification action, OCSS requests the termination become effective the date of filing of the Motion to Modify or the date if later, when the child was actually enrolled in the insurance.

(k) **Fixed medical costs.** ~~If~~ When the parties agree or the court orders, OCSS includes the total monthly fixed medical costs in the child support guidelines computation. If the obligor's share of fixed medical costs exceeds five percent of the obligor's gross income and the parties do not agree to exceed the five percent standard, OCSS requests the court determine the monthly amount of fixed medical costs included in the current child support order.

(l) **Indian Health Services (IHS).**

(1) A child support order that provides for the enrollment of a child(ren) in ~~Indian Health Services~~ IHS may comply with the standards in subsection (d) of this Section. OCSS seeks an order for either or both parents to secure health insurance for the minor child(ren) when:

(A) IHS does not meet the standards in subsection (d) of this Section; or

(B) health insurance is available through an employer or other group plan and the custodial person requests it.

(2) OCSS does not request cash medical support when IHS is the chosen provider.

(m) **Notification requirements.** The noncustodial parent and the custodial person must notify OCSS in writing within 30 days after:

(1) health insurance becomes available;

(2) the cost of existing health insurance changes; or

(3) other provisions of existing health insurance change.

(n) **Modification request.** When a child support order exists, OCSS considers a request to establish a medical support order as a request for modification of the order ~~under~~ per Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order.

340:25-5-169. Establishment of medical enforcement only cases

(a) **Medical enforcement only (MEO) status.** When a person receiving non-TANF (Temporary Assistance for Needy Families) SoonerCare (Medicaid) notifies Oklahoma Child Support Services (OCSS) that only IV-D services related to securing medical support are requested, OCSS updates the case as an MEO case and does not provide full child support services per OAC 340:25-1-1.2. OCSS follows Sections 302.33, 302.56, 303.30, and 303.31 of Title 45 of the Code of Federal Regulations; Section 6058A of Title 36~~,~~; Sections 112, 118F, 118.2, and 119 of Title 43; and Section 237 of Title 56 of the Oklahoma Statutes.

(b) **Services provided on MEO cases.**

(1) OCSS establishes paternity, if necessary, and a child support order. The child support order must include:

(A) a provision for current child support per OAC 340:25-5-178;

(B) a provision for support for a prior period per OAC 340:25-5-179.1, when appropriate; and

(C) a provision for medical support per OAC 340:25-5-168.

(2) OCSS conducts a review of the order ~~under~~ per OAC 340:25-5-198.1 and seeks a modified order ~~that includes~~ including a provision for medical support when:

(A) the existing child support order does not include a medical support provision;

(B) no insurance is available for the child(ren); or

(C) a parent or custodial person claims that the available health insurance is not accessible or ~~is not~~ reasonable in cost.

(c) **Exception to MEO status.** OCSS opens a full-service case when OCSS receives a non-TANF SoonerCare (Medicaid) referral, as defined in OAC 340:25-5-117, from the ~~Family Support Services worker~~ Oklahoma Health Care Authority and:

(1) assigned court-ordered child support is owed ~~under~~ per OAC 340:25-5-117;

(2) the child(ren) is in a deprived or delinquent juvenile court action;

(3) assigned cash medical support is owed ~~under~~ per OAC 340:25-5-117; or

(4) the custodial person is a child care subsidy recipient.

PART 21. ESTABLISHMENT

340:25-5-178. Establishment of current child support

(a) Oklahoma Child Support Services (OCSS) establishes current child support ~~under~~ per:

(1) Sections 654, 656, and 666 of Title 42 of the United States Code;

(2) Parts 302 and 303 of Title 45 of the Code of Federal Regulations; and

(3) Section 83 of Title 10; Title 43; and Sections 231 through 240.23 of Title 56 of the Oklahoma Statutes.

(b) OCSS uses the child support guidelines in Sections 118 and 119 of Title 43 of the Oklahoma Statutes to:

(1) establish the amount of current support; and

(2) prepare a child support computation form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site ~~under~~ per Section 120 of Title 43 of the Oklahoma Statutes.

(c) ~~under~~ Per Section 118 of Title 43 of the Oklahoma Statutes, OCSS uses the best evidence available to determine a parent's monthly gross income for the child support computation form, including written earning records, past job history, and earning ability based on education and training, with a continued emphasis on setting orders that are fair and equitable.

(d) To establish the amount of current support, OCSS considers "actual" child care expenses to be the amount paid to the child care provider by the custodial person except when subsection (e) applies. OCSS determines the amount of prospective annual child care costs and allocates this amount between the parents in the same proportion as their adjusted gross income. The amount allocated to the noncustodial parent becomes part of the fixed monthly child support obligation.

(e) When the custodial person is participating in the OKDHS Child Care Subsidy Program ~~under~~ per Section 230.50 of Title 56 of the Oklahoma Statutes, OCSS uses OKDHS Appendix C-4, Page 1, Child Care Eligibility/Rates Schedule to determine the family share co-payment amount ~~to be~~ considered as actual child care costs on the child support computation form. [43 O.S. § 118]

(1) OCSS considers the noncustodial parent's share of the base monthly obligation for child support and the custodial person's gross monthly income as the custodial person's monthly income when applying Appendix C-4. Upon selecting the applicable income level on Appendix C-4, Page 1, OCSS uses the corresponding family share co-payment amount based on the number of children in OKDHS subsidized child care. OCSS allocates the family share co-payment amount indicated on Appendix C-4, Page 1, in the same proportion as base child support. Child support staff perform a separate child support guidelines calculation for each noncustodial parent.

(2) If the custodial person has a child(ren) in OKDHS subsidized child care other than a child(ren) included in the child support case being established, OCSS uses the proportionate share of the family share co-payment for the child(ren) included in the case.

(f) OCSS establishes child support orders in deprived court actions ~~under~~ per Section 1-4-702 of Title 10 of the Oklahoma Statutes and prepares the child support order on the standard child support order form prescribed by OCSS and published by the Administrative Office of the Courts on the Oklahoma State Courts Network Web site.

(g) OCSS establishes child support orders for a child(ren) for whom child support is imposable under applicable law.

(h) When the noncustodial parent is a minor, OCSS establishes paternity per OAC 340:25-5-176 if necessary and establishes a child support order. If a minor noncustodial parent or a custodial person is under 16 years of age, OCSS does not impute gross income for the minor parent in the child support computation and only uses actual income. If a minor noncustodial parent or custodial person is between 16 and 18 years of age and regularly and continuously attending high school, unless it is otherwise inappropriate, OCSS uses the greater of ~~does impute~~ imputed gross income for the minor parent(s) based on minimum wage at 20 hours per week, ~~unless:~~ or ~~(1) there is evidence of~~ actual income~~; or (2) it is otherwise inappropriate~~.

(i) OCSS enforces child support orders for adults with disabilities under Section 112.1A of Title 43 of the Oklahoma Statutes.

(j) OCSS establishes or modifies child support orders to continue after the child reaches the age of majority ~~under~~ per Section 112.1A of Title 43 of the Oklahoma Statutes if the application or referral for IV-D services is received during the period when child support is due ~~under~~ per Section 112 of Title 43 of the Oklahoma Statutes.

(k) OCSS establishes a child support and medical support order on an incarcerated noncustodial parent and requests the court ~~to~~ order that the child support obligation begin ~~enter the effective date of the child support obligation as~~ the first day of the ~~second~~ month following a lapse of 45 days from release from incarceration. OCSS requests the court reserve the amount of child support for the time period prior to the entry of the court order as per OAC 340:25-5-179.1 through the time of incarceration to the date the current child support obligation begins.

(l) When OCSS establishes a child support order for a child of a noncustodial parent or a custodial person who is a servicemember, OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(m) OCSS does not impute gross income to a person who has been determined disabled by the Social Security Administration.

(n) When a default order for child support has been ordered and either party contacts OCSS in writing within 30 days of entry of the default order and provides information to calculate an accurate child support obligation, OCSS treats the request as a motion to vacate or modify and requests the court enter a new order consistent with the evidence presented.

340:25-5-179.1. Establishment of support for a prior period

(a) The Oklahoma Child Support ~~Enforcement Division~~ Services ~~(CSED)~~ (OCSS) establishes support for a prior period.

(1) When paternity is being established by court order or when paternity has been previously established by a signed Form 03PA209E, Acknowledgment of Paternity, ~~CSED~~ OCSS establishes current support and support for a prior period at the same time ~~under~~ per Sections 83 and 7700-636 of Title 10, Sections 118 and 119 of Title 43, and Section 238.6B of Title 56 of the Oklahoma Statutes.

(2) When a child(ren) is born during a marriage and no order addressing support for a prior period exists, ~~CSED~~OCSS establishes support for a prior period ~~under~~

per Sections 118 and 119 of Title 43 and Section 238.1 of Title 56 of the Oklahoma Statutes.

(A) ~~CSED~~OCSS establishes support for a prior period under this subsection only when:

(i) current child support is sought; and

(ii) Temporary Assistance for Needy Families (TANF) has been expended in any month during the past five years.

(B) ~~CSED~~OCSS may issue a Notice of Support Debt or file a district court action to establish support for a prior period. ~~CSED~~OCSS limits this prior period to the number of months on TANF during the five years immediately before the date ~~CSED~~OCSS issues the Notice of Support Debt, or files the district court action.

(b) When a child support order is entered against a minor noncustodial parent, ~~CSED~~OCSS establishes support for a prior period under the criteria for establishing current child support ~~described in~~ per OAC 340:25-5-178. ~~CSED~~OCSS establishes a monthly payment plan amount of at least ~~$1.00~~ $1 a month.

(c) ~~CSED~~OCSS does not establish an order for support for a prior period on an incarcerated noncustodial parent. ~~CSED~~OCSS requests the court reserve the ~~issue~~ amount of child support for ~~a prior period~~ the time period prior to the entry of the court order through the time of incarceration to the date the current child support obligation begins per OAC 340:25-5-178.

(d) When ~~CSED~~OCSS establishes an order for support for a prior period for a child of a noncustodial parent or a custodial person who is a servicemember, ~~CSED~~OCSS applies the provisions of the Servicemembers Civil Relief Act, codified in Sections 501 through 596 of Title 50A of the United States Code.

(e) When the noncustodial parent is a current TANF or Supplemental Security Income (SSI) recipient and:

(1) ~~CSED~~OCSS has information that the noncustodial parent had no obligation based on the child support guidelines for the prior time period, ~~CSED~~OCSS requests the court set the judgment at ~~$0.00~~ $0; or

(2) ~~CSED~~OCSS determines that a debt may be owed for a prior period, ~~CSED~~OCSS requests the court reserve the issue of support for a prior period until the noncustodial parent is no longer receiving TANF or SSI.

PART 22. REVIEW AND MODIFICATION

340:25-5-198.1. Review of a child support order

(a) **Purpose.** The purpose of the review process is to determine whether a child support order should be modified to ensure substantial compliance with the child support guidelines in Section 118 through 119 of Title 43 of the Oklahoma Statutes and OAC 340:25-5-178.

(b) **Notification requirements.** At least once every three years after a child support order is established, reviewed, or modified, Oklahoma Child Support Services (OCSS) notifies all parties in a full-service case of the right to request a review of the child support order and the process for requesting a review.

(c) **Authority for review.** OCSS conducts a review every three years in cases with a Temporary Assistance for Needy Families (TANF) assignment. OCSS determines the tribunal with jurisdiction under subsection (e) of the Full Faith and Credit for Child Support Orders Act (FCCSOA), codified in Section 1738B(e) of Title 28 of the United State Code and the Uniform Interstate Family Support Act (UIFSA) in Sections 601-101 through 601-901 of Title 43 of the Oklahoma Statutes to modify the order. If another tribunal has jurisdiction to modify the child support order, OCSS follows the provisions in (j) of this Section. If Oklahoma has jurisdiction to modify the child support order, OCSS follows the provisions of this subsection. OCSS completes the review and modification process within 180 days after a request is received or the non-requesting party is located, whichever is later.

(d) **Initiation of review.**

(1) OCSS reviews an order upon written request by a customer or on its own initiative when the non-initiating party is located and there has been a material change in circumstances ~~pursuant to~~ per Section 118I of Title 43 of the Oklahoma Statutes. OCSS notifies the parties of the review with instructions for submitting financial and other information required for the review. OCSS does not initiate a review upon customer request when:

(A) it has been less than 12 months since the child support order was established, reviewed, or modified; and

(B) the preliminary information indicates the change of circumstances will not significantly impact the child support amount or the change of circumstances ~~will be~~ is temporary.

(2) When OCSS determines the customer review request does not meet the provisions in paragraph (1) of this subsection, OCSS provides available pro se self-help modification forms to the customer.

(e) **Medical enforcement only (MEO) cases.**

(1) When either the custodial person or the noncustodial parent requests a review, OCSS changes the services offered from an MEO to a full-service case. OCSS notifies the parties of the change in services provided.

(2) When the noncustodial parent requests the review, the noncustodial parent must complete Form 03EN001E, Application for Child Support Services, ~~described in~~ per OAC 340:25-5-110.1.

(f) **Initial review.** Within 15 days after receiving a request for a review, OCSS determines if the criteria described in paragraph (1) of subsection (d) of this Section are met. OCSS notifies the requesting person if the criteria for review are not met. If the criteria are met, OCSS may:

(1) request further information as necessary from the parties; or

(2) proceed with the review process when OCSS considers it has information sufficient to complete the process.

(g) **Final review.** Within 30 days after the deadline for the parties to submit requested financial and other information to OCSS under (d)(1) of this Section, OCSS completes the review

process and notifies parties of its determination as to whether ~~or not~~ the support order should be modified.

(h) **Modification after review.** OCSS staff follow OAC 340:25-5-198.2 to determine if the child support order ~~should be~~ is modified after the review process is complete.

(i) **Termination of the review process.**

(1) The person requesting a review may withdraw the request after the review process begins, upon approval by OCSS. OCSS does not accept requests to withdraw the review after making a determination that the child support order ~~should~~ be modified.

(2) If the requesting person fails to supply information requested by OCSS as instructed, OCSS may terminate the review process, unless OCSS or the non-requesting party requests the process continue.

(3) When the review is initiated by OCSS, failure of the parties to return requested information does not stop the review process. OCSS proceeds, using the best information available.

(j) **Interstate cases.**

(1) When a tribunal other than an Oklahoma district or administrative court has jurisdiction under UIFSA to modify an order, OCSS obtains the information necessary for the review.

(A) OCSS transmits the documents to the IV-D agency in the other state within 20 days after receipt of the request to modify the order and of the completed documents from the person requesting the modification.

(B) OCSS issues and enforces a subpoena to compel compliance with the request for documents if the non-requesting party fails to return the required documents or OCSS is unable to obtain the necessary information to proceed and an Oklahoma tribunal has personal jurisdiction over the non-requesting party.

(C) OCSS may terminate the review process in an interstate case as provided in subsection (g) ~~under~~ per Sections 601-611 and 601-613 of Title 43 of the Oklahoma Statutes.

(2) If Oklahoma has jurisdiction to modify the order of another state, Native American tribe, territory, or foreign country as defined by subsection (b) of FCCSOA, codified in Section 1738B(b) of Title 28 of the United States Code, the order is registered in Oklahoma for modification ~~under~~ per Section 1738B(i) and Sections 601-609 through 601-613 of Title 43 of the Oklahoma Statutes.

340:25-5-198.2. Modification

(a) **Authority for modification.** Oklahoma Child Support Services (OCSS) may initiate modification of a child support order ~~under~~ per Sections 112, 118, 118.1, 601-611, 601-613, and 601-615 of Title 43 of the Oklahoma Statutes in the appropriate tribunal when facts indicate modification is warranted under applicable state or federal law or regulation.

(b) **Modification of child support order.** OCSS seeks a modification when the existing support order is not in compliance with the child support guidelines because:

(1) a component of or the new current child support amount ~~will be~~ is 20 percent higher or lower than the existing order;

(2) there ~~has been~~ is a change in physical custody verified ~~pursuant to~~ per OAC 340:25-5-201.1;

(3) the original order ~~failed~~ fails to set child support according to the guidelines; or

(4) one of the parents ~~has been~~ is determined disabled by the Social Security Administration and the parent is receiving Supplemental Security Income or Social Security Disability Income.

(c) **Modification of medical support order.**

(1) OCSS seeks a modification of an order for medical support when:

(A) there is no existing order for either parent to provide dependent health care coverage. OCSS initiates a modification of a support order to require either or both parents to provide dependent health care coverage when OCSS obtains information that the child(ren) is not covered under an existing health care plan other than SoonerCare (Medicaid), regardless of whether the coverage is currently available to either parent;

(B) the availability of medical insurance changes;

(C) there is an order for the custodial person to provide medical support for the minor child(ren) and enforcement of the order is not appropriate ~~pursuant to~~ per Section 139.1 of Title 43 or Section 566 of Title 21 of the Oklahoma Statutes;

(D) an order for the noncustodial parent to provide medical insurance and the release of information necessary for enrollment of the child ~~would be~~ is inappropriate due to family violence and a cash medical order ~~would be~~ is appropriate ~~pursuant to~~ per OAC 340:25-5-198; or

(E) there is an order for a parent to provide medical insurance, the applicant for child support services has not requested services against that parent, and the ordered parent is not actually providing medical insurance for the child.

(2) When OCSS participates in the modification of a child support order filed by a party, OCSS requests that the court order contain a provision for medical support consistent ~~with~~ per OAC 340:25-5-168.

(3) When a child support order exists, OCSS considers a request to establish a medical support order as a request for modification of the order ~~under~~ per Section 118.1 of Title 43 of the Oklahoma Statutes. OCSS seeks a medical support order in a tribunal that has jurisdiction to modify the child support order and follows procedures ~~in~~ per OAC 340:25-5-198.1.

(4) When cash medical support is ordered as part of a modification action, OCSS requests that a cash medical support order be effective the first day of the month following the date the modification order is entered.

PART 23. ENFORCEMENT

340:25-5-203.1. Collection from lottery prize winnings

(a) ~~The~~ Oklahoma ~~Department of Human Services~~ Child Support ~~Enforcement Division (CSED)~~ Services (OCSS) files claims with the Oklahoma Lottery Commission against lottery prize winnings ~~under~~ per Section 724.1 of Title 3A of the Oklahoma Statutes to collect:

(1) child support arrearages, child support judgments and interest thereon, past-due alimony, and judgments for child care costs and medical expenses; and

(2) overpayments established by ~~CSED~~ OCSS ~~under~~ per OAC 340:25-5-305 and 340:25-5-312.

(b) ~~The minimum amount of a claim filed by CSED is $50~~ OCSS files a claim for cases in which at least $150 in past-due support or overpayment is owed.

(c) Within five days after filing a claim with the Oklahoma Lottery Commission, ~~CSED~~ OCSS sends a notice by regular mail to the noncustodial parent. The notice includes:

(1) that a claim has been filed with the Oklahoma Lottery Commission;

(2) the basis for the claim;

(3) that the noncustodial parent has the right to contest the claim by requesting in writing an administrative review within ten days of the date on the notice from ~~CSED~~ OCSS; and

(4) that the administrative review is granted only on the grounds of:

(A) a mistake of identity; or

(B) the amount of arrearage or judgment is incorrect.

(d) After the administrative review, ~~CSED~~ OCSS issues a notice of administrative review decision and information about requesting an administrative hearing. The noncustodial parent may request in writing a hearing within 20 days after the date of the administrative review decision.

(e) Upon timely receipt of a written request for an administrative hearing, ~~CSED~~ OCSS schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

(f) If the noncustodial parent settles the arrearage or judgment with ~~CSED~~ OCSS before expiration of the 30-day administrative review period as ~~specified in~~ per OAC 340:25-5-200.1, ~~CSED~~ OCSS notifies the Oklahoma Lottery Commission in writing or by electronic media that the claim has been released.

PART 25. FEDERAL OFFSET PROGRAMS

340:25-5-215. Collection of past-due support from federal tax offset

(a) ~~The~~ Oklahoma ~~Department of Human Services~~ Child Support ~~Enforcement Division (CSED)~~ Services (OCSS), requests collection of child support debts from federal income tax refunds. This program is governed by:

(1) Section 664 of Title 42 of the United States Code; and

(2) Section 285.3 of Title 31, and Sections 302.60 and 303.72 of Title 45 of the Code of Federal Regulations.

(b) A custodial person receiving a payment under this program must return the payment if the Internal Revenue Service (IRS) makes an adjustment within six years following the end of the tax year for which the refund was paid. Any adjusted amount not returned by the custodial person is an overpayment and subject to recovery under Part 37 of this Subchapter.

(c) If an offset is made to satisfy non-TANF past-due support from a refund based on a joint return, ~~CSED~~ OCSS delays issuance of the funds for a period of time not to exceed six months from the notice of deposit.

(d) Collections received by a IV-D agency as a result of a federal income tax refund intercept must be distributed as past-due support ~~as required by~~ per Section 657 of Title 42 of the United States Code.

PART 27. STATE TAX REFUND OFFSET PROGRAM

340:25-5-235. Collection of past support and overpayments from state tax refund offset

(a) The Oklahoma Department of Human Services through ~~its~~ Oklahoma Child Support Services (OCSS) ~~Enforcement Division~~ requests collection of overpayments and past child support, including interest, and spousal support from state tax refund offset. The state tax offset program is governed by:

(1) Section 303.102 of Title 45 of the Code of Federal Regulations;

(2) Sections 205.2 and 205.3 of Title 68 of the Oklahoma Statutes; and

(3) Sections 11-6 through 11-11 of Chapter 50 of Title 710 of the Oklahoma Administrative Code.

(b) When an offset is made to satisfy non-TANF past-due support from a state tax refund, OCSS delays issuance of the funds for a period of 45 days from the notice of deposit.

PART 33. INTERSTATE AND INTERNATIONAL CASES

340:25-5-270. Interstate cases

(a) **Legal base.** When referring and processing interstate IV-D cases, ~~the~~ Oklahoma ~~Department of Human Services Enforcement Division~~ Child Support Services ~~(CSED)~~(OCSS) is governed by:

(1) the Uniform Interstate Family Support Act as provided in Sections 601-100 through 601-901 of Title 43 of the Oklahoma Statutes;

(2) Section 240.9 of Title 56 of the Oklahoma Statutes;

(3) Sections 1738B of Title 28 and 549A, 654, 659A, and 666 of Title 42 of the United States Code; and

(4) Sections 302.36 and 303.7 of Title 45 of the Code of Federal Regulations.

(b) **Interstate central registry.** ~~CSED~~ OCSS operates an interstate central registry ~~in accordance with~~ per Section 303.7 of Title 45 of the Code of Federal Regulations.

(c) **Forms.** ~~CSED~~ OCSS uses forms issued by the Secretary of the United States Department of Health and Human Services

~~under~~ per Section 652 of Title 42 of the United States Code as applicable for processing interstate cases.

(d) **Communication.** When:

(1) ~~When~~ Oklahoma is the initiating state, ~~CSED~~ OCSS obtains information and communicates with the custodial person~~.~~;

(2) ~~When~~ Oklahoma is the responding state, ~~CSED~~ OCSS communicates to the initiating state with which ~~CSED~~ OCSS has established a case~~.~~; or

(3) ~~When~~ ~~CSED~~ OCSS receives ~~a~~ written communication from a party or ~~his or her~~ a party's attorney, ~~CSED~~ OCSS sends copies to the appropriate agency or person within two business days of receipt, as required by Section 601-307 of Title 43 of the Oklahoma Statutes.

(e) **Family violence and nondisclosure.** When Oklahoma is the initiating state and a party claims family violence, ~~CSED~~ OCSS does not release the physical address of the party without a court order. ~~CSED~~ OCSS:

(1) enters the address of record, if designated, or the district office's address instead of the physical address of the party requesting nondisclosure on the Child Support Enforcement Transmittal # 1, Initial Request, and on the General Testimony, if applicable;

(2) does not file the interstate transmittal forms with the tribunal;

(3) does not release a copy of the interstate transmittal form to the other party ~~under~~ per OAC 340:25-5-67; and

(4) seeks an order from the appropriate tribunal regarding release of the information when the responding state or a party requests release of specific identifying information ~~under~~ per Section 601-312 of Title 43 of the Oklahoma Statutes.

(f) **Services provided.** Except as provided in paragraphs (1) through (4), ~~CSED~~ OCSS processes interstate cases in the same manner as intrastate cases. ~~CSED~~ OCSS processes intrastate cases ~~as described in~~ per OAC 340:25-1-1.2.

(1) **Evidence.** If one of the parties is a nonresident of the forum state, ~~CSED~~ OCSS arranges for telephonic testimony at the request of the nonresident party or a IV-D agency and requests the court to admit evidence ~~under~~ per Section 601-316 of Title 43 of the Oklahoma Statutes.

(2) **One-state processing.** In the absence of an order to establish paternity or support, ~~CSED~~ OCSS uses a one-state process to establish an order if personal and subject matter jurisdiction ~~can~~ may be exercised over a nonresident party ~~under~~ per Section 303.7 of Title 45 of the Code of Federal Regulations and Section 601-201 of Title 43 of the Oklahoma Statutes.

(3) **Determination of controlling order.** When there are multiple orders for current support for the same child, ~~CSED~~ OCSS seeks a determination of controlling order (DCO) or a new order from the appropriate tribunal ~~under~~ per Sections 601-207 and 601-602 through 601-615 of Title 43 of the Oklahoma Statutes.

(A) When making the arrears calculation for the DCO proceeding, ~~CSED~~ OCSS applies the law of the respective issuing states in determining the arrears under each order.

(B) Once the court issues a DCO, ~~CSED~~ OCSS applies the law of the controlling order state to the consolidated arrears, even if the support orders of other states contributed a portion to those arrears.

(4) **Redirection of payments.** In accordance with Sections 601-307 and 601-319 of Title 43 of the Oklahoma Statutes:

(A) ~~CSED~~ OCSS issues a notice to redirect payments to the IV-D agency in the state in which the custodial person resides and issues an Order/Notice to Withhold Income for Child Support to implement the order when:

(i) Oklahoma is the state that issued the child support or income assignment order;

(ii) neither the noncustodial parent, custodial person, or any child lives in Oklahoma; and

(iii) ~~Oklahoma~~ ~~CSED~~ OCSS or another IV-D agency makes the request.

(B) ~~CSED~~ OCSS issues a notice to redirect payments to the IV-D agency in the state of residence of the custodial person when:

(i) a child support or income assignment order has been issued;

(ii) neither the noncustodial parent, custodial person, or any child lives in the issuing state; and

(iii) Oklahoma provides child support services.

(C) ~~CSED~~ OCSS furnishes a certified record of payments to a requesting party or tribunal when ~~CSED~~ OCSS receives redirected payments ~~under~~ per Section 601-319 of Title 43 of the Oklahoma Statutes.

(g) **Determination of arrears.** When Oklahoma has personal and subject matter jurisdiction and can obtain service of process on the noncustodial parent, ~~CSED~~ OCSS uses the annual notice, notice of support debt, contempt, or other appropriate proceedings to determine past support and interest before requesting a tribunal of another state to enforce.

(h) **Choice of law.** The applicable law for determination of duration of support and other choice of law issues is controlled by subsection (h) of the Full Faith and Credit for Child Support Orders Act, codified in Section 1738B(h) of Title 28 of the United States Code and Sections 601-604 and 601-611 of Title 43 of the Oklahoma Statutes. The law of the initial controlling order state governs the duration of support even after the order is modified by another state.

(i) **Definition.** For purposes of this Section, forum state means the state in which the hearing is held or the responding court proceeding is filed to establish or enforce a support order.

(j) When genetic testing is required in interstate cases, the responding state is responsible for paying the cost of testing per Section 303.7 of Title 45 of the Code of Federal Regulations and OAC 340:25-5-176.

PART 37. RECOVERY

340:25-5-312. Overpayment rules and procedures

(a) **Overpayment recipient.** A custodial person, noncustodial parent, or other entity to whom ~~the~~ Oklahoma Child

Support ~~Enforcement Division~~ Services ~~(CSED)~~ (OCSS) has made an overpayment is an overpayment recipient and owes the amount of the overpayment to ~~CSED~~ OCSS, acting on behalf of the State of Oklahoma.

(b) **Fraud.** If an overpayment may have resulted in whole or in part from false or misleading statements, concealed information, willful misrepresentation, or if fraud is otherwise suspected, ~~CSED~~ OCSS reports the information to the Oklahoma Department of Human Services ~~(OKDHS)~~ Office of Inspector General ~~(OIG)~~ for appropriate action. Action may include, but is not limited to, investigation and criminal prosecution.

(c) **Recovery amount.**

(1) In order to recover overpayments of any child support, ~~CSED~~ OCSS retains ~~50~~ 25 percent of monthly current support payments collected for the recipient and retains the total amount of any arrearage payments collected at any time~~,~~ until the overpayment is recovered in full. The percent retained can be changed at the discretion of the OCSS director.

(2) When the custodial person has received his or her full monthly support payment in the same month as an overpayment, OCSS retains the full amount of any subsequent payments for that month up to the amount of the overpayment ~~in order to recover any type of overpayment until the overpayment is recovered in full~~. OCSS satisfies any remaining overpayment as set forth in (1) above. ~~CSED does not reduce the recovery amount at the recipient's request.~~

(d) **Notice.** ~~CSED~~ OCSS sends a notice of overpayment and recovery to the recipient of the overpayment. The notice includes:

(1) a statement that the recipient received money to which the recipient was not entitled and owes money to ~~CSED~~ OCSS;

(2) the amount of the overpayment;

(3) the method of withholding from monthly payments until the overpayment is recovered in full;

(4) a statement that ~~CSED~~ OCSS may collect the overpayment through any means permitted by law; and

(5) instructions for requesting in writing an administrative review ~~under~~ per OAC 340:25-5-200.1 within 30 days after the date on the notice of overpayment and recovery letter, if the recipient disagrees with the amount of the overpayment.

(e) **Other overpayment recovery methods.** ~~CSED~~ OCSS also recovers overpayments, including, but not limited to:

(1) voluntary payments;

(2) state income tax refund intercepts ~~under~~ per Section 205.2 of Title 68 of the Oklahoma Statutes; and

(3) lottery prize claims ~~under~~ per Section 724.1 of Title 3A of the Oklahoma Statutes.

(f) **TANF customers.** In active Temporary Assistance for Needy Families (TANF) cases, when a TANF recipient retains child support receipts, ~~CSED~~ OCSS may make a noncooperation referral to the TANF social services specialist. ~~CSED~~ OCSS recovers overpayments from TANF customers through voluntary payments, state income tax refund intercepts, and lottery prize claims.

(g) **Administrative review and hearing.**

(1) If an administrative review is requested ~~under~~ per OAC 340:25-5-200.1, the purpose of the review is to provide the overpayment recipient an opportunity to offer new or additional information regarding the amount of the overpayment. Upon timely receipt of a written request for an administrative review, the ~~CSED~~ OCSS office conducts the review within 30 days.

(2) After the administrative review, OCSS issues a notice of administrative review decision and information about requesting an administrative hearing. The overpayment recipient may request in writing a hearing within 20 days after the date of the administrative review decision.

(3) Upon timely receipt of a written request for an administrative hearing, OCSS schedules the matter for an administrative hearing before the Office of Administrative Hearings: Child Support (OAH). OAH conducts a hearing and enters an order determining the contested issues.

PART 39. ACCOUNTING AND DISTRIBUTION

340:25-5-350.1. Return of overcollected support amounts

(a) ~~If the~~ When Oklahoma Child Support ~~Enforcement Division~~ Services (~~CSED~~ OCSS) receives:

(1) a support payment in excess of the noncustodial parent's obligations, ~~CSED~~ OCSS returns the excess amount to the payor within 45 days after discovering the overcollection. If the payor's address is unknown, or the payment is returned due to the inability to distribute it, the support payment is returned to the noncustodial parent.

(2) a support payment and the custodial person's address is unknown, ~~CSED~~ OCSS applies support collections to any unreimbursed public assistance debt associated with the noncustodial parent.

(3) an erroneous excess payment, ~~CSED~~ OCSS returns it to the payor within 45 days after discovering the overcollection. If the payor's address is unknown, or the payment is returned due to the inability to distribute it, the support payment is returned to the noncustodial parent.

(4) a payment that cannot be disbursed to a custodial person, or returned to the payor or noncustodial parent, and there is no debt to the State of Oklahoma, ~~CSED~~ OCSS remits the payment to the Oklahoma Department of Human Services (OKDHS) General Revenue Fund Treasury.

(b) When a noncustodial person makes an overpayment, the minimum amount for a refund payment is $3. Amounts less than $3 are not refunded, but are remitted to the OKDHS General Revenue Fund Treasury.

340:25-5-351. Allocation and distribution of collections

(a) **Basis for allocation and distribution of collections.** The Oklahoma Department of Human Services (OKDHS) distributes support collections received by the Centralized

Support Registry for IV-D and non-IV-D cases. The collections are allocated and distributed according to Part A of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and associated federal regulations and Oklahoma Statutes. This Section establishes allocation of collections across support orders involving multiple families and different types of support obligations. It also establishes high-level distribution policies. Actual distribution of money occurs under Section 657 of Title 42 of the United States Code after collections are allocated according to this Section. Oklahoma Child Support Services (OCSS) is also governed by Section 654 of Title 42 of the United States Code, Section 302.33 of Title 45 of the Code of Federal Regulations, and Section 237 of Title 56 of the Oklahoma Statutes in the collection of the annual fee.

(b) **Annual fee.** OCSS automatically collects an annual ~~$25.00~~ $25 fee once ~~$500.00~~ $500 support has been collected and issued to the custodial person. A case is exempt from this annual fee when the family is currently receiving or formerly received assistance under state or tribal Temporary Assistance for Needy Families (TANF) or Aid to Families with Dependent Children program. When there is more than one IV-D child support program involved, OCSS collects the annual fee on cases when Oklahoma is the initiating state.

(c) **Overall priority of allocation and distribution.** This subsection has priority over (d) through (i) of this Section.

(1) ~~Oklahoma Child Support (~~OCSS~~)~~ allocates payments from a collection action to satisfy amounts due under obligations included in the action. Income assignment orders, liens, administrative offsets, contempt actions, and license revocations are examples of collection actions. If OCSS receives a voluntary payment, OCSS honors designated payments from noncustodial parents who have multiple family obligations if payments are reasonably consistent with this Section. Otherwise, OCSS allocates voluntary payments to cases with court-ordered obligations before cases without court-ordered obligations.

(2) In a non-IV-D case, OCSS allocates and distributes payments through the Centralized Support Registry directly to the obligee, without otherwise allocating or distributing payments under this Section, unless money was previously assigned to the State of Oklahoma.

(3) Except as provided for in (f) of this Section, OCSS applies arrearage collections owed to the custodial parent before paying conditionally or permanently assigned arrears owed to a state.

(4) OCSS applies payments to interest owed to a particular custodial person after current child support and the principal arrears balance is paid in full. ~~All interest debt is referred and distributed for Internal Revenue Service (IRS) offset as arrears owed to the custodial person and not as a state debt or as assigned cash medical support. When OCSS has been unable to locate the custodial person after reasonable efforts; OCSS applies interest collections from an IRS offset to state debt.~~

(d) **Initial allocation to monthly current support obligations.** Except as provided in (f) of this Section, OCSS initially allocates collections to current support obligations due each month.

(1) If collections are less than the amount of all current support due, OCSS allocates collections between the current child support and the cash medical support specified in the order in proportionate shares.

(2) After the current child support and cash medical support obligation is met, OCSS allocates collections to current spousal support due.

(e) **Allocation to monthly past-due support obligations under payment plans.** Except as provided in (f) of this Section, after all current support obligations are met, OCSS allocates collections under payment plans to fixed monthly past-due support obligations. Payment plans are defined in Section 237.7 of Title 56 of the Oklahoma Statutes.

(1) If collections are less than the amount due under the payment plan, OCSS first allocates collections to past-due current child support.

(2) After the past-due monthly child support obligation is met, OCSS allocates collections to monthly past-due spousal support.

(3) OCSS allocates collections to the total amount in arrears after fixed monthly past-due support obligations in the payment plan are met.

(f) **Allocation and distribution to total amount in arrears.**

(1) OCSS allocates federal income tax refund offset collections to the total amount in arrears and first applies these collections to any assigned arrearages, up to the total amount of unreimbursed assistance. Any remainder is then paid to the custodial person(s).

(2) Except for collections under a payment plan, OCSS allocates collections above the current support obligation to total arrears.

(3) After all child support arrearages are satisfied, OCSS allocates remaining collections to spousal support arrearages.

(g) **Allocation and distribution of arrears to assigned cash medical support.** After the past-due current child support, cash medical support, and spousal support are met, OCSS allocates collections to assigned cash medical support.

(h) **Multiple family support orders.** This subsection explains the allocation of collections when a noncustodial parent has multiple family obligations. For purposes of this Section, a family is a mother and a father and the child(ren) of that relationship, and any custodial person(s) of the child(ren) who is not the mother or the father.

(1) **Current support.** OCSS prorates and applies support collections to each family based on the current child support obligation due each family. The collections are allocated within each family obligation under subsection (d) of this Section.

(2) **Past-due support under a payment plan.** OCSS prorates and allocates collections to payment plans for multiple families based on each family's fixed monthly payment plan obligations due.

(3) **Total arrears, including principal and interest balances.** OCSS prorates and allocates collections to

arrears, including principal and interest balances, for multiple families based on each family's total arrears due.

(i) **Past-due support in interstate cases.** In cases where OCSS is collecting support for a custodial person who is receiving services from another state's child support agency, OCSS allocates arrearage payments based on information provided by the initiating state. After all current support obligations are met, OCSS allocates collections to past-due support for payment plans, total arrears, and interest as follows:

(1) **Non-public assistance balance.** If any portion of the past-due balance is owed to the custodial person or ~~will be~~ is passed through to the custodial person under federal distribution regulations, OCSS allocates collections to that portion of the past-due balance and pays that amount to the other state's State Disbursement Unit.

(2) **Public assistance balances.** If no portion of the past-due balance is owed to the custodial person, OCSS allocates collections first to balances owed to Oklahoma and then prorates between balances owed to the other state(s).

(j) **Interest.** OCSS distributes interest last in single family, multiple family, and interstate cases.

[OAR Docket #11-563; filed 4-22-11]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 40. CHILD CARE SUBSIDY PROGRAM

[OAR Docket #11-552]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
Subchapter 5. Plan of Service
340:40-5-1 [AMENDED]
Subchapter 7. Eligibility
340:40-7-3.1 [AMENDED]
340:40-7-6 [AMENDED]
340:40-7-8 through 340:40-7-9 [AMENDED]
340:40-7-11 [AMENDED]
Subchapter 9. Procedures Relating to Case Changes
340:40-9-1 through 340:40-9-2 [AMENDED]
Subchapter 10. Electronic Benefit Transfer (EBT) System for Child Care
340:40-10-2 through 340:40-10-4 [AMENDED]
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-5 [AMENDED]
(Reference APA WF10-17)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; and Parts 98 and 99 of Title 45 of the Code of Federal Regulations (CFR).
DATES:
Comment period:
January 18, 2011 through February 17, 2011
Public hearing:
None requested
Adoption:
February 22, 2011
Submitted to Governor:
February 22, 2011
Submitted to House:
February 22, 2011
Submitted to Senate:
February 22, 2011
Gubernatorial approval:
March 29, 2011
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 19, 2011.
Final adoption:
April 19, 2011
Effective:
June 1, 2011
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapter 3 of Chapter 40 amend the rules to: (1) clarify when a new application is required; and (2) remove specific application form names and numbers.

The proposed revisions to Subchapter 5 of Chapter 40 amend the rules to: (1) remove language allowing approval for care in a child care home in which the client works; (2) remove star status references; and (3) add clarifying language requiring providers to charge all parents for hours subsidy child care is requested.

The proposed revisions to Subchapter 7 of Chapter 40 amend the rules to: (1) change responsibility for approval of the special needs rate; (2) remove instructions for completion of Form 08AD006E, Special Needs Child Care Rate Certification; (3) add additional reasons a new Form 08AD006E must be completed; (4) clarify when the income of a non-relative of the opposite sex is not considered; (5) change whose income must be considered to determine child care eligibility; (6) add clarifying language regarding the need factor; (7) remove requirement for a new application for job search approvals; (8) specify when enrichment care may be approved for school age children; (9) add language clarifying the process regarding child support cooperation; (10) add language clarifying types of payments considered as income; (11) add clarifying language specifying self employment income calculations; and (12) add language regarding required client and worker action when the client is not the payee of a child's Supplemental Security Income (SSI).

The proposed revisions to Subchapter 9 of Chapter 40 amend the rules to: (1) remove language regarding benefit reporter households; (2) change review time frames for most child care households; (3) remove interview requirement for most child care reviews; (4) clarify the process for determining eligibility at review; (5) update language regarding when a new application is required; and (6) add clarifying language.

The proposed revisions to Subchapter 10 of Chapter 40 amend the rules to: (1) add clarifying language regarding swipes and error messages on the Point of Sale (POS) machine; (2) update form numbers; (3) remove outdated language; and (4) update language to current terminology.

The proposed revisions to Subchapter 13 of Chapter 40 amend the rules to: (1) remove specific star status reference; (2) clarify the contract denial process; (3) include additional changes that must be reported; (4) clarify when a new contract is not required; (5) rearrange language for clarity; (6) remove a requirement for child care liaisons; (7) add new contract violations; and (8) remove the requirement of initiating contract cancellations by certified mail.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

(a) **Application process.** The application process for subsidized child care benefits begins with a request for an

application form and ends with determining the household's eligibility and entering that determination into the computer system. Subsidized child care benefits must be synchronized with the client's food benefits or SoonerCare (Medicaid) benefits ~~in accordance with~~ per OAC 340:40-9-1(c). The Child Welfare or Family Support Services worker processes the application.

(1) **When an application is required.** A new application is required when:

(A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;

(B) the client's subsidized child care benefits have been closed for more than 30 calendar days~~. This includes when expedited eligibility processing was used or when the client was approved for 30 calendar days of child care to search for a job in accordance with OAC 340:40-7-8(a)(6)~~;

(C) the payee for the subsidized child care benefits changes; or

(D) family income ~~has~~ was not ~~been~~ considered because policy at OAC 340:40-7-12(6) applied and one or more of the affected adopted children turns six years of age unless there is already a separate open income eligible case and the child can be added to that case ~~in accordance with~~ per OAC 340:40-9-2(c).

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. If an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving this person permission to act on behalf of the applicant or the applicant must have designated this person as his or her authorized representative on the signed application.

(A) If the natural or adoptive parent or stepparent of the child is in the home, he or she is considered the applicant and eligibility is based on that parent's situation regardless of whether he or she has custody of the child.

(B) If both the natural and adoptive parent of the child are living in the same household and the adoption has been finalized, the adoptive parent is considered the applicant and eligibility is based on that parent's situation.

(C) If the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child.

(D) If the parent is a minor, either the minor parent or the responsible adult the minor is living with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation.

(E) If the natural or adoptive parent is living in the home but is too incapacitated to apply, ~~someone else~~ another person living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply.

(3) **Application form.** An applicant or the applicant's authorized representative completes and signs ~~Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E, Responsibilities and Signature for Benefits,~~ an application to apply for subsidized child care benefits. When child care is needed for a child with disabilities, the worker and applicant also complete Form 08AD006E, Certification for Special Needs Child Care Rate.

(4) **Date of request.** The date of request is the date the applicant requests subsidized child care benefits verbally or in writing.

(5) **Date of application.** The date of application is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the human services center,~~. This includes providing~~ including the name of the child care provider the client wishes to use.

(A) The provider must already have a valid Oklahoma Department of Human Services (OKDHS) child care provider contract.

(B) ~~See~~ Refer to OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.

(C) For applicants choosing an in-home provider, ~~see~~ refer to OAC 340:40-13-1 and 340:40-13-2.

(6) **Child care interview.** Child care interviews are typically completed face-to-face with the applicant or authorized representative. A face-to-face interview is required for protective or preventive child care requests and strongly recommended for special needs requests.

(7) **Explanation of eligibility factors.** At the time of the initial interview, the worker advises the applicant or authorized representative of:

(A) his or her rights and responsibilities;

(B) all factors of eligibility including which child care providers are eligible to receive subsidy payment;

(C) the plan of service and reason child care may be approved based on the applicant's statements at interview;

(D) the applicant's electronic benefit transfer (EBT) responsibilities ~~that includes~~ including viewing the client training video;

(E) the earliest date child care can be approved;

(F) the requirement to cooperate with the OKDHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and

(G) the requirement to report any changes in his or her circumstances within ten calendar days ~~any changes in his or her circumstances~~.

(8) **Timeliness.** Near real-time (NRT) benefit processing time frames are used for all child care applications. To be considered timely, the worker must determine eligibility within two working days of receiving all necessary verification to certify or deny the application. If the applicant does not provide requested verification, the worker denies the request within 30 calendar days of the date of

request. The worker sends Form 08MP037E, Notice Regarding Social Services, explaining the reason for delay to any applicant whose application is over 30 calendar days old.

(9) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility per OAC 340:2-5.

(b) **Expedited eligibility processing.** The worker must process an application immediately when required verification is beyond the applicant's control to provide, the applicant does not have the money to pay toward the cost of child care, and without child care the applicant:

(1) is in danger of losing a job; or

(2) cannot start a new job.

(c) **Eligibility determination.** The worker uses OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine whether the household meets income guidelines. ~~See~~ Refer to OAC 340:40-5-1(8) for ~~more~~ information ~~about~~ regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant provides all necessary verification to determine eligibility. The applicant is responsible for ~~any~~ child care used before the certification date ~~or which~~ that is not part of the approved child care plan of service.

(A) The client swipes attendance with his or her EBT card through a point-of-service (POS) machine at the child care facility.

(B) OKDHS does not pay for care for any day the child attends child care if the client fails to swipe attendance, unless extenuating circumstances exist beyond the control of the client ~~and/or~~ or provider.

(C) If the client fails to swipe attendance, he or she is responsible for any care ~~given for~~ provided that day and may be responsible for any absent day payment OKDHS pays, if all of the days the child attended were recorded.

(2) **Applicant determined ineligible.** The request or application is denied if the applicant is ineligible, does not provide needed verification, or requests cancellation of the application. A new application ~~form~~ is not needed when the applicant completes the application process and provides necessary verification within 60 calendar days of the original request date.

SUBCHAPTER 5. PLAN OF SERVICE

340:40-5-1. Plan of service

Providing child care is part of an overall plan of service designed to help the parent or caretaker with whom the child lives ~~to~~ achieve his or her maximum potential for self-support. Quality child care services assure the parent or caretaker that each child has adequate care that affords developmental and learning experiences while the parent or caretaker is engaged in self-support activities. The plan of service consists of many components that all link to form a goal-directed plan of care, and includes the components in (1) through (11).

(1) **Child characteristics.** The worker gathers information about the child for whom child care is needed including his or her name, age, grade level, and whether the child has a disability.

(2) **Need for child care.** The worker determines whether the parent or caretaker meets a need factor ~~in accordance with~~ per OAC 340:40-7-7 and 340:40-7-8.

(3) **Plan hours.** The worker gathers information about the days and hours the parent or caretaker meets the need factor, including travel time.

(A) When there are two parents or caretakers in the home, the worker only approves subsidized child care benefits when both parents or caretakers meet a need factor during the same hours ~~in accordance with~~ per OAC 340:40-7-7 and ~~OAC~~ 340:40-7-8.

(B) Based on the days and hours the child requires care, the worker approves a full-time daily, part-time daily, a combination of full-time and part-time daily, weekly, or a blended unit type.

(4) **Alternative to subsidized child care benefits.** The worker ~~explores with the~~ and client explore whether there is an appropriate, feasible alternative to Oklahoma Department of Human Services (OKDHS) subsidized child care benefits.

(A) If the alternative is a spouse or the natural or adoptive parent of the child who lives in the home, the client must use the alternative rather than subsidized child care benefits.

(B) If the alternative is someone else, the client has a choice whether to use this alternative. Possible alternatives include:

(i) care by a dependable relative who is able and willing to assume responsibility for care and supervision of the child for part of the day;

(ii) care in a free or low cost facility, such as a preschool, pre-kindergarten, kindergarten, Head Start, Early Head Start, or tribal child care program;

(iii) dependent care expenses ~~that are~~ considered as earned income exemptions, per OAC 340:10-3-33(3); and

(iv) for a school age child, the rearrangement of the parent's or caretaker's employment or training schedule to coincide with the hours the child is in school.

(5) **Plan to increase income.** At each application or review the client and worker discuss ways the client can increase household income ~~to the household~~ and identify the goals child care helps the family achieve. Together, they estimate when the family can assume progressively greater responsibility for the cost of child care. The worker makes referrals to other agencies as appropriate and ~~in accordance with~~ per OAC 340:40-7-9.

(6) **Back up plan.** The worker ~~discusses with the~~ and client discuss the back up plan for child care ~~that is in place~~ if the child cannot go to the usual provider because of illness, school holidays, or other unforeseen ~~emergency~~ emergencies. The back up plan includes the name and

address of a person the client feels he or she can rely on when the normal plan of care cannot be used.

(7) **Choice of provider.** The worker documents the choice of provider on the application or review form.

(A) If the client does not choose a provider at the time of request, the worker provides the client with information to help in making the choice.

(B) The client may choose a family child care home regardless of star level.

(C) The client may not choose a child care:

(i) facility that does not have a valid contract with OKDHS;

(ii) facility in which the client or his or her spouse, including the child's parent or stepparent, has an ownership interest;

(iii) home in which the child resides;

(iv) home in which the client also works during the hours his or her ~~child(ren)~~ child is in care ~~unless an approval is obtained from the Family Support Services Division (FSSD), Child Care Subsidy Section~~;

(v) provider who does not allow parental access during the hours the provider is caring for children;

(vi) provider who is receiving state or federal funds, such as Head Start, Early Head Start, or public schools~~, unless:~~

~~(I) all parents are charged a fee for the hours subsidy payment is requested; and~~

~~(II) the program offers extended day services. Programs operating only during typical school or Head Start hours are not eligible~~ who is not charging all parents for the hours subsidy payment is requested; and

(vii) provider caring for a school age child during the regular school day when such student could be attending a public or private school during those hours; or

(viii) center, which is a one star facility unless there are no ~~one plus, two, or three star~~ centers with a higher star status in the community or special exception criteria are met. Special exception criteria are:

(I) the child was already approved for care at this one star center prior to January 1, 2003 or prior to the provider's star status being reduced to one star. The child can remain at this facility unless the child stops attending there for more than 30 calendar days. The child may be approved at this same facility again if the only reason the child did not attend for more than 30 calendar days was because of a school break or due to circumstances beyond the control of the family such as illness of the child;

(II) care is requested for a child living in the same home as a child already approved for care as described in ~~(II)(i)~~ (7)(C)(viii)(I) of this subsection for the same one star child care provider; or

(III) the parent or guardian demonstrates there is no other child care option that meets the family's needs.

(8) **Income determination.** ~~Based on~~ Per OAC 340:40-7, the worker determines who is considered part of the household for income determination, what income is countable, and what income is excluded. After determining the amount of countable household income, the worker uses OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine whether the household meets income guidelines. The OKDHS Appendix C-4 is amended from time to time and the Commission for Human Services must approve any changes. If the income of the family exceeds the eligibility standard on the appendix or is above the income level on the appendix, the family is not eligible for subsidized child care benefits.

(9) **Family share co-payment.** The worker uses OKDHS Appendix C-4 to determine the family share co-payment for each family. The family share co-payment is applied before OKDHS pays a child care subsidy. The amounts the family and OKDHS pay toward the cost of care varies depending on the plan of service, family size, income, and the number of children receiving subsidized child care benefits.

(10) **Social services requests.** When a client requests help in meeting the social services needs listed on the application or review form, the worker provides all available information to aid a client in meeting these needs.

(11) **Client rights and responsibilities.** The worker advises the client of rights and responsibilities listed in (A) through (G).

(A) A child care request is only approved back to the date of request when the interview is conducted and verification is provided on that same date.

(B) The client has the right to ask for a fair hearing if the client disagrees with an action taken on his or her case, per OAC 340:2-5.

(C) The provider may charge the client for special fees, such as enrollment or transportation fees, provided these fees are posted and also charged to the general public.

(D) The provider may charge the client for care provided in excess of OKDHS approved child care plan of service hours when the client chooses to leave the child in care longer. If the provider requires that all children in the facility begin care by a certain time of day and the client's child care plan hours start later, the provider must not charge the client for those additional hours. The client swipes attendance based on the child care plan hours.

(E) The provider may charge the client for any days OKDHS refuses to pay for care when:

(i) the client did not swipe attendance for the correct days and times his or her child attended child care;

(ii) swipes were denied and the client did not get them corrected within ten calendar days; or

(iii) the provider loses the absent day payment for a child approved for a weekly unit type because the client did not swipe correct attendance for every day the child attended that month.

(F) The provider may not charge the client for:

(i) days and hours covered in the child care plan when all attendance was correctly swiped even if the hours are more than customary for a full-time day; and

(ii) days the child is not in attendance.

(G) The client is required to cooperate with the OKDHS Office of Inspector General in any audit or investigation of possible overpayments by the client or by the client's chosen provider.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-3.1. Child with disabilities

(a) **Child with disabilities.** A child with disabilities is defined as a child who receives Supplemental Security Income (SSI), SoonerStart early intervention services provided in accordance with an Individualized Family Service Plan (IFSP), or special education services provided in accordance with an Individualized Education Program (IEP) by the local school district. This definition also includes a child whose SSI payment stops because of financial reasons but who still meets the medical definition of disability as determined by the Social Security Administration (SSA). When a child with disabilities is 13 years of age or older, the client must provide a statement from a licensed health care professional verifying ~~that~~ the child is physically or mentally incapable of self care as age appropriate before care is approved and annually at review. If the licensed health care professional states that the child is capable of self care as age appropriate, subsidized child care benefits are not approved.

(b) **Special needs rate approval process.** The special needs rate, if approved, is paid in addition to the daily rate paid for a typical child. If a child does not meet the definition of a child with disabilities, the child is not eligible for a special needs rate. A child with disabilities may be approved for a moderate or severe special needs rate unit type after the special needs rate approval process is completed. If the worker determines that the parent or caretaker is eligible for subsidized child care benefits before the special needs rate approval process is completed, the worker approves the child for a typical child unit type. The process includes:

(1) the parent or caretaker must provide proof that the child meets the definition of a child with disabilities and information about the child's care needs.

(A) For a child under ~~age~~ three years of age, the parent or caretaker submits the child's current IFSP that verifies the child receives SoonerStart services and documents the care needs of the child.

(B) For a child over ~~age~~ three years of age, the parent or caretaker submits the child's current IEP that documents the child receives special education services and documents the care needs of the child.

(C) If the child receives SSI, the parent or caretaker submits the child's award letter or other proof from SSA that verifies receipt of this income. If the child is not receiving SoonerStart or special education services, the parent or caretaker submits a statement from a health professional describing the child's care needs ~~of the child~~.

(2) The parent or guardian, the child care provider, Oklahoma Child Care Services (OCCS) licensing staff, and the ~~child's~~ Family Support Services ~~(FSS)~~ Division (FSSD) Child Care Subsidy staff or Child Welfare (CW) worker completes the appropriate sections of Form 08AD006E, Special Needs Child Care Rate Certification. Determination of whether certification requirements are met by the:

(A) child are made by the ~~FSS~~ FSSD Child Care Subsidy staff or CW worker; and

(B) provider are made by the OCCS licensing specialist.

(3) The ~~worker uses~~ FSSD Child Care Subsidy staff follows the instructions on Form 08AD007E, Special Needs Rate Determination Scoring Sheet, to score the 08AD006E. The child's care needs must be within the scoring range shown on Form 08AD007E for moderate or high need to qualify for a special needs rate.

~~(4) OCCS licensing staff completes Section IV of Form 08AD006E indicating whether the provider meets certification requirements described at OAC 340:110-1-9.1.~~

(~~5~~4) When the child and the provider meet certification requirements for the special needs rate, the rate is effective the first of the month following the month OCCS licensing staff signs ~~Section IV of~~ Form 08AD006E. If the child does not start child care until after the special needs rate is approved, the rate is effective the first date care is approved.

(~~6~~5) Once Form 08AD006E has been completed and the FSSD Child Care Subsidy staff or CW worker determines the child is eligible for one of the special need rates, a new Form 08AD006E is only completed when:

(A) the needs of the child change;

(B) the child moves to a different child care facility; ~~or~~

(C) the child stops attending~~, for more than six months,~~ the facility that was approved for the special needs rate unit type for more than six months;

(D) the provider fails to obtain a on-site consultation within the parameters of the corrective action agreed upon with licensing staff; or

(E) it is determined by OCCS licensing staff that the provider no longer meets the child's need.

(c) **Supplemental Security Income-Disabled Children's Program (SSI-DCP).** A child between ~~the ages of~~ birth to 18 years of age who receives SSI may be eligible for additional services described at OAC 340:70-8-1~~. The child may also be eligible for~~ and enrichment child care described at OAC 340:40-7-8(f).

340:40-7-6. Household composition and income consideration

(a) **Definition of household composition terms.** The worker determines household composition for income considerations using the definition of terms listed in (1) through (9) of this subsection.

(1) An adult is an emancipated minor or person 18 years of age or older. A child who is also a parent is considered an adult.

(2) A spouse is a person married by ceremony or common-law to another person. They can be living together or separately. If they are living separately, they are considered part of the household if the separation is temporary with no intention of severing the marital relationship or the separation is involuntary.

(3) A stepparent is a person who is a spouse or has been a spouse to the child's parent.

(4) A caretaker is an adult that the child is living with who is acting in the role of a parent. This person may or may not be related to the child by blood, adoption, or marriage and may or may not be legally and financially responsible for the child. The caretaker must pursue child support from the natural or adoptive parent ~~in accordance with~~ per OAC 340:40-7-9.

(5) An adult non-relative is defined as any person over 18 years of age or an emancipated minor who is not related to the parent or caretaker by blood, adoption, or marriage.

(6) The term legally and financially responsible adult is defined as a parent or stepparent of the child ~~for whom~~ who needs child care ~~is needed~~. The term also includes other caretaker adults who are court-ordered to be legally and financially responsible for the child.

(7) A child is any unmarried, unemancipated, non-parental person under 18 years of age.

(8) A child who has married or voluntarily left the parental home for any reason and established independent living arrangements, other than being away from home for school or health reasons, is considered emancipated and treated as an adult. Once a child is emancipated, the emancipation is permanent.

(9) A sibling is a minor child who has at least one parent in common with another child in the same household. This definition of a sibling also includes a step-brother or step-sister.

(b) **Household composition and income consideration.** To establish a child's eligibility for subsidized child care benefits, it is necessary to define who must be considered part of household composition for income consideration. All persons whose income is counted in determining the family share co-payment are included to determine whether to use a family size of five members or less or for six or more members on OKDHS Appendix C-4, Child Care Eligibility/Co-payment Chart. Persons whose income must be considered in determining eligibility are:

(1) the natural, adoptive, or stepparent of the child ~~who lives~~ living in the home ~~and for whom~~ who needs child care ~~is needed~~;

(2) the caretaker(s) of the minor child ~~who needs~~ needing child care if that caretaker is legally and financially responsible for the child;

(3) the child ~~for whom~~ needing child care ~~is requested~~ and his or her siblings under 18 ~~who live~~ years of age living in the home;

(4) any adult non-relative opposite sex individual (ANROSI) who living in the home with the natural or adoptive parent provided, however, the income of the non-relative adult of the opposite sex may be excluded if the parent and the adult non-relative have separate living quarters and demonstrate no characteristics of a couple; and

(5) any child of the ANROSI who is living in the home with the natural or adoptive parent.

(c) **Periods of absence.**

(1) When a household member is out of the home due to a temporary absence, he or she is ~~still~~ considered a household member as long as he or she plans to return to the home. Examples of temporary absence include, but are not limited to:

(A) ~~a~~ hospitalization for physical or mental health reasons;

(B) incarceration;

(C) attending school;

(D) military service;

(E) working or training away from home;

(F) looking for a job away from home. ~~See~~ Refer to OAC 340:40-7-8(a)(6); and

(G) vacation time for a child.

(2) If a child lives with each parent for part of the month, ~~see~~ refer to (d) in this Section.

(3) If a child lives with a parent for part of the month and a caretaker for the rest of the month, the child's eligibility is based on ~~whether~~ the parent ~~meets~~ meeting the eligibility factors ~~in accordance with~~ per OAC 340:40-7. The caretaker must also meet a need factor ~~in accordance with~~ per OAC 340:40-7-7 during the time he or she has physical custody of the child.

(d) **Joint or shared custody.** When parents separate or divorce and share custody of their child, either voluntarily or through a court order, the worker considers each parent's eligibility separately as well as his or her income. If only one parent qualifies for subsidized child care benefits, only the days and hours of care needed while that parent has physical custody of the child ~~is~~ are approved. If both parents qualify for subsidized child care benefits, each parent is approved only for the days and hours that parent has physical custody and meets a need factor.

340:40-7-8. Defining the need factor for child care benefits

(a) **Employment.** Employment means the parent or the caretaker earns wages for work performed.

(1) The client must provide proof of his or her work hours. If the client has the flexibility to set his or her own work hours, the client and worker jointly determine if they can reduce the number of hours the child needs care by

rearranging the client's work schedule. This is especially important in two-parent or two-caretaker families.

(2) The worker limits approval of child care to the number of days and hours the client is working plus reasonable travel time. In two-parent or two-caretaker working families, the worker limits approval to the days and hours they are both working at the same time plus reasonable travel time. When the child attends school or Head Start during part of the work hours, the worker reduces the number of hours he or she approves child care accordingly.

(3) When the caretaker who is legally and financially responsible for the child or the parent is not making at least minimum wage for the number of hours he or she is working, the worker may limit the number of days and hours of care initially approved with one exception. The exception to a parent not meeting the minimum wage rule is when care is approved for an adopted child who meets criteria at OAC 340:40-7-12(6). When the minimum wage rule applies, the worker counsels with the person regarding increasing his or her income. If counseling is unsuccessful, the worker decides whether to further reduce or terminate the subsidized child care benefits.

(4) A person employed and working from his or her own home may be approved for subsidized child care benefits in an out-of-home child care home or center.

(5) Subsidized child care benefits can be approved for sleep time during the day when a parent or caretaker works night hours and a feasible alternative is used at no cost to the Oklahoma Department of Human Services (OKDHS) during the night working hours. Night working hours ~~is~~ are defined as the hours between 11:00 p.m. and 7:00 a.m.

(A) The maximum amount of time the worker approves child care ~~is to allow~~ allows the client eight hours of sleep plus travel time to and from the child care provider.

(B) In two-parent or two-caretaker families care ~~can~~ may only be approved for this reason when both parents have night time jobs or when one parent has a night time job and the other parent or caretaker works during the day while the other parent is sleeping.

(6) Job search meets the definition of employment and child care may be approved for a single or two parent or caretaker household only when a recipient who has received subsidized child care benefits for at least 30 calendar days loses employment or successfully completes a formal education or training program and requests child care to look for a job.

(A) Child care may be approved for a maximum of 30 calendar days from the date the client loses employment or successfully completes a formal education or training program as long as the child continues to attend the same child care facility.

(~~B~~i) Job search may be approved no more than twice per calendar year.

(~~C~~ii) The client must have been employed or going to school for at least 90 calendar days between approval periods.

(B) When the recipient reports a new job within the job search period and provides all required verification to prove continued eligibility, a new application is not needed. When the recipient does not report a new job or required verification within the job search period, he or she must complete a new application before being approved for further child care.

(b) **Training.** A training program is defined as a course of study that when completed qualifies a person to meet requirements for a job that the client could not have obtained without the certificate of completion, accreditation, or licensure. Child care can be approved for one parent or caretaker to attend a training program. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(1) The training program must qualify to receive federal financial aid from the United States Department of Education (USDE) or other federal or state education funds.

(2) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client will be attending, and when he or she is expected to complete the program.

(3) The program must require classroom attendance on a school campus with an instructor present. Care is only approved for an on-line Internet based course or televised course if it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. If the program is self-paced and can be completed whenever the client chooses, care is not approved.

(4) The client must provide proof of progress when requested. If the client is not making satisfactory progress, further child care for this reason is not approved.

(5) Once the client completes a training program, further child care is not approved for training or education. The client is expected to look for jobs that require his or her training credentials. The client may be eligible for subsidized child care benefits to job search if he or she meets requirements at (a)(6) of this Section.

(6) In certain circumstances, the worker may approve child care benefits for a client to attend a second training program. The client must ~~first~~ have been employed in a job ~~that required~~ requiring the training credentials he or she ~~already~~ has for at least 12 months. Possible circumstances include when:

(A) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional ~~that verifies~~ verifying the reason. The professional must also state that the client is capable of performing the job tasks of the training program ~~in which~~ where the client wants to enroll;

(B) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand.

The professional must be employed by the Workforce Oklahoma Center, a Workforce Investment Act (WIA) contracted entity, the Oklahoma Employment Security Commission (OESC), or the Oklahoma Department of Rehabilitation Services (DRS); or

(C) the client can establish receipt of the additional training ~~can~~ will increase the person's earning potential. The client must provide proof ~~that~~ the starting salary for a person with the training credentials the client wants to obtain is higher than he or she is currently earning.

(c) **Education program.** An education program can include:

(1) **High school.** Child care ~~can~~ may be approved for one or both parents or caretakers to attend high school. It is not approved for a parent or caretaker to receive homebound instruction. Prior to approval the client must provide proof that he or she is enrolled, the days and hours the client is attending, and when he or she is expected to graduate.

(2) **General Educational Development (GED), literacy, or adult basic education (ABE) classes.** The program must require classroom attendance with an instructor present. Child care ~~can~~ may be approved for one parent or caretaker to attend GED, literacy, or ABE classes. However, in two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care ~~being approved~~ approval. If the class has open enrollment and no established end date, the client must provide proof of ~~how often~~ progress and how it is measured.

(B) Within the first month of classes, the client must provide proof of initial testing showing the client's ~~current educational~~ education and/or literacy level.

(C) The worker reviews the client's progress when the class is expected to end prior to approval for further child care for this reason. If the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. At review, the client must provide a statement from the school that includes:

(i) whether the client is attending regularly;

(ii) whether the client is making satisfactory progress;

(iii) an estimated length of time it will take to complete the program; and

(iv) what days and hours the client is currently attending classes.

(D) If the client has not been attending regularly or making satisfactory progress, further child care for this reason is not approved.

(3) **English as a Second Language (ESL) classes.** The program must require classroom attendance with an instructor present. Child care ~~can~~ may be approved for a single parent or caretaker to attend ESL classes when the client lacks proficiency in understanding, speaking, reading, or writing the English language. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The client must provide proof of enrollment, the days and hours the client is attending, and the length of the class prior to care being approved. If the class has open enrollment and no established end date, the client must provide proof of how often progress is measured.

(B) The worker reviews the client's progress when the class is expected to end prior to approval for further care for this reason. If the class is open-ended, the worker reviews progress no later than 12 months from the date care was approved for this reason. The client must provide a statement from the school that includes:

(i) whether the client is attending regularly;

(ii) whether the client is making satisfactory progress;

(iii) an estimated length of time it will take to complete the program; and

(iv) what days and hours the client is currently attending.

(C) If the client has not been attending regularly or making satisfactory progress, further care for this reason is not approved.

(4) **Formal education program.** A formal education program is defined as a course of study that leads to the attainment of an ~~associate's~~ associate or bachelor's degree. Child care can be approved for one parent or caretaker to attend a formal education program and to participate in activities required to maintain a scholarship. Only required scholarship activities for scholarships disbursed through the school's financial aid office qualify for child care. In two-parent or two-caretaker families, the other parent or caretaker must be employed during the same hours.

(A) The formal education program must qualify to receive federal financial aid from USDE or other federal or state education funds.

(B) Prior to approval for child care, the client must provide proof of enrollment, the days and hours the client is attending school or participating in activities required to maintain a scholarship, and when he or she is expected to complete the degree.

(C) The degree program must require classroom attendance on the school campus with an instructor present. Care is only approved for an on-line Internet based course or a televised course if it is a live broadcast conducted by an instructor and attendance is required while the program is being broadcast. If the program is self-paced and can be completed whenever the client chooses, care is not approved.

(D) The client must provide proof of progress when requested. If the client is not making satisfactory progress, further care for this reason is not approved.

(E) Once the client completes a bachelor's degree, further care is not approved for training or education. The client is expected to look for jobs that require a degree. The client may be eligible for subsidized child care benefits to job search if he or she meets requirements at (a)(6) of this Section.

(F) In certain circumstances, the worker may approve subsidized child care benefits for a client to obtain a different bachelor's degree. The client must first have been employed in a job that required the degree he or she already has for at least 12 months. Possible circumstances include when:

(i) the client can no longer perform the job he or she is trained to do because of physical or mental health reasons. In this instance, the client must provide a statement from a doctor, mental health professional, or a vocational rehabilitation professional that verifies the reason. The professional must also state that the client is capable of performing the job tasks of the degree program in which the client wants to enroll;

(ii) there is no longer a demand for the type of work the person is trained to do. The client must provide a statement from a professional working with the client to obtain employment stating there is no demand. The professional must be employed by the Workforce Oklahoma Center, a WIA contracted entity, OESC, or DRS; or

(iii) the client can establish receipt of the second degree ~~can~~ may increase the person's earning potential. The client must provide proof that the starting salary for a person with the degree the client wants to obtain is higher than he or she is currently earning.

(d) **Temporary Assistance for Needy Families (TANF) Work activity.** When a client receives a TANF benefit, subsidized child care benefits may be provided for any activity outlined on the client's Form 08TW002E, TANF Work/Personal Responsibility Agreement, ~~in accordance with~~ per OAC 340:10-2-1.

(1) Need for child care is also met when the person is waiting to enter an approved TANF Work activity. Approval is limited to a time period not to exceed:

(A) two weeks; or

(B) one month on an exception basis where child care arrangements or other services would otherwise be lost and the subsequent activity is scheduled to begin within that period.

(2) TANF applicants referred for immediate employment may be approved for subsidized child care benefits to job search. TANF applicants are advised:

(A) child care to job search is limited to 20 days ~~which~~ that must be used within 30 calendar days from the date of request;

(B) in-home child care arrangements are not available for TANF applicants;

(C) child care may only be used during the times the applicant is actually looking for a job; and

(D) he or she must notify the worker immediately upon securing employment.

(e) **Protective or preventive child care.** Subsidized protective or preventive child care benefits ~~can~~ may be used as an early intervention strategy in certain critical situations to help ~~in preventing~~ prevent neglect, abuse, or exploitation of a child. The worker may approve child care in these situations to help stabilize the family situation or ~~to~~ enhance family functioning. In most instances, Child Welfare (CW) staff ~~co~~ completes protective or preventive child care requests when they are working with the family and recommending protective or preventive child care. When CW staff contracts with an outside agency to provide protective or preventive services and child care is recommended, Family Support Services (FSS) staff completes ~~these~~ the child care requests with ~~the~~ help ~~of the~~ from contracted agency staff.

(1) Subsidized protective or preventive child care benefits are temporary and planning to reduce or eliminate the need for such child care begins at the initial contact.

(2) The worker must complete a face-to-face interview with the client prior to approving subsidized protective or preventive child care benefits in order to better assess all of the service needs of the family.

(3) The client must provide a statement from a professional working with the family stating:

(A) the reason child care is recommended;

(B) how placing the child in a child care facility helps to prevent neglect, abuse, or exploitation of the child; and

(C) the length of time this care is expected to be needed.

(4) The family may or may not be expected to help in paying the cost of these subsidized child care benefits depending on the unique circumstances of the family.

(5) In certain circumstances, families who are financially ineligible for subsidized child care benefits may be approved for protective or preventive child care benefits when the child is in danger of neglect, abuse, or exploitation. The client must provide evidence the family is so burdened by debt that the additional financial pressure of paying for child care may result in further deterioration of family stability and functioning. The client must also provide a plan for reducing his or her debt.

(6) The worker may approve subsidized protective or preventive child care benefits for a maximum of 30 calendar days. If determining ongoing eligibility will take time, the worker may approve child care while the parent or caretaker is gathering necessary information during this 30 calendar day period.

(7) If the family requests subsidized protective or preventive child care benefits beyond this initial 30 calendar day period, the worker sends a memo and supporting documentation to the Family Support Services Division (FSSD) Child Care Subsidy Section staff to request an extension. The client must provide all needed eligibility information prior to submission of the extension request.

(f) **Enrichment.** The purpose of subsidized enrichment child care benefits is to assist a child receiving Supplemental

Security Income (SSI) to develop socialization skills and to transition into a group setting such as a classroom. If a child is not receiving SSI benefits, the child is not eligible for subsidized enrichment child care benefits.

(1) The need for subsidized enrichment child care benefits is based solely on the needs of the child's condition of delay or disability rather than on the activities of the parent or caretaker.

(2) Child care for enrichment is limited to a maximum of two days per week not to exceed ten full-time or part-time days per month.

(3) The parent or caretaker must provide a written recommendation from a professional who is working directly with the child in some capacity that states how child care would be beneficial to the child. The professional could be the child's doctor, occupational therapist, physical therapist, or special education teacher.

(4) ~~Unless special circumstances exist, subsidized enrichment child care is only approved for children who have not yet started school or Head Start.~~ Enrichment child care is only approved for a child who has not started school or Head Start unless, due to the child's disabilities, the child receives instruction from a teacher in his or her home.

(5) When subsidized enrichment child care benefits are approved, care must be provided outside of the child's home and at least one other child must ~~be attending~~ attend during the same hours.

(6) The worker obtains approval from staff in the FSSD Child Care Subsidy Section prior to authorizing care for this need factor.

340:40-7-9. Mandatory pursuit of child support and other potential income

(a) **Mandatory referral to the Oklahoma Child Support Services (OCSS).** When one or both of the child's parents are absent from the home, the client must agree to pursue child support through OCSS for all children who must be included in the same household ~~in accordance with~~ per OAC 340:40-7-6 before subsidized child care benefits are approved.

(1) **When an OCSS referral is required.** The client is required to pursue child support for all children living in the home ~~for which~~ where one or both parents are absent, unless good cause exists as described at paragraph (2) or (6) of this subsection~~. This includes~~ including when:

(A) the parent or caretaker is not requesting subsidized child care benefits for every child living in the home;

(B) the client is already receiving court-ordered child support;

(C) there is a joint custody agreement and neither parent is ordered to pay support;

(D) parental rights have been terminated except in the case of adoption per Section 7006-1.3 of Title 10 of the Oklahoma Statutes;

(E) an additional child whose parent is absent is added to the household after certification; or

(F) one or both parents leave the home after certification.

(2) **When an OCSS referral is not required.** The client is not required to complete child support forms when:

(A) he or she is a foster parent to the child and the OCSS referral was completed in the child's SoonerCare (Medicaid) case;

(B) the client is an adoptive parent and provides proof of a single parent adoption;

(C) a parent is temporarily out of the home ~~in accordance with~~ per OAC 340:40-7-6(c) and is still considered part of the household;

(D) the child whose parent is absent is not required to be considered part of the household ~~in accordance with~~ per OAC 340:40-7-6;

(E) the client is a minor parent and is not living with his or her own parents. The minor parent must pursue child support for his or her own child but not for himself or herself; or

(F) the child is not receiving a subsidized child care benefit and is only included in household composition because his or her parent is considered an adult non-relative of the opposite sex individual (ANROSI) per OAC 340:40-7-6(b).

(3) **Required forms.** The worker makes the referral to OCSS by completing with the client Form 08TA001E, Absent Parent (AP) Information Sheet, for each absent parent. The client must sign Form 08TA012E, Cooperation Agreement and Request for Good Cause, as described at paragraph (6) of this subsection. The worker gives the Oklahoma Department of Human Services (OKDHS) Appendix C-16, Child Support Services and Responsibilities, to the client. The form explains OCSS services and client expectations. Supplemental information sent to the appropriate OCSS district office by the worker includes:

(A) a signed and completed Form 03EN002E, Affidavit of Child Support Payments Received; and

(B) copies of ~~any~~ legal documents concerning custody or child support.

(4) **Centralized Support Registry (CSR).** After the worker approves the client for subsidized child care benefits, all future child support payments must be made to the CSR. OKDHS Appendix C-16 contains the address for the CSR.

(5) **Establishment of paternity.** If paternity has not ~~yet~~ been established, the worker discusses the voluntary acknowledgment of paternity process with the alleged father when he is located. If the alleged father admits paternity, the worker secures the alleged father's and the mother's ~~signature~~ signatures on Form 03PA209E, Acknowledgment of Paternity, per instructions under the Notice of Rights and Responsibilities on the form.

(6) **Good cause.** Although the client's cooperation in the pursuit of child support through OCSS is required as a condition of eligibility for child care, good cause for refusal to cooperate may be granted when such cooperation is not in the best interest of the child. OKDHS may determine that child support activities can be safely conducted without the cooperation of the client.

(A) The client must sign Form 03TA012E, Cooperation Agreement and Request for Good Cause, at the time of the initial application, at the time of an additional child request, or when circumstances result in an applicant or recipient's request for good cause. The worker does not deny, delay, or discontinue subsidized child care benefits pending a determination of good cause for refusal to cooperate if the applicant or recipient has complied with the requirements to furnish evidence or information.

(B) OKDHS determines that the client has good cause for refusing to cooperate only ~~if~~ when:

(i) there is possible physical or emotional harm to the child;

(ii) there is possible physical or emotional harm to the parent or caretaker;

(iii) the child was conceived as a result of incest or forcible rape;

(iv) legal proceedings for adoption of the child are pending before a court; or

(v) the client is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(C) It is the responsibility of the applicant or recipient who makes a claim for good cause to supply documentary evidence to establish the claim, or to furnish sufficient information to permit OKDHS to investigate the circumstances of good cause for refusing to cooperate. Uncorroborated statements of the applicant or recipient are not acceptable documentation. The evidence must be of probative value and supported by written statements to the extent possible. Examples of acceptable written statements include:

(i) birth certificate, ~~or~~ medical, or law enforcement records ~~which indicate that~~ indicating the child was conceived as a result of incest or forcible rape;

(ii) court documents or other records ~~which indicate that~~ indicating legal proceedings for adoption are pending before a court of competent jurisdiction;

(iii) criminal, medical, child protective services, social services, psychological, or law enforcement records indicating ~~that~~ the putative or absent parent might inflict physical or emotional harm on the child or caretaker;

(iv) medical records indicating the emotional health history and present emotional health status of the caretaker or child, or a written statement from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the caretaker or child;

(v) a written statement from a public or licensed private social agency that the applicant or recipient is being assisted by OKDHS to resolve the issue of whether to keep the child or relinquish the child for adoption; and

(vi) sworn statements from persons other than the client with knowledge of the circumstances which provide the basis for the good cause claim.

(D) Upon request, the worker assists the client in obtaining evidence that is not reasonably obtainable. This requirement is limited to the specific documentary evidence in (C)(i) through (vi) of this subsection. The client must specify the type of document or record needed, as well as provide sufficient identifying information to make it possible to be obtained.

(b) **Failure to cooperate in the pursuit of child support.** Failure to cooperate in pursuit of child support without good cause may be indicated at the time of application or at any time further action by the client is necessary.

(1) Actions indicating failure to cooperate include refusals to:

(A) identify and assist in locating a known parent;

(B) establish paternity; or

(C) establish, modify, or enforce a support order.

(2) When the client refuses to cooperate at the time of application, the worker denies the application.

(~~2~~3) When the worker is informed by OCSS that the client is not cooperating after certification, the worker closes ~~or denies~~ the subsidized child care benefits for all children included in the child care benefits effective ten calendar days from the date action is taken.

(c) **Cooperation with OCSS following denial or closure of the subsidized child care benefits.** The client must verify that he or she is cooperating with OCSS before subsidized child care benefits can be approved again.

(1) If the client cooperates with OCSS within 30 calendar days of the:

(A) denial of subsidized child care benefits and the worker is notified of the cooperation within this time frame, the worker may approve subsidized child care benefits without a new application; or

(B) closure of the subsidized child care benefits and the worker is notified of this cooperation within this time frame, the worker can reopen the benefits back to the date they closed without imposing a penalty period.

(2) If the client does not cooperate with OCSS or waits to inform the worker of this cooperation for more than 30 calendar days from the date the subsidized child care benefits are denied or closed, the client must complete a new application before care can be approved. The earliest date subsidized child care benefits can be approved is the date the client completes a child care interview and provides all necessary verification ~~in accordance with~~ per OAC 340:40-3-1.

(d) **Exploration and development of potential income other than child support.** The worker explores all other potential sources of income such as Social Security benefits, Supplemental Security Income (SSI), unemployment benefits, veterans benefits, and increased wages at the time of application and at each review for all members of the household whose income must be considered ~~in accordance with~~ per OAC 340:40-7-6. The client must apply for, or continue to pursue,

all potential sources of income for which it appears likely he or she may be eligible except for SSI. The client is encouraged, but not required, to apply for SSI when the client indicates that a household member has a disability. The worker gives the client 90 calendar days from the date potential income is identified to pursue such income.

(1) If the client refuses to pursue available income at the time of request, the worker denies the child care request.

(2) If the client agrees to pursue all potential income and then fails to do so, the worker closes subsidized child care benefits effective ten calendar days from the date the worker takes action.

(3) If the client is approved for the potential income or offered a raise in pay and refuses to accept it, the worker closes the subsidized child care benefits effective ten calendar days from the date the worker takes action.

(4) If the client's pay is decreased either in rate of pay or number of hours worked, the worker explores why the decrease occurred. If the client requested the decrease to avoid a family share co-payment increase or to maintain eligibility for the subsidized child care benefits, the worker closes the subsidized child care benefits.

(5) At each review, the worker determines whether the client continues to pursue potential income.

(A) If the client begins receiving previously identified potential income, the worker considers the income for the next negative action deadline after it is reported.

(B) If the client was determined not eligible for the income, the client must verify this. The worker records in the case record the verification provided and stops exploring this potential income with the client.

(C) If the client stops pursuing the income and was not determined ineligible for it, the worker closes the client's child care benefit for failure to cooperate effective ten calendar days from the date the worker takes action.

(6) If the client's subsidized child care benefits were closed because of failure to cooperate, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care can be approved.

(A) If the client verifies cooperation within 30 calendar days of the closure of subsidized child care benefits, the worker ~~can~~ may reopen the benefits back to the date they were closed without imposing a penalty.

(B) If the client does not cooperate or waits to verify cooperation for more than 30 calendar days from the date the subsidized child care benefits close, the client must complete a new application before care is approved. The earliest date subsidized child care benefits ~~can~~ may be approved is the date the client completes a child care interview and provides all necessary verification ~~in accordance with~~ per OAC 340:40-3-1.

340:40-7-11. Sources of income considered

(a) **Sources of income considered.** Income may be received periodically or at irregular intervals. All income, unless specifically excluded ~~in~~ per OAC 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. Gross income is treated the same for both types of income.

(b) **Earned income.** Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee. Temporary disability insurance payment(s) and temporary worker's compensation payments are considered as earned income if payments are employer funded and the person remains employed.

(1) **Wages.** Wages include total money received for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before any deductions are made such as taxes, bonds, pensions, union dues, credit union payments, and cafeteria plans.

(A) Countable wages for military personnel include Variable Housing Allowance (VHA), Basic Allowance for Quarters (BAQ), and Basic Allowance for Housing (BAH).

(~~A~~B) Only the portion of the cafeteria plan the client controls is counted as income.

(~~B~~C) Reimbursements for expenses such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from gross income.

(~~C~~D) Payments made for annual leave, sick leave, or severance pay are considered ~~as~~ earned income during the month such income is received whether paid during employment or at termination of employment.

(~~D~~E) Wages that are garnisheed or diverted and paid to a third party are also counted as income.

(2) **Self-employment.** Earnings derived from a business enterprise owned solely or in part by the person are considered ~~as~~ self-employment income. ~~Self-employment income for households declaring business expenses is determined by calculating total gross receipts or sales and subtracting 50% of the gross income to arrive at the net profit. Alternatively, the net business profit for the most recent tax year can be used as reported on the person's income tax return.~~

(A) **Records used and income calculation.** The worker uses the records described in (i) through (iii) to calculate income.

(i) If the person filed a federal income tax return for self-employment income for the most recent year, the worker uses the net self-employment income shown on the person's federal income tax return and divides the income by 12 or the number of months the business has been in existence, if less than 12 months.

(ii) If the person did not file an income tax return for the most recent tax year, the worker calculates self-employment income using the person's

business records for the last 12 months or the number of months the business has been in existence if less than 12 months. If the client declares he or she has business expenses, the worker subtracts 50% of the gross self-employment income to arrive at the net profit.

(iii) When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(~~A~~B) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(i) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(ii) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(~~B~~C) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings.

(~~C~~D) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover.

(~~D~~E) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged over a 12-month period, even if the income is received in a short time period ~~of time~~. If the averaged amount does not accurately reflect the person's actual monthly circumstances because the person ~~has~~ experienced a substantial increase or decrease in income, self-employment income is based on anticipated earnings, using the business records that reflect the current situation.

(~~E~~F) **Income from rental property.** Income from rental property is considered self-employment income ~~from self-employment~~.

(~~F~~G) **Income from room and board.** Payments from roomers or boarders are considered self-employment if the roomer or boarder is paying a reasonable amount. If the roomer or boarder is an adult non-relative opposite sex individual (ANROSI), OAC 340:40-7-6(b)(4) applies.

(3) **On-the-job training.** Earned income from regular employment for on-the-job training is considered as ~~any other~~ earned income.

(4) **Workforce Investment Act (WIA).** Income earned in on-the-job training positions provided under Section 134 of WIA is considered earned income for persons who are 19 years of age and older. On-the-job training provided must be full-time positions, and there must be a contract between WIA and the employer for each individual position. This does not include classroom training and institutional training or intern assignments sponsored by WIA, even when an hourly amount is paid for such training. ~~See~~ Refer to OAC 340:40-7-12(24)(G) for other types of excluded WIA income.

(5) **Title I payments of Domestic Volunteer Services Act.** Payments under Title I of the Domestic Volunteer Services Act of 1973 as amended [P.L. 93-113] are considered income unless they are excluded ~~under~~ per OAC 340:40-7-12.

(6) **Earnings of children.** Earned income of a minor parent is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded per OAC 340:40-7-12.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through (10) of this subsection are considered unearned income.

(1) **Assistance payments.** Assistance payments include state means tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Resettlement Program (RRP) cash assistance.

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income. When a minor child receiving Social Security benefits no longer lives with the payee receiving the Social Security benefits, only the portion of the child's Social Security benefit that is used to meet the minor child's needs is considered ~~as~~ income. This may include cash given directly to the minor or money paid to a third party for room and board for the minor child. The parent or caretaker or, if appropriate, the minor child must take action to become the payee within 90 calendar days as required at OAC 340:40-7-9(d). If action is not taken within 90 calendar days, the worker counts the total Social Security benefit as income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income.

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) **Child support, court-ordered or third party paid child care, and alimony.** Child support, child care payments, and alimony payments, whether court-ordered or voluntary, ~~that are~~ made directly to the household from non-household members are counted as unearned income.

(A) If a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share co-payment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) If the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's co-payment, it is considered as an additional co-payment that must be met before the Oklahoma Department of Human Services (OKDHS) makes a subsidy payment to the provider.

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs that the payment be made to the household. Payments for medical support are excluded.

(6) **Veterans compensation, pensions, or military allotments.** Annuities, pensions, disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income.

(7) **Contributions.** Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the recipient. To be appreciable, a contribution must exceed $30 per calendar quarter per person.

(8) **Dividends, interest, minerals, and royalties.** Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) **Lump sum payments.** Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover.

(10) **Irregular income.** Income received irregularly but in excess of $30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months.

SUBCHAPTER 9. PROCEDURES RELATING TO CASE CHANGES

340:40-9-1. Review of child care eligibility

(a) **Child care review.** All conditions of eligibility are periodically reviewed per OAC 340:40-7. The client is sent notification when the review is due and the methods the client may use to complete it. The client must complete the review in order to continue receiving benefits.

(b) **Review time frame.** When circumstances change between review months, the worker evaluates whether to complete a review early, a new application, or make changes to the client's family share co-payment and/or plan of service. ~~The worker completes a~~ A review ~~of all conditions of eligibility~~ for subsidized child care benefits must be completed no later than:

(1) ~~12~~ six months from the date of approval ~~of the application~~ or ~~from~~ the last review when the child does not receive public assistance; or

(2) 12 months from the date of approval or last review when the child receives Temporary Assistance for Needy Families (TANF) or a State Supplemental Payment (SSP).

~~When the need factor for child care is for a protective or preventive reason, child care is reviewed more often in accordance with OAC 340:40-7-8(e).~~

(c) **Signature requirement.** The client or the client's authorized representative ~~completes and signs Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E, Responsibilities and Signature for Benefits~~ must sign the review. ~~If the client is a benefit reporter as described in subsection (b) of this Section, Form 08MP004E, Benefit Review Report, may also be used as a review form for subsidized child care benefits. When circumstances change between review months, the worker evaluates whether to make a change to the client's family share co-payment and/or plan of service or to complete a new application.~~

~~(b) **Benefit reporter households.** If a client receiving subsidized child care benefits is also receiving food benefits and/or SoonerCare (Medicaid) and is considered a benefit reporter for one or both of these programs, the client is considered a benefit reporter for the Child Care Subsidy Program. The client is considered a semi-annual reporter when he or she also receives food benefits and is a semi-annual reporter for the Supplemental Nutrition Assistance (SNAP) program. When the client does not receive food benefits, he or she is considered an annual benefit reporter as SoonerCare (Medicaid) clients are annual benefit reporters.~~

~~(1) Benefit reporter households are sent a computer-generated Form 08MP004E in the 5th month of certification for semi-annual benefit reporters and the 11th month of certification for annual benefit reporters. The client will continue to receive Form 08MP004E every 5th or 11th month thereafter as long as the subsidized child care benefits remain active and the client remains in benefit reporting status.~~

~~(2) Form 08MP004E asks households to report changes in the household's circumstances that could affect their benefits. Form 08MP004E must be completed and returned to the human services center, along with all required verification, by the last day of the 6th or 12th month of the review period or the subsidized child care benefits automatically close.~~

~~(3) If the household fails to provide sufficient information regarding a deductible expense, continued eligibility is determined without regard to the deduction.~~

~~(4) The worker must act on any changes reported on Form 08MP004E in a timely manner.~~

(d) **Interview requirement.** An interview is not required at review for the Child Care Subsidy Program unless the client receives child care benefits because of a protective or preventive reason per OAC 340:40-7-8. When an interview is required, it must be a face-to-face interview.

(e) **Eligibility determination.** An eligibility determination is made once the review is signed, all required information has been provided, an interview, if required, is conducted, and all information evaluated.

(1) The eligibility determination results in:

(A) completing the review without changes;

(B) completing the review with changes; or

(C) closing the child care benefits.

(2) Benefits closed may be reopened when the client provides required information by the last day of the month of closure.

(~~c~~f) **Synchronization of benefits.** When the client is receiving other benefits from the Oklahoma Department of Human Services ~~(OKDHS)~~ in addition to the subsidized child care benefits, certification and review dates must be coordinated with the other programs.

340:40-9-2. Case changes

(a) **Case changes.** The client must report ~~within ten calendar days~~ any changes in his or her circumstances that would result in an increase or decrease in subsidized child care benefits within ten calendar days. The worker acts on changes that increase or decrease the subsidized child care benefits ~~regardless of whether the client is a semi-annual reporter~~ within ten calendar days of the reported change. Failure to report changes timely may result in an overpayment assessment against the client. Examples of changes the client must report include:

(1) household income;

(2) household composition;

(3) names and number of household members in child care;

(4) the reason child care is needed;

(5) parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed;

(6) the client's address or telephone number;

(7) the child care facility the child is attending;

(8) child care is no longer being used or needed; and

(9) family size.

(b) **Change of payee.** When a change of payee is reported, the worker refers to policy at OAC 340:40-7-6(c) regarding temporary absence. If the situation is not temporary, a new application must be taken. ~~See~~ Refer to OAC 340:40-3-1 for application processes.

(c) **Additional child request.** When an additional child requires subsidized child care benefits, the worker completes the request within two working days of the client providing all necessary verification to determine eligibility. If eligible, the child can be approved for subsidized child care benefits beginning with the date of request. Family share co-payment increases due to adding an additional child to the subsidized child care benefits are effective the month after the month the client requests subsidized child care benefits for that child.

(d) **Changes that increase the subsidized child care benefits.** When the client reports a change timely that increases the subsidized child care benefits, the client and the worker jointly plan the effective date of the change. When the client does not report changes timely, the earliest date the worker increases the subsidized child care benefits is the first day of the month in which the client reports the change.

(e) **Changes that decrease the subsidized child care benefits.** When possible, the worker ~~plans with the~~ and client plan changes that decrease the subsidized child care benefits before implementing the change. When the client reports an increase in income, the worker uses Oklahoma Department of Human Services (OKDHS) Appendix C-4, Child Care Eligibility/Co-payment Chart, to determine whether the household meets income guidelines ~~in accordance with~~ per OAC 340:40-5-1(8).

(f) **Change in provider.** When a client reports a change in provider, the change is effective the date the change in provider occurs, regardless of whether the client reports this change timely. The worker completes provider changes within two working days of the date the client reports the change.

(g) **Closure of the subsidized child care benefits.** When advance notice is required, the worker closes the subsidized child care benefits ten days from the date action is taken. Ten day advance notice is not required when the client gives written permission agreeing to an earlier closure date.

(h) **Reopen action.** When a client's subsidized child care benefits close, they can be reopened using current eligibility information if policy and procedures were not administered correctly or if human services center staff receive new or additional information within 30 calendar days of the effective date the benefits terminated ~~that shows~~ showing the family continues to be eligible. The client must complete a new application per OAC 340:40-3-1(a)(1) when:

~~(1) a 30-calendar day period of job search was given because the client lost his or her job or successfully completed school and the subsidized child care benefits were closed;~~

(~~2~~1) ~~expedited eligibility processing is used and requested verification is not returned within~~ the client's subsidized child care benefits have been closed for more than 30 calendar days ~~of the application date. See OAC 340:40-3-1(b)~~; ~~or~~

(~~3~~2) the payee for the subsidized child care ~~case~~ benefits changes; or

(3) family income was not considered because policy at OAC 340:40-7-12(6) applied and one or more of the affected adopted children turned six years of age unless there is already a separate open income eligible case and the child can be added to that case per OAC 340:40-9-2(c).

SUBCHAPTER 10. ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEM FOR CHILD CARE

340:40-10-2. Client, worker, and provider electronic benefit transfer (EBT) responsibilities

(a) **Client EBT responsibilities.** Client EBT responsibilities include:

(1) watching the client training video;

(2) swiping correct attendance days and times with his or her EBT card through the provider's point-of-service

(POS) machine within ten days, current day and previous nine days;

(3) checking the message on the POS machine after each swipe to see if it is approved, denied, or pending. If the message shows denied or pending different provider, the client is responsible to report the problem to the worker right away;

(4) not swiping attendance for any day the child does not attend child care;

(5) not giving the EBT card or personal identification number (PIN) to anyone else, including the child care provider; and

(6) paying for care the Oklahoma Department of Human Services (OKDHS) does not pay because:

(A) the client did not swipe attendance timely for days and times his or her child attended child care;

(B) swipes were denied and the client did not get them corrected within ten days; or

(C) the provider loses the absent day payment for a weekly authorization because the client did not swipe correct attendance for every day that the child attended care for a given month.

(b) **Worker EBT responsibilities.** Worker EBT responsibilities include:

(1) ensuring that the client reads and states he or she understands the EBT responsibilities shown on the ~~last page of the child care~~ application;

(2) arranging for the client to receive his or her EBT card and watch the training video as soon as possible after the child care request is ~~signed~~ submitted;

(3) if the client chooses an authorized representative, arranging for that person to receive his or her EBT card and watch the training video as quickly as possible;

(4) acting on swipe errors reported by the client as soon as they are reported;

(5) acting on reports of misuse of the EBT card per policy at OAC 340:40-10-3 as soon as they are reported.

(c) **Provider EBT responsibilities.** Provider responsibilities include:

(1) never being in possession of or swiping client's EBT card through the POS machine;

(2) never moving the POS machine to another location without receiving prior written approval from OKDHS Family Support Services Division ~~(FSSD)~~ Child Care Section;

(3) requiring clients to swipe attendance as care is used;

(4) never asking or requiring a client to swipe attendance for a day the child does not attend; and

(5) ensuring that claimed attendance submitted via the EBT system is correct and voiding any incorrect transactions within the ten day swipe limit, current day and previous nine days.

340:40-10-3. Misuse of the electronic benefit transfer (EBT) card

(a) When the worker becomes aware that the client or the authorized representative of the client is misusing his or her EBT card, ~~he or she~~ the worker cancels that EBT card.

(b) Misuse can occur when the client or authorized representative gives his or her EBT card to another person, such as the child care provider, to swipe attendance or when ~~he or she~~ the client knowingly swipes incorrect attendance dates and times.

(c) Before the EBT specialist issues a new EBT card, the client or authorized representative must view the EBT training video regarding ~~the~~ proper use of the EBT card again and sign Form ~~EBT 5~~ 08EB005E, Access Oklahoma Card Violation.

340:40-10-4. Child care electronic benefit transfer (EBT) payment process

(a) **Child care payments.** The Oklahoma Department of Human Services (OKDHS) makes payments for child care services to providers electronically using the electronic benefit transfer (EBT) system unless the provider is an in-home provider ~~or a provider on a military base~~. These providers are paid manually via the EBT system after submitting Form 10AD121E, Child Care Claim.

(b) **Point-of-service (POS) machines.** Contracted child care providers are issued a POS machine within ten days of the date the worker authorizes care for a child and the provider notifies the OKDHS contractor that he or she is beginning to care for a child eligible for an OKDHS subsidy.

(c) **Attendance swiping.** Clients record actual times their child attends child care by swiping an EBT card through the POS machine. Providers can charge clients for care provided on days they fail to bring their EBT card or when the machine message shows care is denied. If care is later approved for that date(s), the provider must reimburse the client for any care paid for by the client above the family share co-payment.

(1) Providers must monitor the POS machine to ensure correct attendance times are recorded. If incorrect times are recorded, the provider can void the incorrect transaction and ask the client to start over.

(2) When clients forget to swipe their EBT card for a day their child attends care, record incorrect times that are voided by the provider, or receive a denied error message, the system allows the client to swipe previous in and out times for the current day and the previous nine days.

(3) Based on attendance recorded and the level of care authorized, electronic settlements to providers are made weekly.

(d) **EBT payment week.** The EBT payment week begins every Sunday at 12:01 ~~A.M.~~ a.m. and ends every Saturday at midnight. Electronic settlements are made each week in the provider's designated financial institution account on Tuesday morning for services provided two weeks prior to the current week. If the financial institution is closed on Monday or Tuesday or Monday is a holiday, the electronic settlement is deposited on Wednesday morning.

(e) **Manual claims process.** When the provider reports he or she was not paid correctly, the provider may submit Form 10AD121E or ask the client's worker to submit Form 10EB004E, Report of EBT Child Care Payment Adjustments, to the Electronic Payment Services (EPS) Unit of the Finance Division for a manual adjustment. ~~The provider waits to submit Form 10AD121E until approximately the 20th of the next month. Finance Division~~ EPS staff evaluate whether to

adjust payment to the provider based on ~~why~~ the reason care was not paid electronically.

(1) If the client did not attempt to record attendance electronically, no payment is made to the provider for days swipes are not recorded unless extenuating circumstances beyond the client's ~~and/or~~ or provider's control exist. These extenuating circumstances must be documented on Form 10AD121E.

(2) If the client swiped correct attendance times but swipes were denied in error, ~~Finance Division~~ EPS staff makes manual adjustments.

(3) If the family share co-payment applied by the EBT system was incorrect, Finance Division staff makes manual adjustments.

(4) If the provider was paid the wrong rate because of incorrect coding of the child care plan, an incorrect birth date shown for a child, or an incorrect star status paid, ~~Finance Division~~ EPS staff makes manual adjustments.

(f) **Absent day payments.** Providers can be paid an absent day payment for a child who misses some days of scheduled attendance and is authorized for a weekly unit type. An absent day payment is electronically deposited in the provider's account in their weekly settlement received after the tenth of the month following the month care was given. To be eligible to receive this additional payment, the child must be approved for a weekly unit type and attend the minimum number of full-time days shown on OKDHS Appendix C-4-B, Child Care Provider Rate Schedule, for that month. The provider is not eligible for an absent day payment if the child did not attend the minimum number of full-time days for that calendar month or attended the maximum days paid ~~that is~~ also shown on OKDHS Appendix C-4-B.

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-5. Child care provider contracts

(a) **Criteria.** In order for the Oklahoma Department of Human Services (OKDHS) to purchase out-of-home child care services, a provider must have a current Form 08CC001E, Child Care Provider Contract, signed by both the owner of the facility and the OKDHS Director or designee on file with the Family Support Services Division (FSSD) Child Care Subsidy Section staff. OKDHS assures all persons that OKDHS or any provider of contractual services, does not take into account a person's race, color, religion, sex, national origin, or disability in the selection or eligibility of persons to receive services and in the manner of providing them. Age may be a factor only to the extent that certain services are designed for a particular age group.

(1) Written complaints of noncompliance with the assurance in (a) of this Section may be made to the Director of OKDHS or to the Secretary of Health and Human Services, Washington, D.C., 20201.

(2) Local Oklahoma Child Care Services (OCCS) licensing staff provides initial information about contracts for child care facilities. The provider contacts the child care liaison to request a contract.

(3) Child care contracts are valid for a maximum of one year. Contracts are automatically renewed for successive one year terms, under the same terms and conditions, unless ~~either~~ the child care provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the current term.

(b) **License and star status for child care centers and homes.** OKDHS does not contract with child care providers located out-of-state unless the provider had a contract in effect on January 1, 2010. Child care providers may only obtain an OKDHS contract after they are licensed or permitted.

(1) A child care center requesting a contract must have a license or permit and have a one plus~~, two, or three~~ and higher star status. The child care center provider may sign Form 08CC001E if a one plus~~, two or three~~ and higher star status shows on the child care licensing system (CCLS) within 30 calendar days.

(2) A child care home provider requesting a contract must have a license or a permit.

(A) If licensed, the child care home provider may sign Form 08CC001E if one star status or higher shows on CCLS ~~within 30 calendar days~~.

(B) If on permit, the child care home provider may sign Form 08CC001E if one star plus status or higher shows on CCLS within 30 calendar days.

(c) **Procedure for obtaining child care contracts.** The procedures in (1) through (5) of this subsection are used to obtain child care contracts.

(1) OCCS licensing staff gives the child care provider a flyer titled "Obtaining a Contract with OKDHS for Child Care Subsidy Payments." The provider is instructed to contact the child care liaison to obtain the compact disk (CD) titled "Orientation to Child Care Subsidy Contracts" for training and review of the contracting requirements. The CD includes instructions on how to complete the training, take the proficiency test, and print the certificate of completion.

(2) When contacted by the owner or authorized signor of a child care facility, the child care liaison explains that the owner or authorized signor must view the required training CD, pass the proficiency test, and provide the certificate of completion before signing a contract. The date on the certificate of completion must be within 30 calendar days of the date the contract is signed. Directors are not required but are highly encouraged to view the training.

(3) Once the certificate of completion is provided, the child care liaison types all identifying information on Form 08CC001E. The child care liaison gives Form 08CC001E to the provider and explains that the earliest date a contract is valid is the date of approval by the OKDHS Director or designee.

(4) The owner or authorized signor signs the contract and returns the contract to the child care liaison. The owner or authorized signor must also provide:

(A) proof of his or her identity;

(B) a copy of the owner's or authorized signor's Social Security card;

(C) a copy of the Oklahoma State Bureau of Investigation (OSBI) background investigation report for the owner or authorized signor of a center or a child care home;

(D) proof of the employer identification number (EIN) for a child care center provider and any home provider who is not a sole proprietor; and

(E) a copy of the certificate of completion of the required CD training.

(5) The child care liaison sends Form 08CC001E, the Contract Routing Checklist, and the documents listed in (c)(4)(A-E) of this Section to the FSSD Child Care Subsidy Section staff for approval or denial.

(A) If approved, the FSSD Child Care Subsidy Section staff assigns a contract number and sends a copy of the signed contract back to the provider.

(B) If denied, the FSSD Child Care Subsidy Section staff ~~returns the original contract~~ sends a letter to the provider ~~with a letter~~ advising it is not in the best interest of OKDHS to contract with the provider.

(C) If the child care provider signs Form 08CC001E but fails to complete other contracting requirements within 30 calendar days, the child care liaison attaches Form 08CC001E to the Contract Routing Checklist and sends it to the FSSD Child Care Subsidy Section staff for denial.

(d) **Changes that must be reported.** Form 08CC001E advises child care providers ~~what~~ of changes they must report to the FSSD Child Care Subsidy Section staff no less than 30 calendar days prior to the effective date of any changes. When the provider fails to report the anticipated change timely and a new contract is needed, a gap may occur in the child care subsidy payment to the provider. Changes that must be reported include:

(1) collaborations or agreements;

(2) anticipated sale of the business;

(3) change of legal business entity;

(4) change of physical or mailing address;

(5) change in facility status;

(6) legal name change; ~~or~~

(7) plan to stop caring for children;

(8) change of phone number; and

(9) reduction of star status.

(e) **Changes that do not require a new contract.** Changes that do not require a new contract include a:

(1) legal name change;

(2) change of location. When a child care center or home provider changes the location of his or her child care business, the provider must notify FSSD Child Care Subsidy Section staff of the new location and sign a new license application agreeing to care for children at the new location. The provider's license and contract remain open with the same:

(A) begin date;

(B) number assigned; and

(C) star status; ~~and~~

(3) facility status change from a child care home to a large child care home or from a large child care home to a child care home as long as the same license number is used; and

(4) facility status change from a child care home to a child care center or a child care center to a child care home if the business entity stays the same.

(f) **Changes that require a new contract.** Changes that require a new contract are included in (1) through (~~3~~2) of this subsection. When a new contract is required, procedures in (c) of this Section are used to complete and submit child care contract requests.

~~(1) **Change in facility status.** A change in facility status occurs when a facility changes from a home to a center or a center to a home.~~

~~(A) When the status of a child care home changes to a child care center, a new license application is required. A child care center provider may sign Form 08CC001E if the:~~

~~(i) new license or permit application is pending; and~~

~~(ii) provider meets or is anticipated by OCCS licensing staff to meet one plus status or higher within 30 calendar days.~~

~~(B) When the status of a child care center changes to a child care home, a new license application is required. A child care home provider may sign Form 08CC001E if the:~~

~~(i) license application is pending at any star status; or~~

~~(ii) permit application is pending and the provider meets or is anticipated by OCCS licensing staff to meet one plus, two, or three star status within 30 calendar days.~~

(~~2~~1) **Change in ownership ~~for a child care center~~.** When the owner of a child care center or child care home changes, the new owner or authorized signor may sign Form 08CC001E if the:

(A) child care center:

(~~A~~i) has a new license or permit application is pending; and

(~~B~~ii) ~~provider~~ meets or is anticipated by OCCS licensing staff to meet one plus star status or higher within 30 calendar days; or

(B) child care home:

(i) has a new license application pending; and

(ii) is anticipated by OCCS licensing staff to meet one star status or higher within 30 calendar days.

(~~3~~2) **Change of legal business entity.** Examples of changing legal business entity include changing from a sole proprietor to a corporation, partnership, or limited liability company.

(A) When a child care center changes the business entity, a new license application is required. A child care center provider may sign Form 08CC001E if the:

(i) new license or permit application is pending; and

(ii) provider meets or is anticipated by OCCS licensing staff to meet one plus status or higher within 30 calendar days.

(B) When a child care home changes the business entity, a new license application is required. A child care home provider may sign Form 08CC001E if the:

(i) license application is pending at any star status; or

(ii) permit application is pending and the provider meets or is anticipated by OCCS licensing staff to meet one plus status or higher within 30 calendar days.

(g) **Providing care at a different site than is authorized.** When the child care provider signs the child care contract, he or she agrees to provide care only at the physical address designated in the contract. In certain circumstances, a child care center provider who owns more than one child care center may move children receiving subsidized child care benefits to an alternate center only after he or she receives prior approval in writing from the FSSD Child Care Subsidy Section staff authorizing him or her to move the children and the point-of-service (POS) machine to the alternate site for a designated period of time. FSSD Child Care Subsidy Section staff may give approval when (1) through (4) are met.

(1) The same owner or legal business entity owns the alternate site.

(2) The alternate site is licensed and contracted at the same star level and the provider has adequate licensed capacity at the alternate site.

(3) There is a legitimate business reason for providing care in another location.

(4) The provider advises FSSD Child Care Subsidy Section staff how he or she is ensuring that parents are aware their children are being cared for at a different location.

(h) **Renewal of child care contracts.** Contracts ~~are~~ automatically ~~renewed~~ renew for successive one year terms, under the same terms and conditions, unless ~~either~~ the provider or OKDHS gives written notice of its intent not to renew to the other party at least 30 calendar days prior to the expiration of the previous term. A contract is not renewed when a provider fails to complete required contract training or to provide any other information or documents requested during the contract renewal period.

(i) **Contract violations.** When the child care provider signs Form 08CC001E, the provider is agreeing to abide by the terms of the contract. When human services center (HSC) staff becomes aware that a provider is violating the terms of the contract, he or she ~~advises the provider to stop the practice immediately and~~ sends an e-mail to FSSD Child Care Subsidy Section staff advising of the circumstances. HSC staff may also complete Form 19MP001E, Referral Form, to report the violation to the Office of Inspector General. Examples of contract violations include, but are not limited to:

(1) discriminating against persons seeking services either by charging a discriminatory rate or violating a person's rights as listed in the Civil Rights Act of 1964 as amended, the Rehabilitation Act of 1973 as amended, or the Americans with Disabilities Act of 1990, as amended;

(2) failing to maintain a drug-free workplace;

(3) ~~possessing or swiping a client's electronic benefit transfer (EBT) card~~ operating over licensed capacity;

(4) ~~knowing a client's personal identification number (PIN)~~ possessing or swiping a client's electronic benefit transfer (EBT) card;

(5) ~~failing to ensure accurate time and attendance information was recorded by the parent or caretaker on the POS machine. The attendance, not time, of a child approved for the part-time or blended unit type must be recorded on the POS machine during the school year by the parent or caretaker~~ knowing a client's personal identification number;

(6) ~~charging a client receiving subsidized child care more than the OKDHS rate for days and hours within the client's plan of service~~ refusing unlimited access by a parent or caretaker to the areas of the facility used for child care during the hours of operation;

(7) ~~charging a client or requiring a client to swipe attendance for days and hours outside of client's plan of service when those days and hours are a requirement of the provider, not a choice of the client~~ failing to ensure accurate time and attendance information was recorded by the parent or caretaker on the POS machine. The attendance, not time, of a child approved for the part-time or blended unit type is recorded on the POS machine by the parent or caretaker during the school year;

(8) charging a client receiving subsidized child care ~~an allowable fee not charged to non-OKDHS participants~~ more than the OKDHS rate for days and hours within the client's plan of service;

(9) ~~moving the children from the agreed upon location shown in the contract for reasons other than field trips and claiming for services at the other location without prior written approval from the FSSD Child Care Subsidy Section staff~~ charging a client receiving subsidized child care an allowable fee not charged to non-OKDHS participants;

(10) ~~moving the POS machine and allowing parents to record time and attendance at a different location than agreed upon in the contract without receiving prior written approval from the FSSD Child Care Subsidy Section staff in accordance with subsection (g) of this Section~~ failing to post all of the facility's rates and fees;

(11) ~~failing to advise and provide OKDHS a completed copy of any agreement the provider enters into within 30 calendar days of entering into a collaboration or agreement. This includes agreements with Head Start, Early Head Start, public schools, and/or any other programs receiving state or federal funding~~ charging a client or requiring a client to swipe attendance for days and hours outside of client's plan of service when those days and hours are a requirement of the provider, not a choice of the client;

(12) ~~claiming and/or receiving payment from OKDHS for the same hours of care the provider receives payment from another state or federal funding source~~ failing to advise and provide OKDHS a completed copy of any agreement the provider enters into within 30 calendar

days of entering into a collaboration or agreement. This includes agreements with Head Start, Early Head Start, public schools, or any other programs receiving state or federal funding;

(13) ~~failing to inform OKDHS of a change in facility status, location, legal business entity, or ownership of the business at least 30 calendar days in advance of the change~~ claiming or receiving payment from OKDHS for any hours of care the provider is not charging all parents for care because provider receives state or federal funds for those hours. Refer to OAC 340:40-5-1(7) for policy on collaborations;

(14) ~~filing manual claims when claims could be filed through the EBT system~~ claiming payment for care given for any hours in an unlicensed collaborative classroom;

(15) ~~failing to post all of the facility's rates and fees~~ moving the children from the agreed upon location shown in the contract for reasons other than field trips and claiming for services at the other location without prior written approval from the FSSD Child Care Subsidy Section staff;

(16) ~~subcontracting services to another provider~~ moving the POS machine without receiving prior written approval from the FSSD Child Care Subsidy Section staff per subsection (g) of this Section;

(17) ~~refusing unlimited access by a parent or caretaker to the areas of the facility used for child care during the hours of operation~~ failing to inform OKDHS of a change in facility status, location, legal business entity, or ownership of the business at least 30 calendar days in advance of the change;

(18) ~~refusing to make available to OKDHS within an hour of request by any OKDHS representative all business records that document proper fiscal and program management by the provider~~ failing to inform OKDHS in writing within ten calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of the child care business, who has been convicted of a criminal offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act;

(19) not maintaining written records for manual claims filed during the last three years;

(20) not maintaining written attendance records which include in and out times for the last three years;

(~~19~~21) ~~breaching the contract signed by the provider with the OKDHS EBT contractor~~ refusing to make available to OKDHS all business records that document proper fiscal and program management by the provider within an hour of request by any OKDHS representative;

(~~20~~22) ~~not maintaining written records for manual claims filed or attendance records required by OCCS Licensing during the last three years~~ failing to allow full access to the facility's premises and personnel to investigate a complaint;

(~~21~~23) ~~failing to inform OKDHS in writing within ten calendar days of any person who has an ownership or controlling interest in, or is an agent or managing employee of the child care business, who has been convicted of a criminal offense related to such person's involvement under Titles XVIII, XIX, or XX of the Social Security Act~~ failing to report the income from the child care business within ten calendar days to his or her Family Support Services (FSS) worker if receiving benefits; ~~and~~

(~~22~~24) ~~failing to report the income from the child care business within ten calendar days to his or her Family Support Services (FSS) worker if receiving benefits~~ claiming payment for care given by a home provider for his or her employee's child. Refer to OAC 340:40-5-1(7);

(25) subcontracting services to another provider; and

(26) breaching the contract signed by the provider with the OKDHS EBT contractor.

(j) **Cancellation of child care provider contracts.** FSSD Child Care Subsidy Section staff initiates the cancellation by issuing a notice to the provider ~~by certified mail and regular mail at the same time~~.

(1) Contracts may be cancelled:

(A) with cause. The effective date of cancellation is 13 calendar days after FSSD staff mails the notice. This allows three calendar days for mailing time. The notice must contain a reference to the grounds for cancellation including the specific contract provision(s) that was violated; or

(B) without cause. The effective date of cancellation is 33 calendar days after FSSD staff mails the notice. This allows three calendar days for mailing time.

(2) The FSSD Child Care Subsidy Section staff communicates with the child care liaison when a contract is being cancelled to ensure that HSC staff has sufficient time to plan with clients to find another facility, if necessary. When it is necessary to cancel authorizations with a child care provider, the provider is notified by use of a computer-generated notice. FSSD Child Care Subsidy Section staff closes all authorizations with the provider whose contract is cancelled except for Child Welfare (CW) authorizations. An e-mail is sent to the KIDS Help Desk notifying them of the contract cancellation requesting closure of CW authorizations.

[OAR Docket #11-552; filed 4-22-11]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 50. SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

[OAR Docket #11-553]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Application Process
340:50-3-2 [AMENDED]
Subchapter 5. Non-Financial Eligibility Criteria
Part 1. Household Definition
340:50-5-3 [AMENDED]
340:50-5-6 [AMENDED]
340:50-5-8.1 [AMENDED]

Part 3. Special Households
340:50-5-28 [AMENDED]
Part 5. Students, Strikers, Resident Farm Laborers, Migrant Households, Sponsored Aliens, and School Employees
340:50-5-48 through 340:50-5-49 [AMENDED]
Part 7. Related Provisions
340:50-5-67 through 340:50-5-68 [AMENDED]
Part 9. Work Registration
340:50-5-88 [AMENDED]
Subchapter 7. Financial Eligibility Criteria
Part 1. Resources
340:50-7-1 [AMENDED]
340:50-7-2 through 340:50-7-5 [REVOKED]
Part 3. Income
340:50-7-22 [AMENDED]
340:50-7-29 through 340:50-7-31 [AMENDED]
Subchapter 9. Eligibility and Benefit Determination Procedures
340:50-9-1 [AMENDED]
340:50-9-5 [AMENDED]
Subchapter 11. Special Procedures
Part 1. Households Entitled to Expedited Service
340:50-11-5 [AMENDED]
Part 7. Replacement When Food Purchased With Food Benefits Is Destroyed
340:50-11-64 [AMENDED]
Part 12. Categorically Eligible Households
340:50-11-111 through 340:11-113 [AMENDED]
340:50-11-115 [AMENDED]
Subchapter 15. Overpayments and Fraud
Part 3. Fraud
340:50-15-25 [AMENDED]
(Reference APA WF 10-16)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; the Food and Nutrition Act of 2008; waivers received affect federal regulations at Section 272.3 of Title 7 of the Code of Federal Regulations (CFR), 7 CFR 273.12, 7 CFR 273.14, 7 CFR 273.2, and 7 CFR 273.8; and Chapter 4 of Title 10 of the Oklahoma Statutes.

DATES:
Comment period:
January 18, 2011 through February 17, 2011
Public hearing:
None requested
Adoption:
February 22, 2011
Submitted to Governor:
February 22, 2011
Submitted to House:
February 22, 2011
Submitted to Senate:
February 22, 2011
Gubernatorial approval:
March 29, 2011
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 19, 2011.
Final adoption:
April 19, 2011
Effective:
June 1, 2011

SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed revisions to Subchapter 3 of Chapter 50 amend the rules to: (1) waive recertification interviews for households where all adults are elderly or disabled and there is no earned income; (2) add language to allow certain households that appear eligible for expedited services to be certified for one or two months prior to the required interview and requirement to complete the interview before further benefits can be approved; and (3) remove worker responsibility to inquire about resources.

The proposed revisions to Subchapter 5 of Chapter 50 amend the rules to: (1) remove language regarding resources for all households except sponsored alien households as they are no longer a factor of eligibility; (2) remove incorrect language regarding residents of shelters for battered women and children; (3) add information about deductions from income; (4) add clarifying language; and (5) restructure information for greater readability.

The proposed revisions to Subchapter 7 of Chapter 50 amend the rules to: (1) remove resources as an eligibility factor; (2) clarify that liquid resources are considered for expedited processing; (3) clarify what military pay is countable; (4) add language that self-employment losses cannot offset other household income; (5) add clarifying language regarding temporary disability and worker compensation, how to determine monthly income from certain unearned income sources, and the medical expense deduction; (6) add information regarding consideration of income for household members absent from the home, in foster care, and receiving adoption subsidy payments; and (7) correct language regarding child care expenses.

The proposed revisions to Subchapter 9 of Chapter 50 amend the rules to: (1) remove language regarding resources; (2) add information regarding reopening benefits; and (3) change information regarding benefit reviews.

The proposed revisions to Subchapter 11 of Chapter 50 amend the rules to: (1) add a new requirement prior to restoration of benefits because of a natural disaster; (2) remove language that liquid resources must be verified; (3) add language regarding when postponed interviews must be scheduled; and (4) change language regarding which households can and cannot be considered categorically needy.

The proposed revisions to Subchapter 15 of Chapter 50 amend the rules to remove language regarding resources.

CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 3. APPLICATION PROCESS

340:50-3-2. Interview process

(a) **Face-to-face interview.** All households initially applying for food benefits, including those submitting applications by mail, must have a face-to-face interview with a worker except when the household:

(1) requests the interview be waived because the household is unable to appoint an authorized representative and does not have a household member able to come into the human services center (HSC) because of hardship conditions. Hardship conditions include, but are not limited to:

(A) education, training, or work hours ~~which~~ that make it difficult to come into the HSC during office business hours;

(B) illness or the need to care for a family or household member;

(C) bad weather conditions;

(D) transportation problems of any kind;

(E) residence in a rural area; or

(F) advanced age or disability; or

(2) is being recertified for food benefits. At recertification, the interview may be conducted face-to-face or over the telephone. Recertification interviews may be waived for households when all adult members are elderly or disabled and have no earned income.

(b) **Waiver of face-to-face interview.** When the face-to-face interview is waived, the worker conducts the interview as soon as possible either by phone or at a location convenient to the household such as a home visit.

(1) The seven day expedited service or 30 calendar day processing standards apply.

(2) The home visit or telephone interview is scheduled in advance with the household.

(3) The household must provide the required verification. If the household is unable to furnish the required verification, the worker provides assistance.

(c) **Postponed interviews.** Households applying for food benefits who complete and sign an online application or drop off, mail, or fax a complete and signed Form 08MP001E, Request for Benefits, to the HSC and appear eligible for expedited services per OAC 340:50-11-1 may have the interview postponed in certain circumstances.

(1) The interview may be postponed when:

(A) the applicant's identity is verified; and

(B) the worker is unable to contact the household or determines that an interview cannot be scheduled within seven calendar days.

(2) When the interview is postponed, the household is sent Form 08AD092E, Client Contact and Information Request, setting an interview date and listing verification that must be provided before further benefits are approved. Per OAC 340:50-3-1 and 340:50-11-5, the interview must be completed and postponed verification provided within 30 calendar days of the application date in order to avoid a break in benefits. If the interview is completed and postponed verification provided within 60 calendar days of the date of application, a new application is not needed. Benefits are prorated from the date the interview is completed and verification provided.

(~~c~~d) **Who must be interviewed.** The person interviewed may be the head of the household, spouse, any other responsible member of the household, or an authorized representative who knows the household's circumstances. The household may bring any person of their choice to the face-to-face interview.

(~~d~~e) **Worker responsibilities during the interview.** During the face-to-face interview, the worker:

(1) reviews with the household the information ~~the household listed~~ on the application ~~form and explores~~ and resolves ~~with the household~~ unclear and incomplete information;

(2) inquires whether changes have occurred in the household's income, ~~resources,~~ deductions, or other circumstances since the application was filed;

(3) advises the household of its rights and responsibilities, including reporting requirements;

(4) conducts the face-to-face interview as an official and confidential discussion of household circumstances limited to facts related to food benefit eligibility factors; and

(5) ensures the household's right to privacy is protected.

(~~e~~f) **Scheduling interviews.** The face-to-face interview or alternate interview method is scheduled as promptly as possible after the filing of the application to ensure the household, if eligible, may participate within 30 calendar days following the date of application. If the person to be interviewed is employed, the worker schedules an appointment to minimize the person's absence from work even if it must be scheduled outside ~~the~~ normal business hours. If the person is unable to attend a scheduled face-to-face interview for any of the reasons stated in (a) of this Section, the worker offers to waive the face-to-face interview and schedule a telephone interview or home visit.

(1) **Timely reapplications.** A household making a timely reapplication has the interview scheduled as early as possible, but not later than the last day of the month.

(A) If the household fails to appear for the first interview, further interviews are not scheduled unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(2) **Untimely reapplications and initial applications.** A household making an untimely reapplication or an initial application is scheduled for an interview as early as possible, but not later than 20 calendar days from the application date.

(A) If the household fails to appear for the scheduled interview, further interviews are not scheduled unless the household requests another appointment by the 30th calendar day after the application date.

(B) Upon request, the worker reschedules the interview at the earliest possible date.

(~~f~~g) **Household cooperation.** To determine eligibility, the application ~~form~~ must be completed and signed, the household or its authorized representative must be interviewed, and required information on the application ~~form required~~ verified to determine eligibility ~~must be verified~~.

(1) If the household refuses to cooperate with the worker in completing this process, the application is denied at ~~the~~ that time ~~of the refusal~~.

(A) For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take the necessary actions required to complete the application process.

(B) The household is also ineligible if it refuses to cooperate in any subsequent review of eligibility, including reviews generated by reporting changes, recertifications, or an Office of Inspector General Quality Control (QC) review.

(2) If an application is denied or food benefits are terminated for refusal to cooperate, the household may reapply, but may not be determined eligible until it cooperates.

(3) If food benefits have been terminated for refusing to cooperate with the QC reviewer and reapplication is made after 95 calendar days from the end of the QC review period, October 1 through September 30, the household must provide verification of eligibility factors only for

the reapplication. For example, if a household had a QC review during the October ~~2008~~ 2009 through September ~~2009~~ 2010 annual QC review period and food benefits were terminated for refusal to cooperate with the QC review, the household is required to provide verification for the reapplication only if it is filed after January 2, ~~2010~~ 2011.

SUBCHAPTER 5. NON-FINANCIAL ELIGIBILITY CRITERIA

PART 1. HOUSEHOLD DEFINITION

340:50-5-3. Persons who cannot be separate food benefit households

Separate food benefit household status may not be granted to persons living together, as described in (1) through (4), even if they customarily purchase food and prepare meals for home consumption separate and apart from the others, except as otherwise specified in this section. Separate status may not be granted to:

(1) a spouse, ceremonial or common law, of a household member;

(2) children, 21 years ~~old~~ of age and under, living with their natural or adoptive parent(s) or stepparent(s);

(3) children, ~~under age~~ 18 years of age and under who live with and are under the parental control of an adult who is someone other than their natural or adoptive parent(s) or stepparent(s).

(A) Per Chapter 4 of Title 10 of the Oklahoma Statutes, a minor may be considered emancipated if the district court confers upon the minor the rights of majority.

(B) The worker considers the child to be under parental control for purposes of this provision when he or she is financially or otherwise dependent on a member of the household.

(C) This provision does not apply to foster children or children placed in the home by the Developmental Disabilities Services Division (DDSD); or

(4) persons who live together and customarily purchase and prepare meals together except as described in OAC 340:50-5-1(5).

340:50-5-6. Households with non-household members

(a) For those non-household members who have not been disqualified, such as students who are ineligible, the worker does not count the income ~~and resources~~ of the non-household member ~~are not considered available to the household~~.

(b) When the earned income of one or more household members and the earned income of a non-household member are combined into one wage, the worker determines the income for the household members by:

(1) counting the portion due to the household when it is possible to identify the household's share; or

(2) prorating the earned income equally and counting the household member's pro rata share when it is not possible to identify the household's share.

(c) ~~If~~ When the household shares deductible expenses with the non-household member, the worker only deducts the amount the household actually paid or contributed ~~by the household is deducted~~ as a household expense. ~~If~~ When the payments or contributions cannot be differentiated, the worker prorates the expenses ~~are prorated~~ evenly among persons actually paying or contributing to the expense and deducts only the household's pro rata share ~~is deducted~~. ~~When the earned income of one or more household members and the earned income of a non-household member are combined into one wage, the income of the household members is determined as follows:~~

~~(1) If the household's share can be identified, the worker counts that portion due to the household as earned income.~~

~~(2) If the household's share cannot be identified, the worker prorates the earned income among all those whom it was intended to cover and counts that prorated portion as the household's.~~

340:50-5-8.1. Ineligible and illegal aliens

Aliens not identified as qualified aliens ~~in~~ per OAC 340:50-5-67(3) are not eligible for food benefits. ~~Income and resources~~ The worker considers the income of ineligible aliens ~~are considered~~ as available to the household. All aliens who are in the United States unlawfully, must be reported to the United States Citizenship and Immigration Services (USCIS).

PART 3. SPECIAL HOUSEHOLDS

340:50-5-28. Shelter for battered women and children

Residents of shelters for battered women and children ~~that do not provide a majority of the residents' meals~~ may file an application and are certified using program requirements applicable to any other household. To be eligible for special eligibility rules in this Section, ~~residents must be residing in a~~ the shelter for battered women and children ~~that provides~~ must provide a majority of the residents' meals. Residents of shelters providing meals voluntarily apply on their own behalf. They may name a shelter member or other person to act as an authorized representative for application and certification purposes; however, the residents are expected to control the use of their own allotment.

(1) **Verification for shelter status.** ~~The county office is~~ Human services center (HSC) staff are responsible for verifying that the shelter for battered women and children meets the definition specified in OAC 340:50-5-7(b).

(A) Verification of non-profit status is accomplished by seeing correspondence from Internal Revenue Service (IRS) stipulating that the organization is tax-exempt as a charitable or educational entity under Section 501(c)(3) of the IRS code.

(B) If ~~this document~~ IRS documentation is not available, the worker sends a copy of the shelter's

by-laws ~~is sent~~ to the Family Support Services Division~~, and the county is notified~~ Supplemental Nutrition Assistance Program (SNAP) Section.

(C) SNAP Section staff notify the worker of the determination of non-profit status.

(D) ~~The county office is~~ HSC staff are responsible for keeping a list of shelters for battered women and children in their county~~,~~ whose status has been verified and must also keep documentation of that verification.

(2) **Separate households.** Shelter residents who are included in another active household may participate as a separate household if the active household which includes them is the household containing the person who subjected them to abuse. They may receive an additional allotment as a separate household only once a month. ~~Prompt~~ The worker takes prompt action ~~is taken to reflect changes in the~~ to remove shelter residents from the active household's composition and allotment.

(3) **Income~~, resources,~~ and expenses.** ~~Residents~~ The worker certifies residents applying as a separate household ~~are certified~~ solely on the basis of their own income~~, resources,~~ and the expenses for which they are responsible. Income~~, resources,~~ and the expenses of their former household are disregarded. ~~Jointly owned resources are considered inaccessible if the resources are owned with members of their former household and the resident's access to the value of the resources is dependent upon the agreement of a joint owner who still resides in the former household.~~ Room payments to the shelter are considered as shelter expense.

PART 5. STUDENTS, STRIKERS, RESIDENT FARM LABORERS, MIGRANT HOUSEHOLDS, SPONSORED ALIENS, AND SCHOOL EMPLOYEES

340:50-5-48. Migrant farm laborers

Migrant farm laborers usually have little or no income upon arriving at a work area; therefore, the worker should be alert to the need for emergency food and determine whether the migrant farm laborer's household qualifies for expedited services.

(1) **~~Resources~~ Income.** ~~When the migrant household contains a household member who is disqualified from the Supplemental Nutrition Assistance Program (SNAP) due to an intentional program violation as described at OAC 340:50-15-25, special care should be taken to determine if there are out-of-state resources or income from real property in the home base area. For example, a migrant who claims Texas as a home base area and who is applying for food benefits in Oklahoma is questioned as to the availability of resources in Texas as well as in Oklahoma. Particular attention is paid to real property in the home base area.~~ In addition to income declared by the household, the worker explores the possibility that out-of-state real property is being rented or is producing income. If home property is producing income, the income must be added to all other household income to determine eligibility and food benefit allotment.

~~(A) Each applicant household is permitted one home and surrounding property as an exemption from resources. Since the household may be temporarily away from the home base for employment, the home and surrounding property in the home base area may be exempt from consideration as a resource.~~

~~(B) Shelter costs for the home when unoccupied because of employment may be allowed if the household intends to return. When the home is occupied, the current occupants must not be claiming the shelter costs and the house must not be leased or rented in order for shelter costs to be allowed.~~

~~(C) The worker explores the possibility that out-of-state real property is being rented or is producing income. If home property is producing income, the income must be added to all the household's income in determining eligibility and food benefit allotment.~~

(2) **Exempt income of children in migrant households.** Since many migrant households receive one payment in combination for work performed by all household members, the income of a student under 18 years of age must be differentiated from the rest of the household's income. The worker prorates the income equally among the number of household members working and excludes that portion allowed to the student.

(3) **Deductions from income.** When eligible, the worker deducts expenses described at OAC 340:50-7-31 from the household's income.

(~~2~~4) **Work registration.** Employable members of migrant households who are not employed at least 30 hours a week or receiving weekly earnings equal to the federal minimum wage times 30 hours must register for and accept suitable employment the same as other persons.

~~(3) **Exempt income of children in migrant households.** Since many migrant households receive one payment in combination for work performed by all household members, the income of a student under 18 years of age must be differentiated from the rest of the household's income. The worker prorates equally the income among the number of household members working and excludes that portion allowed to the student.~~

340:50-5-49. Sponsored aliens

(a) Sponsored aliens whose sponsor signed an enforceable affidavit of support may be subject to sponsor deeming, unless exempt from deeming requirements. ~~The groups listed in (1) through (5) are~~ Sponsored aliens exempt from deeming requirements~~.~~ include:

(1) ~~During any 12 month period, the alien is exempt if he or she is~~ aliens who are a battered spouse, battered child or parent, or child of a battered person~~, providing the battered alien lives in a~~ when they live in a separate ~~household~~ residence from the person responsible for the

battery. The ~~exemption can be extended beyond the~~ worker grants the exemption for a 12-month period. The exemption can be extended beyond the 12-month period if the alien demonstrates that the battery is recognized in a court or administrative order and if it is determined by the Oklahoma Department of Human Services (OKDHS) that the battery has a substantial connection to the need for benefits~~.~~;

(2) ~~If~~ when the food benefit household includes the alien and the sponsor ~~lives in the same household as the alien, deeming does not apply because~~, the sponsor's income ~~and resources are~~ already ~~counted~~ counts. ~~There is no deeming exemption if~~ When the sponsor receives food benefits in another household~~.~~, the sponsor's income must be deemed;

(3) ~~If~~ when the sponsored alien is ineligible for food benefits because of immigration status, such as he or she is not a qualified alien~~, sponsor's income is not deemed to other eligible members of the immigrant's household.~~;

(4) ~~Children~~ children under the age of 18 ~~are exempt.~~;

(5) ~~If~~ when the alien's own income and any assistance provided by the sponsor or any other person is not enough for the alien to obtain food and shelter without ~~the assistance of~~ help from other assistance programs~~, the amount of the~~. The worker cannot attribute more income and resources ~~attributed~~ to the alien ~~cannot exceed the actual amount provided~~ than actually received for a 12-month period. An alien is considered indigent if the sum of alien's household's own income and any cash or in-kind assistance provided by the sponsor or others is less than 130% of the poverty limit as shown on OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. Each indigence determination is effective for 12 calendar months and may be renewed for additional 12-month periods.

(A) ~~If~~ When exempted under ~~(5) of~~ this subsection, OKDHS ~~is required to~~ must send a written notice of the determination to the statistics branch of United States Citizenship and Immigration Services (USCIS).

(B) After learning of the reporting requirement, the alien may be given the opportunity to refuse food benefits for himself or herself without withdrawing the entire household's application.

(C) An alien who does not wish to be exempt as indigent can be permitted to have his or her eligibility and benefits determined based on the deeming formula.

(b) ~~The~~ When the household is not exempt from deeming requirements, the worker counts the income and resources of a sponsor and his or her spouse ~~are considered~~ as the unearned income and resources of ~~an~~ the sponsored alien. The worker counts the income of the sponsor's spouse ~~is considered~~ even ~~if~~ when the marriage occurred after the sponsor signed an agreement to support the sponsored alien.

(1) A sponsor is defined as a person, not an organization, who executed an affidavit of support or similar agreement on behalf of the alien as a condition of the alien's entry or admission into the United States as a permanent resident.

(2) In addition to providing information required for any other applicant, if deeming is required, the sponsored alien must provide the:

(A) income and resource information of the alien's sponsor and the sponsor's spouse;

(B) number of other aliens sponsored by the sponsor;

(C) Immigration and Naturalization Services (INS) Act under which the alien was admitted and the date of entrance;

(D) alien's birthdate, birthplace, and registration number;

(E) number of dependents claimed on the sponsor's and his or her spouse's income tax statement; and

(F) name, address, and phone number of the sponsor.

(3) In addition to verification requirements described in OAC 340:50-3-3, the sponsored alien is also required to provide proof of non-liquid resources of the sponsor and the number of aliens he or she sponsors if a household member has been determined to have committed an intentional program violation per OAC 340:50-15-25.

(4) If an alien has already reported the gross income and resources of the sponsor and the sponsor's spouse in a Temporary Assistance for Needy Families (TANF) case, that income amount may be used for food benefit purposes. The amount of the sponsor's income and resources deemed to the sponsored alien is determined by:

(A) using the total monthly gross earned income, including income from self-employment but excluding in-kind or vendor payments to the sponsor and sponsor's spouse, minus 20% of the gross earned income, plus total monthly unearned income.

(i) In-kind assistance such as food and shelter provided to the alien must be included as income in determining indigent exemption only. It is not considered when determining eligibility or benefit levels for the sponsored alien household.

(ii) In the absence of actual declared in-kind assistance cost provided by the sponsor, the worker uses an assigned value of $143 ~~is used~~; and

(B) subtracting the food benefit gross income eligibility standard for the sponsor and the dependents as claimed by the sponsor to determine his or her federal personal income tax liability; and

(C) considering the total amount of the resources of the sponsor and sponsor's spouse less $1,500.

(5) Income and resources of the sponsor and sponsor's spouse considered available to the sponsored alien are:

(A) not considered in determining need of unsponsored members of the alien's household unless actually available;

(B) divided equally when the sponsor also sponsors other aliens; and

(C) redetermined on a new sponsor if the alien switches sponsors during the certification period.

(6) Countable resources of sponsors include:
(A) liquid resources such as:
(i) cash on hand;
(ii) checking or savings accounts;
(iii) savings certificates; and
(iv) stocks or bonds; and
(B) non-liquid resources such as:
(i) licensed and unlicensed vehicles;
(ii) boats;
(iii) land;
(iv) recreational property;
(v) mobile homes other than home property; and
(vi) vacation home property.

(~~6~~7) Changes during the certification period must be reported for both the alien's and the sponsor's household.

(~~7~~8) Sponsor-to-alien deeming stops when the sponsored:
(A) alien becomes a naturalized citizen;
(B) alien can be credited with 40 quarters of work per OAC 340:50-5-67; or
(C) alien's sponsor is deceased.

PART 7. RELATED PROVISIONS

340:50-5-67. Citizenship and alien status

(a) ~~To~~ As defined in federal law, to be eligible for food benefits ~~an individual~~ a person must be:
(1) a United States (U.S.) citizen;
(2) a U.S. non-citizen national;
(3) an alien who is both qualified and eligible; or
(4) an alien not required to meet qualified alien status.

(b) Pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes, all persons 14 years of age and older must declare whether they are residing in the U.S. lawfully and may be required to sign Form 08MP005E, Citizenship Affidavit, ~~in accordance with~~ per OAC 340:65-3-1(g).

340:50-5-68. Social Security numbers

(a) Each household member must provide his or her Social Security number (SSN) when applying for participation in the Supplemental Nutrition Assistance Program (SNAP). The worker explains to the applicant that refusal to provide SSNs will result in disqualification of the person for whom a SSN is not provided.
(1) If an applicant cannot provide a SSN, proof of application is required prior to certification for each household member except a newborn.
(2) The household must provide the SSN or proof of application for the newborn at its next recertification or within six months following the month the baby is born, whichever is later.

(b) If the worker determines a household member has refused or failed to make all efforts to apply for or provide a SSN for a household member, that person is ineligible to participate in SNAP.
(1) The disqualification applies to the person for whom the SSN is not provided and not to the entire household.
(2) The income ~~and resources~~ of persons disqualified for failure to provide a SSN are considered in determining food benefit eligibility.
(3) Disqualification ends when the SSN is provided or the SSN application is made and verified.

PART 9. WORK REGISTRATION

340:50-5-88. Requirements after registration

Requirements after registration in the Job Search Project are applicable only to registrants in the Job Search Project human services center (HSC).

(1) **Employment and Training (E&T) Program.** The intent of the Supplemental Nutrition Assistance Program (SNAP) E&T Program is to ensure all able-bodied food benefit recipients are involved in meaningful work related activities which will lead to paid employment and a decreased dependency on assistance programs. The Oklahoma Department of Human Services (OKDHS) is responsible for assisting and directing persons in E&T activities which enable them to achieve or maintain economic self support. These activities include registration for E&T, employment related evaluations and assessment, employability planning, counseling, job developing, and job placement.
(A) All work registrants not exempted from work registration who live in the designated SNAP E&T HSC office boundaries or have not been exempted from E&T activity must participate in the SNAP E&T Program. Food benefit recipients exempted from work registration or from E&T may participate in the SNAP E&T Program as a volunteer.
(B) The E&T requirement applies each time a registrant loses a work registration exemption, re-enters SNAP after a period of absence, or each 12 months, whichever occurs first.
(C) If a work registrant becomes exempt from work registration at any point during the E&T process, E&T requirements no longer apply.
(D) When a work registrant moves from a non-E&T HSC into the Job Search Project HSC boundaries, the E&T is initiated for work registrants immediately following receipt and review of the case file. When a work registrant moves from the Job Search Project HSC boundaries into a non-E&T HSC boundaries, E&T requirements no longer apply.

(2) **SNAP E&T exemptions.** Mandatory work registrants not exempted from work registration may be exempted from the SNAP E&T Program if the registrant:
(A) resides an unreasonable distance from the HSC or potential employer. A distance is considered unreasonable if the round trip exceeds two hours by public or private transportation;
(B) is a migrant or seasonal farm worker away from his or her home base and following the work stream;

(C) lacks adequate child care;

(D) has physical or mental problems;

(E) is 55 years ~~old~~ of age or older and working under Title V of the Older American Act; or

(F) is homeless as defined in OAC 340:50-5-29.

(3) **E&T classification.** Participants are classified into four groups.

(A) **Job ready.** The registrant does not have substantial barriers to employment.

(B) **Not job ready.** This classification is assigned when the food benefit work registrant has barriers that require services not available through the SNAP E&T Program. If this classification is assigned, the person's worker or food benefit E&T worker finds services to eliminate these barriers to employment.

(C) **Job attached.** The registrant is temporarily laid off or expects to return to work within 60 calendar days. This classification is assigned for only 60 calendar days. At the end of the 60 calendar day period, the registrant, if still unemployed, is reassessed and reclassified to a different category.

(D) **Exempt.** This classification is assigned if the registrant meets any of the conditions listed in paragraph (2) of this subsection.

(4) **SNAP E&T component assignments.** Participants classified as job ready are assigned to an E&T component as described in (A) through (C) of this paragraph.

(A) **Job Search.** Participants assigned to this component are required to contact a minimum of 24 employers within an eight-week period or two four-week periods. One eight-week period is eight consecutive weeks of job search with a follow-up meeting after the first four weeks. A two four-week job search period has a period of time between the two job search periods. One follow-up interview is required each four weeks.

(i) A job contact is defined as a registrant presenting himself or herself as available and applying for work.

(ii) Appointments are scheduled on Form 08FB020E, Supplemental Nutrition Assistance Program (SNAP) Employment and Training Letter.

(iii) The job search assignment is given to the registrant in writing on Form 08FB022E, Job Search Plan. This form is also used to schedule follow-up interviews and used by the registrant to report job contacts. Job contacts are reported in writing and the registrant must attest that the signed statement is true. Employers contacted by the registrant are not required to provide written confirmation of the contact, but the registrant is required to sign the statement attesting he or she made the contacts.

(iv) If an E&T participant is referred to a job contact by the food benefit E&T worker and does not make this contact, the E&T worker initiates conciliation per (6)(A) of this Section.

(v) If an E&T participant does not accept a job offered to him or her without good cause, the food benefit E&T worker initiates conciliation per (6)(A) of this Section.

(B) **Workforce Investment Act (WIA) component.** A participant assigned to a WIA component is eligible for all the services available through WIA. A participant assigned to this component has completed the job search component without finding a job or is identified by the E&T worker as a person who can benefit from the services available through WIA. When the component is assigned, the participant is provided Form 08TW003E, Interagency Referral and Information, to take to WIA. The E&T participant is responsible for returning to the E&T worker Form 08TW003E signed by a representative of WIA.

(C) **Oklahoma Employment Security Commission (OESC) component.** A participant assigned to this component is eligible for all the services available at OESC. A participant assigned to this component is an E&T participant the E&T worker has determined would benefit from these services. When this component is assigned, the E&T worker gives the participant Form 08TW003E to take to OESC. The E&T participant is responsible for returning to the E&T worker Form 08TW003E signed by a representative of OESC.

(5) **E&T related expenses.** A participant in the SNAP E&T Program may receive up to $25 per month for E&T activity if another agency is not reimbursing the participant for the same type of activity. Reimbursement is $3 for a half day, four hours or less, and $6 for a full day, more than four hours.

(A) The food benefit E&T worker gives Form 08FB023E, Supplemental Nutrition Assistance Program Employment and Training Participation Report, to the E&T participant to complete Part 1 and return to the HSC during the first week of each month.

(B) A work registrant with a child under 12 years of age required to participate or who volunteer in the SNAP E&T Program is eligible for a maximum child care payment of $200 per month per child paid to the child care provider. See OAC 340:50-5-97 for voucher authorized child care for the SNAP E&T Program.

(6) **Failure to comply.**

(A) A registrant who fails to keep a scheduled E&T interview or fails to comply with E&T requirements and does not meet the good cause provision in (7) of this Section, is given the opportunity to comply through a conciliation period. The purpose of conciliation is to resolve disputes in an informal fashion and avoid invoking penalties. The conciliation period starts the day after noncompliance with E&T requirements is determined and lasts for no more than ten calendar days.

(B) If the registrant has not responded to the conciliation process by the tenth calendar day, the ten-day advance notice is sent. The adverse action is taken for noncompliance of E&T requirements. This notice is sent no later than the last day of the conciliation period.

(C) To comply with conciliation or show a good faith effort to comply, the participant during the conciliation period must:

(i) be assessed or assigned, if he or she failed to be assessed or assigned;

(ii) complete the balance of job contacts or at least three verified contacts, if he or she failed to complete job search component; or

(iii) provide Form 08TW003E, if he or she failed to return Form 08TW003E from the WIA or OESC component.

(D) If conciliation has failed, mandatory disqualification periods are imposed. The disqualification period for households whose non-compliant E&T registrant is the head of household does not exceed the lesser of the duration of ineligibility listed in (i) through (iii) of this paragraph or 180 calendar days. For all other non-compliant E&T registrants, disqualification periods remain in effect until the later of the date the household member complies with the work rules or is disqualified for the:

(i) first violation, one month;

(ii) second violation, three months; or

(iii) third or subsequent violation, six months.

(E) The disqualification cannot be ended unless the required household member meets the criteria in (6)(D) of this subsection, leaves the household, or becomes exempt from work registration.

(i) If any household member who failed to comply with E&T joins another household as the head of household, the entire new household is ineligible for the remainder of the disqualification period.

(ii) If the member who failed to comply with E&T joins another household where he or she is not the head of the household, the person is considered an ineligible household member.

(F) Households and persons disqualified for failure to comply with E&T requirements may request a fair hearing and continue participation.

(G) If the participant fails to comply with E&T requirements and meets the definition of head of household, the food benefits are closed.

(H) If the participant fails to comply with E&T requirements and does not meet the definition of head of household, that person is removed from the case. His or her income ~~and resources continue~~ continues to be counted.

(I) For purposes of failure to comply with work requirements, the head of household is defined in OAC 340:50-5-90.

(J) The principal wage earner is the household member, including excluded members, who has the greatest earned income in the two months prior to the violation.

(7) **Good cause.** Good cause includes circumstances beyond the registrant's control, such as, but not limited to:

(A) illness;

(B) illness of another household member requiring the presence of the registrant;

(C) a household emergency;

(D) unavailability of transportation; or

(E) lack of adequate child care for children ages 6 through 11.

(8) **Suitable work.** Any employment offered is considered suitable:

(A) if the wage offered is at least the highest of the applicable federal minimum wage, the applicable state minimum wage, or 80% of the federal minimum wage, if neither the state nor federal minimum wage applies;

(B) if the employment offered is on a piece-rate basis and the average hourly wage the employee can reasonably expect is at least equal to the applicable hourly wages specified;

(C) if the registrant, in order to be hired or to continue working, is not required to join, resign from, or refrain from joining any legitimate labor organization;

(D) if the work offered is not at a site subject to a strike or lockout at the time of the offer unless the strike has been enjoined under the Labor Management Relations Act (Taft-Hartley) or an injunction has been issued under Section 10 of the Railway Labor Act; or

(E) unless the registrant demonstrates or the worker determines the:

(i) risk to health and safety is unreasonable;

(ii) household member is physically or mentally unfit to perform the employment as documented by medical evidence or other reliable information;

(iii) employment offered within the first 30 calendar days of registration is not in the registrant's major field of experience;

(iv) distance from the registrant's home to the place of employment is unreasonable based on the expected wage and the time and cost of daily commuting. Commuting time cannot exceed two hours daily; or

(v) working hours or nature of the employment interferes with the registrant's religious observations, convictions, or beliefs.

(9) **Monitoring E&T.** The Family Support Services Division SNAP Section staff monitor the SNAP E&T Program.

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 1. RESOURCES

340:50-7-1. Resources considered

(a) ~~The resource standards in Part 1 of this Subchapter apply only to households containing a person who is disqualified from the Supplemental Nutrition Assistance Program (SNAP) due to an intentional program violation (IPV) as described in OAC 340:50-15-25.~~ Resources are excluded in determining eligibility for the Supplemental Nutrition Assistance Program (SNAP) unless the household:

(1) ~~Eligibility must be denied or terminated if the non-exempt resources described in OAC 340:50-7-3 exceed $3,000 for households with a member who is disabled [OAC 340:50-5-4] or 60 years of age or older, or $2,000 for all other households.~~ applies for expedited service. The worker must include the household's liquid resources as defined at (b) of this Section to determine eligibility for expedited service per OAC 340:50-11-1; or

(2) ~~The household's resources at the time the face-to-face interview is conducted must be used to determine if the household meets resource standards~~ contains one or more sponsored aliens whose sponsor's resources must be considered per OAC 340:50-5-49.

~~(3) The worker:~~

~~(A) reviews with the applicant any resources reported on the application;~~

~~(B) inquires if any resources have been obtained since the application was filed; and~~

~~(C) verifies all liquid and non-liquid resources which appear to be questionable or are inconsistent with other information reported on the application or review forms.~~

(b) ~~Resources are not considered in determining eligibility for food benefits when all household members are considered to be categorically eligible per OAC 340:50-11-111. However, liquid resources must be within the criteria shown at OAC 340:50-11-1 to determine expedited eligibility.~~ The worker accepts the household's statement regarding the value of liquid resources to determine expedited eligibility. Liquid resources include:

(1) cash on hand;

(2) checking or savings account balances;

(3) the cash value of savings certificates; and

(4) the cash value of stocks or bonds.

(c) The household must verify the value of liquid and non-liquid resources per OAC 340:50-5-49 when the sponsor's resources must be considered. After subtracting $1,500 from countable resources, resources cannot exceed $3,000 for households that contain a member who is disabled or 60 years of age or older or $2,000 for all other households.

340:50-7-2. Excluded resources [REVOKED]

~~In households applying for or receiving food benefits, resources listed in this Section are excluded for household members, for disqualified members whose resources are counted, or for ineligible aliens who would otherwise be a household member. When an exclusion applies because of use by or for a household member, the exclusion also applies when the resource is used by or for a disqualified person whose resources are counted or for an ineligible alien who would otherwise be a household member.~~

~~(1) **Home and surrounding property.** The home and surrounding property which is not separated from the home by intervening property owned by others is exempt. Public right-of-way, such as roads which run through the surrounding property and separate it from the home, does not affect exemption of the property.~~

~~(A) The home and surrounding property remain exempt when temporarily unoccupied by reasons of employment, training for future employment, illness, vacation, or uninhabitability caused by casualty or natural disaster so long as the household intends to return.~~

~~(B) Households that currently do not own a home, but own or are purchasing a lot on which they intend to build or are building a permanent home receive an exclusion for the value of the lot and, if it is partially completed, for the home.~~

~~(2) **Household personal goods, life insurance, and pension plans.** Household goods, personal belongings, including one burial lot per household member, the cash value of life insurance policies, and prepaid burial plans are exempt. The cash value of pension plans or funds described in federal law is excluded.~~

~~(3) **Vehicles.**~~

~~(A) Exclude one licensed vehicle per adult household memberregardless of the use of the vehicle.~~

~~(B) Exclude any other licensed vehicle a household member under age 18 drives to and from employment, or to and from training or education which is preparatory to employment, or to seek employment. This exclusion applies during temporary periods of unemployment to a vehicle which a household member under age 18 customarily drives to and from employment.~~

~~(C) Exclude any other licensed vehicle if:~~

~~(i) used for income producing purposes such as, but not limited to, a taxi, truck, or fishing boat, or a vehicle used for deliveries, to call on clients or customers, or required by the terms of employment. Licensed vehicles previously used by a self-employed household member engaged in farming must continue to be excluded as a resource for one year from the date the household member terminated his or her self-employment farming;~~

~~(ii) annually producing income consistent with its fair market value, even if used only on a seasonal basis;~~

~~(iii) necessary for long distance travel, other than daily commuting, that is essential to the employment of a household member such as the vehicle of a traveling sales person or of a migrant farm worker following the work stream;~~

~~(iv) used as the household's home;~~

~~(v) necessary to transport a physically disabled household member regardless of the purpose of~~

~~such transportation. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member. Only one vehicle per physically disabled household member may be excluded;~~

~~(vi) necessary to carry fuel for heating or water for home use when the transported fuel or water is anticipated to be the primary source of fuel or water for the household during the certification period. Households must receive this resource exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle. Households must not be required to furnish documentation unless the exclusion of the vehicle is questionable;~~

~~(vii) the value of the vehicle is inaccessible because its sale would produce an estimated return of not more than $1,500;~~

~~(viii) jointly owned by a food benefit household member and someone who does not live with the food benefit household. To be excluded, the vehicle must not be used by, nor in the possession, of anyone who lives in or with the household. The food benefit household member must also be unable to sell the vehicle because the signature of the co-owner is needed and that person will not sign; or~~

~~(ix) legally prohibited from being sold by the food benefit household. The determination of whether a food benefit household can legally sell a vehicle is governed by the law of Oklahoma.~~

~~(D) The exclusions in (i) through (iii) of this subsection continue to apply when the vehicle(s) is not in use because of temporary unemployment such as when a taxi driver is ill and cannot work or the vehicle is broken down and cannot be used.~~

~~(4) **Real or personal property directly related to the maintenance of excluded vehicles.** Property, real or personal, to the extent it is directly related to the maintenance or use of a vehicle described in paragraph (3) of this subsection is excluded. Only that portion of real property determined necessary for maintenance or use is excluded.~~

~~(5) **Income producing property.** Income producing property which annually produces income consistent with the fair market value is excluded even if used on a seasonal basis.~~

~~(6) **Property essential to employment.** Property, such as farm land or work related equipment including tools of a tradesman or the machinery of a farmer, which is essential to the employment or self-employment of a household member is excluded. Property of a household member engaged in farming continues to be excluded for one year from the date the household member terminates his or her self-employment from farming.~~

~~(7) **Installment contracts.** Installment contracts for the sale of land or buildings are excluded if the contract or agreement is producing income consistent with its fair market value. The exclusion applies to the value of the property sold under the installment contract or held as security in exchange for a purchase price consistent with the fair market value of that property.~~

~~(8) **Inaccessible resources.** Resources whose cash value is not accessible to the household are exempt, such as but not limited to, irrevocable trust funds, security deposits on rental property or utilities, property in probate, and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold. If questionable, the worker establishes that the property is for sale and that the household will accept a reasonable offer.~~

~~(A) A resource is considered inaccessible if its sale or other disposition is unlikely to produce funds amounting to one half or more of the applicable resource limit for the household.~~

~~(B) The value of the inaccessible resource is the amount of the expected return to the household after subtracting estimated cost of sale or disposition, and consideration of the ownership interest to the household.~~

~~(C) A single resource may not be subdivided solely to obtain an exclusion as inaccessible.~~

~~(D) This inaccessible provision does not apply to vehicles or financial instruments such as stocks, bonds, or negotiable financial instruments.~~

~~(E) Any funds in a trust, transferred to a trust, and the income produced by that trust, to the extent it is not available to the household, is considered inaccessible to the household if:~~

~~(i) the trust arrangement is not likely to cease during the certification period and no household member has the power to revoke the trust arrangement or change the name of the beneficiary during the certification period;~~

~~(ii) the trustee administering the funds is:~~

~~(I) a court;~~

~~(II) an institution, corporation, or organization which is not under the direction or ownership of any household member; or~~

~~(III) a person appointed by the court who has court imposed limitations placed on his or her use of the trust funds;~~

~~(iii) trust investments made on behalf of the trust do not directly involve or assist any business or corporation under the control, direction, or influence of a household member; and~~

~~(iv) the funds held in irrevocable trust are established from:~~

~~(I) the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust; or~~

~~(II) non-household funds by a non-household member.~~

~~(9) **Education assistance.** All education grants, work study, scholarships, and student loans are exempt if receipt is contingent upon the student regularly attending school.~~

~~(10) **Resources excluded by law.** Resources currently excluded by law are:~~

~~(A) payments received:~~

~~(i) under the Alaska Native Claims Settlement Act [Public Law (P.L.) 92-203, § 21(a)];~~

~~(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];~~

~~(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];~~

~~(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or~~

~~(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];~~

~~(B) payments received by certain Indian tribal members under P.L. 94-114, Section 6 regarding submarginal land held in trust by the United States;~~

~~(C) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Exclude any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest or investment income accrued on such funds. Exclude any per capita payments, headrights of Osage tribe, income from mineral leases, or other tribal business ventures, as long as the payments meet the distribution requirements as stated in this subparagraph.~~

~~(i) Any interest or income derived from the funds after distribution is considered as any other income.~~

~~(ii) The per capita exclusion applies per person rather than per family.~~

~~(iii) When these excluded funds are deposited in a bank or other financial institution, the deposits are excluded as long as the funds are kept in a separate account and not commingled in an account with non-excluded funds.~~

~~(iv) When the excluded funds are commingled in an account with non-excluded funds, the excluded funds retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource.~~

~~(v) Purchases made with excluded funds are considered a resource;~~

~~(D) interests of individual Indians in trust or restricted lands;~~

~~(E) benefits received from Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) [P.L. 92-443, § 6];~~

~~(F) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 [P.L. 91-646, § 216];~~

~~(G) Earned Income Tax Credit (EITC) payments received by a participating food benefit household member as part of a federal tax refund or as advance payments received as part of a paycheck, excluded for 12 months during continuous participation. This does not mean that households lose the exclusion if they temporarily leave the program for administrative reasons;~~

~~(H) refunds of the state EITC as a result of filing a state income tax return in the month received and the following month;~~

~~(I) payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under Title IV of the Comprehensive Employment and Training Act of 1978 [P.L. 95-524];~~

~~(J) financial assistance provided by a program funded in whole or in part under Title IV of the Higher Education Act in accordance with P.L. 99-498;~~

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

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

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

~~(N) amounts held in an account for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;~~

~~(O) the resources of any non-household member unless the person is disqualified from the program by an administrative or court fraud hearing, by failing to obtain or refusing to provide a Social Security number, or is an ineligible alien who would otherwise be a household member;~~

~~(P) payments or allowances made under any federal law for the purpose of energy assistance such as the Low Income Home Energy Assistance Program (LIHEAP);~~

~~(Q) earmarked resources, such as those governmental payments made by the Individual and Family Grant Program or the Small Business Administration which are designated for the restoration of homes damaged in a disaster and which are subject to a legal sanction if the funds are not used as intended. Resources such as those of self-employed persons, which have been prorated and counted as income, and Indian lands held jointly with the tribe or land that can be sold only with the approval of the Bureau of Indian Affairs are also exempt;~~

~~(R) the identified resources of all Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI) recipients when the household's total resources are calculated for food benefit eligibility purposes;~~

~~(S) excluded monies kept in a separate account, which are not commingled in an account with the non-excluded funds retain excluded status for an unlimited period of time.~~

~~(i) Monies of self-employed households that are excluded as a resource because they have been prorated over the period they are intended to cover and are commingled in an account with non-excluded funds retain their exclusion for the period of time over which they have been prorated as income.~~

~~(ii) All other excluded monies which are commingled in an account with other funds retain their exempt status for six months from the date they are commingled. When the household's total resources, including all funds in the commingled account, exceed the allowable limit after that time, all funds in the commingled account are considered as a resource;~~

~~(T) payments made to persons because of their status as victims of Nazi persecution;~~

~~(U) any funds deposited in an Individual Development Account (IDA) operated under the Assets for Independence Act;~~

~~(V) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain persons who are children of Vietnam War veterans; and~~

~~(W) Disaster Unemployment Assistance paid to persons unemployed as the result of a major disaster.~~

~~(11) **Department of Housing and Urban Development (HUD) Family Self-sufficiency (FSS) Program escrow accounts.** Families participating in the HUD FSS program may withdraw money from their escrow accounts prior to completion of the program. This money is excluded both as income and as a resource.~~

~~(12) **Education accounts.** Funds in education accounts established under Sections 529 and 530 of the Internal Revenue Code and Section 4000 of Title 56 of the Oklahoma State Statutes are excluded.~~

340:50-7-3. Non-exempt resources [REVOKED]

~~(a) Non-exempt resources are those resources which, after deducting any encumbrances, must be considered in the determination of eligibility to receive food benefits.~~

~~(b) Non-exempt resources include, but are not limited to:~~

~~(1) liquid resources. Liquid resources must be verified and include:~~

~~(A) cash on hand;~~

~~(B) checking or savings accounts;~~

~~(C) savings certificates; or~~

~~(D) stocks or bonds; or~~

~~(2) non-liquid resources. Non-liquid resources are verified if questionable and include:~~

~~(A) licensed and unlicensed vehicles;~~

~~(B) boats;~~

~~(C) land;~~

~~(D) recreational property;~~

~~(E) mobile homes other than home property;~~

~~(F) vacation home property; or~~

~~(G) other property not specifically excluded.~~

~~(c) The value of non-exempt resources, except for licensed vehicles, is the equity value. The equity value is the fair market value less encumbrances.~~

~~(d) Exclude the entire value of non-liquid assets used as collateral for a business loan if the household is prohibited by the loan agreement from selling the asset.~~

340:50-7-4. Special resource situations [REVOKED]

~~(a) **Jointly owned resources other than vehicles.** Resources other than vehicles owned jointly by separate households must be considered available in their entirety to each household, unless the household can demonstrate such resources are inaccessible to the household.~~

~~(1) If the household can demonstrate it has access to only a portion of the resources, the value of that portion of the resource is counted toward the household's resource level.~~

~~(2) The resources are considered totally inaccessible to the household if the resource cannot practically be subdivided and the household's access to the value of the resource is dependent on the agreement of a joint owner who refuses to comply. For purposes of this provision, ineligible aliens or disqualified persons residing with the household are considered household members.~~

~~(3) Resources are considered inaccessible to persons residing in shelters for battered women and children if:~~

~~(A) the resources are jointly owned by such persons and by members of their former household; and~~

~~(B) the shelter resident's access to the value of the resources is dependent on the agreement of a joint owner who still resides in the former household.~~

~~(b) **Non-recurring lump sum payments.** Money received in the form of a non-recurring lump sum payment such as income tax refunds, rebates, credits, and retroactive lump sum insurance settlements constitute a resource in the month received unless specifically excluded from consideration as a resource by federal law.~~

~~(1) Upon receipt of information that a certified household has received a non-recurring lump sum payment, the worker reviews the case file to determine if the amount received, in addition to the other resources listed on the application form, exceeds the resource limitation for the household.~~

~~(2) If the total amount exceeds the allowable resource limitation, the worker must close the food benefits giving ten-day advance notice. If, within ten days, the household presents evidence that the resources have been depleted and are within the allowable resource limits, the food benefits may be left open for the remainder of the certification~~

~~period. If the household does not agree with the decision to terminate the food benefits and requests a hearing, the food benefits may be continued pending a decision on the appeal.~~

~~(3) Any amount received by an income-eligible Supplemental Security Income (SSI) recipient due to an underpayment or retroactive payment of SSI or Social Security benefits is excluded as a resource.~~

~~(c) **Non-excluded vehicles.** The equity in all vehicles, except those excluded in OAC 340:50-7-2, is considered. The amount of equity in excess of $5,000 is considered against the maximum allowable resource limit for the household.~~

~~(1) The current market value less encumbrances on the vehicle(s) is the equity.~~

~~(2) Only encumbrances that can be verified are considered in computing equity.~~

~~(3) The market value of each year's make and model is established on the basis of the average trade-in value.~~

~~(4) In the event the household and worker cannot agree on the value of the vehicle, the household secures written appraisals by two persons familiar with current values. If there is substantial unexplained divergence between these appraisals or between the blue book value and one or more of these appraisals, the worker and the household jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current values and acceptable to both the household and worker.~~

~~(d) **Resources of disqualified members or ineligible aliens.** All resources of disqualified members or ineligible aliens are considered in determining the eligibility of the remaining household members.~~

340:50-7-5. Transfer of resources [REVOKED]

~~Households which have knowingly transferred resources for the purpose of qualifying or attempting to qualify for food benefits are disqualified from participating in the program for up to one year from the date of discovery. The disqualification period applies if the resources are transferred three months prior to application or transferred after the household is determined eligible. At the time of application, the worker asks the household to provide information regarding any resources which have been transferred, within the three month period immediately preceding the date of application, by any household member, ineligible alien, or disqualified member whose resources are being considered available.~~

~~(1) Transfers of property which do not otherwise affect eligibility do not result in disqualification. Examples include:~~

~~(A) personal property such as furniture or property which is sold or traded at or near the fair market value;~~

~~(B) property transferred between members of the same household, including ineligible aliens or disqualified members whose resources are being considered available; and~~

~~(C) property which is transferred for reasons other than to qualify for food benefits.~~

~~(2) For applicants, the period of disqualification begins in the month of application. The length of the disqualification period is based on the amount of transferred resources which, when added to the other accountable resources, exceeded the allowable limits. The following chart is used to determine the period of disqualification:~~

~~Amount in excess of the resource limit~~	~~Period of disqualification~~
~~$ 0 – 249~~	~~One Month~~
~~250 – 999~~	~~Three Months~~
~~1000 – 2999~~	~~Six Months~~
~~3000 – 4999~~	~~Nine Months~~
~~5000 – and up~~	~~Twelve Months~~

PART 3. INCOME

340:50-7-22. Income exclusions

Only the payments listed in this Section are excluded from the household's income, from income of disqualified members whose income is counted, or from the income of ineligible aliens who would otherwise be household members. No other income is excluded.

(1) **In-kind income.** In-kind income is any gain or benefit which is not in the form of money payable directly to the household, including non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden.

(2) **Vendor payments.** Vendor payments are payments in money on behalf of a household when a person or organization outside the household uses its own funds to make a direct payment to either a household's creditors or a person or organization providing a service to the household.

(3) **Educational assistance.** Educational assistance including grants, work-study, scholarships, fellowships, educational loans on which payment is deferred, veteran's education benefits, and the like are exempt if receipt is contingent upon the student regularly attending school and the money received is intended to offset the costs of education and expenses as identified by the institution, school, program, or other grantor. If the money is not intended to be a reimbursement, as described in paragraph (7) of this Section, and is a gain to the client, it is considered income.

(4) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments provided by Developmental Disabilities Services Division (DDSD) are excluded.

(5) **Income excluded by law.** Income excluded by law is:

(A) reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. [Public Law (P.L.) 91-646, § 216] Such payments are:

(i) payments to persons displaced due to the acquisition of real property;

(ii) relocation payments to a displaced home owner toward the purchase of a replacement dwelling if the owner purchased and occupied the dwelling within one year following displacement; and

(iii) replacement housing payments to displaced persons not eligible for a home owner's payment;

(B) payments received:

(i) under the Alaska Native Claims Settlement Act [P.L. 92-203 § 21(a)];

(ii) under the Sac and Fox Indian Claims Agreement [P.L. 94-189];

(iii) from the disposition of funds to the Grand River Band of Ottawa Indians [P.L. 94-540];

(iv) by members of the Confederated Tribes of the Mescalero Reservation [P.L. 95-433]; or

(v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation [P.L. 96-420];

(C) any payment to volunteers under Title II, Retired and Senior Volunteer Program (RSVP), foster grandparents and others, of the Domestic Volunteer Services Act of 1973 [P.L. 93-113] as amended;

(D) income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes [P.L. 94-114, § 6];

(E) Indian per capita payments distributed from judgment awards and trust funds made pursuant to P.L. 98-64. Also excluded is any interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment income accrued on such funds. Any per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded, as long as they meet the distribution requirements as stated in this paragraph. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family~~.~~;

~~(i) Excluded funds deposited in a bank or other financial institution are excluded as long as they are kept in a separate account and not commingled in an account with non-excluded funds. When the excluded funds are commingled in an account with non-excluded funds they retain their exemption for six months from the date of commingling. After six months from the date of commingling, all funds are counted as a resource.~~

~~(ii) Purchases made with excluded funds are considered a resource;~~

(F) income up to $2,000 per year received by individual Indians, which is derived from leases or other uses of individually-owned trust or restricted lands. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered as income;

(G) allowances, earnings, and payments made for participation in the Workforce Investment Act (WIA) to persons of all ages and student status. There are numerous programs for which payments are excluded. These programs include Summer Youth, Job Corps, paid classroom training, and others. The exception to the income exclusion is income to persons for on-the-job training paid to participants 19 years ~~old~~ of age and older. This income is treated as any other earned income;

(H) payments, allowances, or earnings to persons participating in programs under Title I of the National and Community Service Act, such as University Year for Action (UYA), Senior Companion Program, AmeriCorps Volunteers in Service to America (VISTA) and other AmeriCorps Programs, are not included as income for purposes of determining food benefit eligibility and benefit level;

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP) and utility payments, and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) all funds that are paid to persons under the Community Service Employment Program under Title V, P.L. 100-175. This program is authorized by the Older Americans Act. Each state and various organizations receive some Title V funds. These organizations include:

(i) Experience Works;

(ii) National Council on Aging;

(iii) National Council of Senior Citizens;

(iv) American Association of Retired Persons (AARP);

(v) U. S. Forest Service;

(vi) National Association for Spanish Speaking Elderly;

(vii) National Urban League;

(viii) National Council on Black Aging; and

(ix) National Council on Indian Aging;

(L) Earned Income Tax Credit (EITC) payments received as part of a tax refund and also EITC advance payments received as part of a paycheck [P.L. 100-435];

(M) refunds of the state EITC as a result of filing a state income tax return;

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

(O) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in interment camps during World War II;

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

(Q) payments for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act;

(R) payments made to persons because of their status as victims of Nazi persecution;

(S) funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to persons directly affected by the event. This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;

(T) monetary allowances as described in Section 1823(c) of Title 38 of the United States Code (U.S.C.) provided to certain persons who are children of Vietnam War veterans;

(U) Disaster Unemployment Assistance paid to persons unemployed as a result of a major disaster; and

(V) benefits paid to certain veterans and the spouses of veterans who served in the military of the Government of the Commonwealth of the Philippines during World War II by the Filipino Veterans Equity Compensation Fund.

(6) **Payments which are not considered income.**

(A) The payments in (i) through (iii) are not considered as income.

(i) Monies withheld from any income source to repay a prior overpayment from that same source.

(ii) Monies voluntarily or involuntarily returned to repay a prior overpayment received from that same income source.

(iii) Child support payments received by Temporary Assistance for Needy Families (TANF) recipients ~~which must be~~ that are sent to the Oklahoma Child Support Services (OCSS) to maintain TANF eligibility.

(B) Monies withheld or returned to repay overpayments in federal, state, or local means-tested assistance programs are counted when they are withheld or returned to repay overpayments resulting from intentional program violation as established by the agency administering the program.

(i) In the Supplemental Nutrition Assistance Program (SNAP), willful misrepresentation is considered as intentional program violation.

(ii) The State Supplemental Payment to the Aged, Blind, and Disabled and TANF programs define intentional program violation using the terms restitution, fraud, and willful misrepresentation.

(iii) The Social Security Administration (SSA) and Veterans Benefits Administration programs define intentional program violation as fraud. Supplemental Security Income (SSI) is a means-tested program within SSA.

(7) **Reimbursements.**

(A) Reimbursements for past or future expenses to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household are not considered. Examples are reimbursements for:

(i) job or training related expenses such as travel, per diem, uniforms, and transportation to and from job or training site. However, if these expenses are not reimbursements, they are considered income;

(ii) out-of-pocket expenses incurred by volunteers in the course of their work;

(iii) medical or dependent care; and

(iv) services provided by Title XX of the Social Security Act.

(B) When a reimbursement, including a flat allowance, covers multiple expenses, each expense does not have to be separately identified as long as none of the reimbursement covers normal living expenses. The amount of the reimbursement that exceeds the actual incurred expenses is counted as income. A reimbursement is not considered to exceed actual expenses unless the provider or household indicates the amount is excessive.

(8) **Money received for third parties.** Money received and used for the care and maintenance of a third party beneficiary who is not a household member is not considered.

(A) If the intended beneficiaries of a single payment are both household and non-household members, any identifiable portion of the payment intended and used for the care and maintenance of the non-household member is excluded.

(B) If the non-household member's portion cannot be readily identified, as in TANF payments, the payment is evenly prorated among intended beneficiaries. The exclusion is applied to the non-household member's pro rata share or the amount actually used for the non-household member's care and maintenance, whichever is less.

(9) **Earnings of a child.** Earned income of a child who is head of his or her own household is counted. The earned income of an elementary or high school student

17 years of age or younger who is under parental control of an adult household member is excluded. This exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment will resume following the break. If the child's earnings cannot be differentiated from those of other household members, the total earnings are prorated equally among the working members, and the child's prorated share is excluded.

(10) **Other types of excluded income.**

(A) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded. Verification that the income is a loan is required.

(B) **Irregular Income.** Exclude any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated ~~which~~ that is $30 or less per quarter.

(C) **Non-recurring lump sum payments.** Exclude money received in the form of non-recurring lump sum payments, including but not limited to: income tax refunds, rebates, credits, retroactive lump sums from SSA, SSI, public assistance, Railroad Retirement pensions, or other payments, or retroactive lump sum insurance settlements. ~~These payments are counted as resources.~~

(D) **Cost of self-employment.** Exclude the cost of producing self-employment income.

(E) **Income of non-household members.** The income of non-household members who have not been disqualified or are not ineligible aliens is not considered available to the household.

(F) **Charitable contributions.** Exclude cash contributions to a household from one or more private non-profit charitable organizations, not to exceed $300 in a federal fiscal year quarter. For the purposes of this provision a quarter includes these specific months:

(i) October, November, December;

(ii) January, February, March;

(iii) April, May, June; and

(iv) July, August, September.

(G) **Department of Housing and Urban Development's (HUD) Family Self-sufficiency Program (FSS) escrow accounts.** Families participating in the HUD FSS program may withdraw money from their escrow accounts prior to completion of the program. This money is excluded ~~both~~ as income ~~and as a resource~~.

(H) **Individual Development Account (IDA).** Any funds deposited in an IDA operated under the Assets for Independence Act and the interest that accrues.

340:50-7-29. Income inclusions

(a) **Sources of income considered.** The worker considers all household income, unless specifically excluded at OAC 340:50-7-22, in determining monthly gross income. Income is classified as earned or unearned.

(1) When one or more household members are absent from the home, before deciding whether to consider the absent household member's income, the worker must determine if the person returns to the home for part of the month.

(A) When the household member does not return for part of the month, per OAC 340:50-5-2, the worker does not include the absent member in the benefit amount and only counts the portion of his or her income that he or she makes available to the rest of the household.

(B) When the household member returns for part of each month, the worker includes him or her in the benefit amount and counts all of his or her income unless excluded at OAC 340:50-7-22.

(2) Per OAC 340:50-5-5, the household has the option of including a child receiving a foster payment, that includes a payment for kinship care, in the food benefit. When the household chooses not to include the child receiving a foster care payment in the food benefit, the worker does not count the child's income, including the foster payment.

(3) When the household adopts a child previously in the custody of the Oklahoma Department of Human Services (OKDHS) and receives an adoption subsidy payment for the child, the worker includes the child in the food benefit and counts the child's income, including the adoption subsidy payment.

(~~a~~b) **Earned income.** Earned income is income which a household receives in the form of wages, commission, self-employment, or training allowances and for which a person puts forth ~~daily,~~ physical labor. Temporary disability insurance payments and temporary worker's compensation payments are considered earned income if payments are employer funded and the person remains employed. The types of earnings listed in (1) through (4) of this subsection, including money from the sale of whole blood or blood plasma, are considered earned income.

(1) **Wages.** ~~All~~ The worker counts as earned income all wages and salaries for services performed as an employee, including sick pay paid by the employer to an employee who plans to return to work when recovered~~, are considered as earned income~~. ~~Wages that are~~ This includes wages garnisheed or diverted and paid to a third party for a household's expenses ~~are also included~~. Countable wages for military personnel include Variable Housing Allowance (VHA), Basic Allowance for Quarters (BAQ), and Basic Allowance for Housing (BAH).

(2) **Self-employment.** The worker determines the household's total gross income from a self-employment enterprise ~~in accordance with~~ per procedures described at OAC 340:50-7-30.

(3) **Title I payments of the Domestic Volunteer Services Act.** ~~Payments~~ Countable earned income includes payments paid to a household member under Title I of the Domestic Volunteer Services Act of 1973 as amended [Public Law (P.L.) 93-113] ~~are considered as income~~ unless excluded ~~in~~ per OAC 340:50-7-22.

(4) **On-the-job training.** ~~Income~~ The worker counts income earned in on-the-job training positions ~~is considered~~ as earned income. This includes on-the-job training provided under Section 204(b)(1)(c) or Section 264(c)(1)(A) of the Workforce Investment Act for persons 19 years of age or older.

(~~b~~c) **Unearned income.** In general, unearned income is that income which a household receives and is not in the form of wages, self-employment, or training allowances and for which a person does not put forth ~~any daily,~~ physical labor. The types of income listed in (1) through (5) of this subsection, while not all inclusive, are considered unearned.

(1) **Assistance payments.** ~~Assistance~~ The worker counts payments from a federally aided public assistance program, such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), or assistance programs based on need, such as State Supplemental Payments ~~are considered~~ as unearned income.

(A) A household's food benefit amount does not increase when the benefit received from another program is reduced, suspended, or terminated because of a penalty imposed for an intentional failure to comply with a requirement of that program. The other program must be a means-tested, federal, state, or local welfare or public assistance program which is governed by welfare or public assistance laws or regulations and which distributes public funds, such as, SSI and TANF. ~~Policy at~~ OAC 340:10-2-2 explains the TANF penalty considered for SNAP.

(i) When a worker is not able to obtain the necessary information and cooperation from another federal, state, or local means-tested welfare, or public assistance program to comply with the provision in (A) of this paragraph, Oklahoma Department of Human Services (OKDHS) is not held responsible. The worker must make a good faith effort to get the needed information and record the details and results of this effort in the case file.

(ii) The worker does not reduce, suspend, or terminate the household's current food benefit amount ~~is not reduced, suspended, or terminated~~ when the benefits under another assistance program are decreased.

(iii) When the worker adds eligible members ~~are added~~ to the food benefit, the benefit must be adjusted regardless of whether the household is prohibited from receiving benefits for the additional member under another federal, state, or local welfare or public assistance means-tested program.

(iv) Changes in the household circumstances which are not related to the penalty imposed by another federal, state, or local welfare or public means-tested assistance program are not affected by the provision in (A) of this paragraph.

(v) The application of the provision in (A) of this paragraph applies for the duration of the imposed penalty.

(B) The provision in (A) of this paragraph does not apply to persons or households subject to disqualification from SNAP for noncompliance with a comparable work requirement under Title IV of the Social Security Act or an unemployment compensation work requirement.

(2) **Pension and Social Security.** Annuities, pensions, retirement, veterans' or disability benefits, workers' or unemployment compensation, survivors' or Social Security benefits, and strike benefits are unearned income. The worker considers disability payments as:

(A) unearned income when the person is no longer considered an employee of the company and an agency outside of the company pays the disability benefits; and

(B) earned income when the person is still considered an employee of the company and the company pays the disability benefits.

(3) **Support and alimony.** ~~Support~~ The worker counts as unearned income support and alimony payments ~~that are made~~ paid directly to the household from non-household members~~,~~. The worker also counts as unearned income, money deducted or diverted ~~from court ordered support or alimony payments, or other binding written support or alimony agreement,~~ to a third party ~~for~~ to pay a household expense ~~must be considered as income~~ when the court order directs that the payment be made to the household. The worker does not count as income money the court order states must be paid to a third party.

(4) **Grants, dividends, royalty, and interest payments.** Payments from government sponsored programs, such as Agricultural Stabilization and Conservation Service Programs, grants, dividends, royalties, interest, ~~royalties,~~ and all other direct money payments from any source which can be construed to be a gain or profit are considered as income. ~~Income~~ The worker treats income from ~~royalties is treated~~ these sources as unearned income. The household must provide proof of income from these sources so income can be averaged to determine monthly countable income.

(5) **Monies which are withdrawn or dividends which are or could be received by a household from trust funds.** Dividends which the household has the option of either receiving as income or reinvesting in the trust are considered as income in the month they become available to the household.

(~~c~~d) **Income of disqualified or ineligible household members.** ~~A~~ OAC 340:50-5-10.1 gives a complete list of reasons for disqualification of household members ~~is found in OAC 340:50-5-10.1~~. Income of disqualified persons and unqualified aliens is counted as indicated in paragraphs (1) and (2) of this subsection.

(1) **Income of a person disqualified for failure to comply with food benefit Employment and Training (E&T) Program requirements, a fleeing felon disqualification, or willful misrepresentation or fraud.** All income of a person disqualified for failure to comply with

food benefit E&T requirements, a fleeing felon disqualification, or willful misrepresentation or fraud, is counted in it's entirety as available to the remaining household members. ~~Utility~~ The worker does not prorate utility, medical, dependent care, and excess shelter deductions ~~are not prorated for the household~~.

(2) **Income of persons disqualified for reasons other than willful misrepresentation, a fleeing felon disqualification, or failure to comply with E&T requirements.** ~~Income~~ The worker prorates the income of persons disqualified for reasons other than those stated in paragraph (1) of this subsection ~~is prorated~~ among all household members.

(A) A pro rata share of the income of a disqualified person is considered as income available to the remaining members. ~~This~~ The worker calculates the pro rata share ~~is calculated~~ by first subtracting the allowable exclusions from the disqualified member's income and dividing the income evenly among the household members, including the disqualified member.

(B) ~~All~~ The worker counts all but the disqualified member's share ~~is considered~~ as income available to the remaining household members. The earned income deduction from OKDHS Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions, applies to the prorated income attributed to the household if it was earned by the disqualified member.

(C) ~~That~~ The portion of the household's allowable shelter and dependent care expenses ~~which~~ that are either paid by or billed to the disqualified member is divided evenly among the household members, including the disqualified member. When the household is using the utility standard, it too is evenly prorated. All but the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

(3) **Determining eligibility and benefit level.** The worker does not consider the needs of a disqualified or ineligible household member ~~are not considered~~ when determining the household's size for purposes of assigning a benefit level to the household or ~~for purposes of~~ comparing the household's monthly income with the income eligibility standard.

340:50-7-30. Self-employed households

Households whose income is derived either wholly or in part from a self-employment enterprise are treated in accordance with the procedures listed in paragraphs (1) through (10).

(1) **Capital gains.** The proceeds from the sale of capital goods or equipment is income for program purposes and is calculated in the same manner as a capital gain for federal income tax purposes. Even though a percentage of the proceeds from the sale of capital goods or equipment is taxed for federal income tax purposes, the worker counts the full amount of capital gain as income.

(2) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies may receive profit sharing that is reported on the household's personal income tax return. When a household member:

(A) actively participates in the operations, the income from profit sharing is considered part of the household's self-employed earned income; or

(B) does not actively participate in the operations, the income from profit sharing is considered part of the household's unearned income.

(3) **Self-employed farm income.** To be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1,000 or more from the farming enterprise.

(A) Farming is defined as cultivating or operating a farm for profit either as owner or tenant.

(B) A farm includes stock, dairy, poultry, fish, fruit, and truck farms, and plantations, ranches, ranges, and orchards.

(i) A fish farm is an area where fish are grown or raised and where they are artificially fed, protected, and cared for, and does not include an area where they are only caught or harvested.

(ii) A plant nursery is a farm for purposes of this definition.

(C) A loss of income for a self-employed farmer cannot be used to offset income from other household income. When a self-employed farmer reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(4) **Monthly self-employment income.** Self-employment income received on a monthly basis but which represents a household's annual support is normally averaged over a 12-month period. If the averaged amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(5) **Seasonal self-employment income.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. For example, the income of self-employed vendors who work only in the summer and supplement their income from other sources during the balance of the year is averaged over the summer months rather than a 12-month period.

(6) **Annualized self-employment income.** Self-employment income which represents a household's annual support must be annualized over a 12-month period, even if the income is received in a shorter period of time. For example, self-employment income received by crop farmers must be averaged over a 12-month period if the income represents the farmer's annual support.

(A) If the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced substantial

increase or decrease in business, the worker calculates the self-employment income on anticipated earnings.

(B) The worker does not calculate self-employment income on the basis of prior earnings such as income tax returns when an increase or decrease of business has occurred.

(i) If the household's self-employment enterprise has been in existence for less than a year, the income from that self-employment enterprise must be averaged over the period of time the business has been in operation and the monthly amount projected for the coming year.

(ii) If the business has been in operation for a short time and there is insufficient data to make a reasonable projection, self-employment income is recomputed at each new certification until a full year's information is available.

(7) **Anticipated income.** When a household who would normally have the self-employment income annualized experiences a substantial increase or decrease in business, the worker calculates the self-employment income based on anticipated earnings.

(A) For those households whose self-employment income is calculated on an anticipated basis, the worker adds any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divides this amount by 12. This amount is used in successive certification periods during the next 12 months except that a new average monthly amount must be calculated over this 12-month period if the anticipated amount of capital gain changes.

(B) The worker adds the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtracts the cost of producing the self-employment income.

(8) **Determining net monthly self-employment income.** When the household has business expenses associated with its self-employment income, the business expenses must be deducted before determining whether the household meets the maximum gross income standards shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. When the household does not have business expenses, the gross self-employment income is used.

(A) When the household has filed an income tax return on its self-employment income for the most recent year, the worker uses the net self-employment income shown on the income tax return and divides the net self-employment income by the number of months to be averaged.

(B) When the household did not file an income tax return on its self-employment income for the most recent year, the worker uses (i) through (iii) to determine the net monthly self-employment income.

(i) The worker computes gross self-employment income, including capital gains, ~~is computed~~ using the client's self-employment business records.

(ii) If the client declares ~~they~~ incurred business expenses, the worker ~~then~~ subtracts 50% of the gross self-employment income as business expenses. If the household did not incur business expenses, a business expense deduction is not given.

(iii) The worker then divides the net self-employment income by the number of months to be averaged.

(C) The worker adds monthly net self-employment income ~~is added~~ to all other earned income received by the household. When the household reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) The worker adds the total monthly earned income less the earned income deduction according to OKDHS Appendix C-3 ~~is then added~~ to all other monthly income received by the household.

(ii) The worker subtracts the standard deduction, dependent care, and shelter costs ~~are computed~~ as for any other household ~~and subtracted~~ per OAC 340:50-7-31 to determine the monthly net income of the household.

(9) **Household with income from boarders.** A household that operates a commercial boarding house may be considered a food benefit household and self-employed as shown in paragraph (8) of this subsection. A household with boarders or roomers that is not a commercial boarding house may receive food benefits as shown in subparagraphs (A) through (C) of this paragraph.

(A) ~~A~~ The worker excludes a person paying a reasonable amount for room and board ~~is excluded~~ from the household and counts payments from the boarder as self-employment income when determining the household's eligibility and benefit level. ~~Payments from the boarder are treated as self-employment income if the boarder is paying a reasonable amount.~~

(i) The income from a boarder includes all direct payments to the household for room and meals, including contributions to the household for part of the household shelter expense.

(ii) ~~Shelter~~ The worker does not count expenses paid directly by a boarder to someone outside the household ~~are not counted~~ as income to the household.

(B) ~~After determining the income received from the boarder, the~~ The worker excludes 50% of the boarder payment as the cost of doing business.

(C) The worker includes the net income from self-employment ~~is included~~ with other earned income ~~and~~ minus the earned income deduction ~~from OKDHS Appendix C-3 is taken~~.

(i) ~~Shelter~~ The worker computes the shelter cost incurred by the household ~~actually incurred~~,

even if the boarder contributes ~~to the household for~~ part of the ~~household's~~ shelter expense, ~~is computed~~ to determine if the household ~~will receive~~ qualifies for a shelter deduction.

(ii) The shelter and utility cost must not include any expense billed to and directly paid by the boarder to a third party.

(10) **Income from rental property.** ~~Income~~ The worker considers income received from rental property ~~is considered~~ as self-employment income.

(A) ~~It is treated~~ The worker treats rental income as earned income if a member of the household ~~is~~ actively ~~engaged in the management of~~ manages the property an average of at least 20 hours per week.

(B) When a household member ~~is~~ does not actively ~~engaged in the management of~~ manage the property at least 20 hours each week, the worker considers the income ~~is considered~~ as unearned. The person is ~~allowed~~ eligible for business expenses described at (8) of this Section.

340:50-7-31. Deductions

(a) Deductible expenses from income include only certain costs of dependent care, shelter, the earned income allowance, a standard deduction, certain medical costs for elderly or disabled household members, and legally binding child support payments as described in OAC 340:50-7.

(1) ~~That~~ The portion of the household's allowable shelter, utility, and dependent care expenses, ~~which are either~~ paid by or billed to a disqualified household member, ~~as defined by~~ per OAC 340:50-7-29(c)(2), is divided evenly among the household members, including the disqualified member. All except the disqualified member's share is considered ~~as~~ a deductible shelter expense for the remaining household members.

(2) Business expenses for the self-employed are handled ~~in accordance with~~ per OAC 340:50-7-30.

(b) Deductions from income are allowed for the expenses listed in paragraphs (1) through (6) of this subsection.

(1) **Standard deduction.** The appropriate standard deduction as shown in Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefits Allotments and Standards for Income and Deductions, is deducted from the household's income.

(2) **Earned income deduction.** The appropriate amount of earned income deduction from OKDHS Appendix C-3 is deducted from the gross earned income to cover the cost of state and local income taxes, pensions, union dues, and work related expenses. The earned income deduction is not allowed on any portion of income that is attributable to public assistance. No other deduction is allowed from the gross earned income.

(3) **Medical expense deduction.** Medical expenses exceeding $35 per month incurred by ~~any~~ elderly or disabled household members, ~~as defined at~~ per OAC 340:50-5-4, are deductible. The $35 is subtracted from medical expenses ~~only~~ once per household even though the household has more than one elderly or disabled member. When the household does not know the amount of on-going medical expenses ~~that can be~~ anticipated monthly ~~over~~ during the certification period, the anticipated expense amount ~~may be~~ is determined by averaging at least the past two month's expenses.

(A) Households report and verify medical expenses at certification and ~~each~~ recertification. Households are not required to report changes in medical expenses during the certification period.

(i) When a household voluntarily reports a change in medical expenses that will reduce the food benefit allotment, no verification is needed. However, the change does require notice of adverse action.

(ii) When a household voluntarily reports a change in medical expenses that will increase the food benefit allotment, the change must be verified before the change is made.

(iii) If OKDHS finds out about a change from a source other than the household, the change is acted on ~~if it is considered~~ when verified upon receipt. The household is not contacted for additional information. When the change requires ~~contacting the~~ household contact for additional information or verification, ~~no~~ a change is not made.

(B) If a household reports an anticipated medical expense at the time of certification, but is unable to provide the verification at that time, the household is told the expense will be allowed when the verification is provided during the certification period. Upon verification, a household may elect ~~to have~~ a one-time medical deduction or ~~have the~~ average the expense ~~averaged~~ over the remaining months of the certification period. Allowable costs are:

(i) medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional authorized by state law ~~or other qualified health professional~~;

(ii) hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for a person who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state;

(iii) prescription drugs and other over-the-counter medication, including insulin, when approved by a licensed practitioner or other qualified health professional authorized by state law. Costs of medical supplies, sick-room equipment, including rentals, or other prescribed equipment are also included;

(iv) health, dental, and hospitalization policy premiums;

(v) Medicare premiums, and any cost-sharing or spend-down expenses incurred by Medicare or SoonerCare (Medicaid) recipients;

(vi) dentures, hearing aids, and prosthetics;

(vii) eye glasses prescribed by a licensed practitioner, and securing and maintaining a seeing eye or hearing dog, including the cost of dog food and veterinarian bills;

(viii) reasonable cost of transportation and lodging to obtain medical treatment or services; and

(ix) maintaining an attendant, homemaker, home health aide, child care services, or housekeeper due to age, infirmity, or illness. If this expense also qualifies as a dependent care expense as described in paragraph (4) of this subsection, it is considered as a medical expense rather than a dependent care expense. Additionally, if the household furnishes a majority of the caretaker's meals, an amount equal to one allotment is added to the medical expense for meals provided. The allotment used is the amount in effect at certification.

(C) ~~Cost for~~ Costs not allowable as medical expense deductions include:

(i) costs associated with special diets ~~or~~;

(ii) premiums for health and accident insurance policies such as those payable in lump sum settlements for death or dismemberment~~, or~~;

(iii) premiums for income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled ~~are not allowable medical costs~~; or

(iv) items that can be purchased with food benefits such as dietary supplements.

(4) **Dependent care.** Dependent care is payment for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment or to attend training or education preparatory to employment.

(A) This deduction is applicable regardless of whether the household member is subject to the Supplemental Nutrition Assistance Program Employment and Training requirements.

(B) If this expense also qualifies as a medical expense, it is considered as a medical expense rather than a dependent care expense.

(C) There is no maximum dependent care deduction. The total reported by the client is an allowable expense as long as it meets the criteria in this Section.

(D) Dependent care is only verified when the~~:~~

~~(i)~~ expenses claimed ~~would~~ actually result in a deduction and other information available to the worker is inconsistent with the household's claim that it incurs a dependent care expense~~; or~~

~~(ii) household incurs the expense for reasons of employment, seeking employment, training, or education for employment~~.

(5) **Legally-binding child support.** A deduction is allowed for verified legally-binding child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member.

(6) **Shelter costs.** A household is allowed a shelter deduction when the monthly shelter cost ~~is in excess of~~ exceeds 50% of the household's income after all other deductions are allowed. The shelter deduction ~~alone~~ cannot exceed the maximum amount as shown in OKDHS Appendix C-3, unless the household has an elderly or disabled member. Households with an elderly or disabled member receive an excess shelter deduction for the monthly cost ~~that exceeds~~ exceeding 50% of the household's income after ~~all of~~ the deductions listed in paragraphs (1) through (6) of this subsection ~~have been~~ are allowed. All homeless households who incur or ~~can~~ expect to incur a shelter cost during the month are entitled to use the estimated homeless shelter deduction to determine food benefit eligibility and benefit level. This estimate covers ~~all~~ shelter costs as described in this paragraph. If a homeless household is living in a vehicle for which they are making payments, the monthly payment ~~may be~~ is allowed as a shelter cost. If the household's actual verified shelter cost exceeds the estimated amount, the larger amount is used. Shelter costs only include ~~only~~:

(A) continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments. The charge for renting or buying the land on which a mobile home is located is also ~~considered~~ a shelter cost;

(B) property taxes, state and local assessments, and insurance on the structure ~~itself~~ except for the separate costs for insuring furniture or personal belongings.

(i) The cost of vehicle registration or tag for a mobile or motor home is not a shelter expense.

(ii) A mobile home is taxed as part of the property tax when the land is owned or being purchased~~. This~~, and is ~~considered as~~ a shelter expense.

(iii) Unregistered mobile homes on rented land are taxed as personal property. The personal property tax for the mobile home is ~~considered~~ a shelter expense. No other personal property tax is ~~considered~~ a shelter expense;

(C) charges for heating, cooling, or cooking fuel; electricity; water, sewage, garbage, and trash collection fees; and the basic service fee and tax for one telephone ~~including tax on the basic fee~~. A household ~~that incurs~~ incurring an allowable utility expense receives the total amount of the utility standard specified in OKDHS Appendix C-3 for one of the mandatory utility standards in (i) through (iii) of this subparagraph.

(i) The standard utility allowance (SUA) is a single standard based on annual averages that include costs for heating~~,~~ or cooling~~,~~; and cooking fuel~~;~~, electricity~~;~~, basic telephone service~~;~~, ~~and~~ water, sewage, and garbage.

(I) The SUA ~~may be~~ is used as long as the household is billed for heating or cooling during the year. Households billed less often than monthly for heating costs such as butane or propane may continue to use the utility standard between billing months. If the household reports they no longer incur a heating or cooling expense, but still have a utility expense, the standard must be changed to ~~either~~ the basic utility allowance (BUA) or telephone standard.

(II) A household with utility expenses ~~which~~ that are reimbursed or paid by an excluded payment such as a vendor payment, Housing and Urban Development (HUD), or Farmers Home Administration (FmHA) payment may use the SUA when ~~the~~ heating or cooling ~~cost exceeds~~ costs exceed the excluded payment amount ~~of the excluded payment~~.

(ii) The BUA includes utility charges the household incurs other than for heating and/or cooling ~~which the household incurs~~.

(iii) The telephone standard is used ~~if~~ when the household is not entitled to use the SUA or BUA, but has a telephone cost; and

(D) the shelter costs for the home even when not actually occupied by the household, because of employment or training away from home, illness, or abandonment of the home due to disaster or casualty loss.

(i) For the cost of a vacated home to be included in shelter costs the:

(I) household must intend to return to the home;

(II) current occupants of the home, if any, must not be claiming the shelter costs during the absence of the household; and

(III) home must not be rented or leased during the absence of the household.

(ii) If a deductible expense must be verified and obtaining the verification may delay the household's certification, the worker advises the household that the household's eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense.

(iii) The appropriate utility standard is used if the household is entitled to claim it.

(c) The worker calculates a household's expenses based on the expenses the household expects to be billed for during the certification period. ~~Anticipation for the~~ The worker anticipates expenses ~~is~~ based on the most recent month's bills unless the household is reasonably certain a change will occur.

(d) Households may elect to have an expense that:

(1) is billed monthly and fluctuates, averaged;

(2) is billed less often than monthly, averaged forward over the interval between scheduled billings; or

(3) if there is no scheduled billing interval, averaged forward over the period the expense is intended to cover.

(e) A deduction is allowed in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense.

(1) For example, rent ~~which is~~ due each month is included in the household's shelter costs, even if the household has not yet paid the expense.

(2) Amounts carried forward from past billing periods are not deductible even if included in the most recent billing and actually paid by the household.

(3) A particular expense may ~~only~~ be deducted only once.

(f) The portion of an expense paid by an excluded reimbursement or vendor payment is not deductible. The amount left after deducting the excluded payment is deductible~~. This~~ and includes HUD and FmHA rent and utility payments. Expenses are only deductible if the service is provided by someone outside the household and the household makes a ~~money~~ monetary payment for the service.

SUBCHAPTER 9. ELIGIBILITY AND BENEFIT DETERMINATION PROCEDURES

340:50-9-1. Determining the food benefit allotment

(a) **Cases with unverified deductible expenses.**

(1) **Food benefits without deductions.** If a deductible expense ~~which~~ that must be verified ~~in accordance with~~ per OAC 340:50-7-31 cannot be verified before the 30-day processing standard for applications expires, the worker determines the household's benefit level without giving a deduction for the claimed but unverified expense. If the household:

(A) is eligible without allowing the expense, an allotment ~~which~~ that does not reflect deduction of the expense is provided within 30 calendar days after the application is filed; or

(B) chooses to claim expenses for an unoccupied home, the worker verifies the household's utility expenses for the unoccupied home and uses the appropriate utility standard.

(2) **Benefits delayed.** If a deductible expense cannot be verified before the 30-day processing standard for applications expires and the household is ineligible unless the expense is allowed, the household application is held pending or denied.

(b) **Determining household eligibility.** In calculating net monthly income, cents are used in determining each source of each person's monthly income and the household's monthly dependent care, shelter, legally binding child support payments, or medical expense. When the monthly amount of each person's source of income or each of the household's expenses is established, and at all other steps of the net income computation, cents are rounded to the nearest dollar, 1 cent through 49 cents is rounded down and 50 cents through 99 cents is rounded up. Due to changes in household composition or circumstances, households certified under gross income standards may become subject to net income standards during the certification period or vice versa. The worker is required

to change one income standard to the other when any change is made to adjust the household's eligibility, benefit level, or certification period, or at recertification, whichever is earlier.

(1) **Households without elderly or disabled members.** If the household does not have an elderly or disabled member, the household's total gross monthly income and household size are the first basis for determining eligibility. The household is not eligible if the total gross income exceeds the Maximum Gross Income Standard for the appropriate household size as shown on Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions. After gross income~~, resource,~~ and non-financial conditions of eligibility are established, the net food benefit monthly income is computed and compared to the Maximum Net Income Standard for the appropriate household size as shown on OKDHS Appendix C-3. If the net food benefit income does not exceed this standard, the household is determined eligible. The steps in (A) through (H) are used to determine the household's net food benefit monthly income.

(A) Add gross monthly income earned by all household members including any net self-employment income minus the earned income exclusions to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction according to the OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(E) Subtract monthly dependent care expenses. A dependent care deduction cannot be allowed for dependent care expenses which are reimbursed or paid for under an employment and training (E&T) program or other source.

(F) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(G) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions given in subparagraphs (A) through (F) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, ~~go~~ proceed to the next step.

(H) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income if the total of excess shelter costs does not exceed the maximum shown in OKDHS Appendix C-3. If the total of the shelter costs exceeds the standard shown in OKDHS Appendix C-3, only the amount not exceeding the standard is deducted.

(2) **Households with an elderly or disabled member.** When a household that includes an elderly or disabled member meets the ~~other resource and~~ non-financial conditions of eligibility, the household's net food benefit, monthly income, and household size are the basis for determining eligibility. The net food benefit monthly income is compared to the Maximum Net Income Standards for the appropriate household size as shown on OKDHS Appendix C-3. If the net food benefit income does not exceed this standard, the household is determined eligible. The steps listed in (A) through (I) are used to determine the household's net food benefit income if the household includes an elderly or disabled member.

(A) Add gross monthly income earned by all household members, including any net self-employment income minus the earned income exclusions, to determine the household's total gross earned income.

(B) Multiply the total gross earned income by the appropriate earned income deduction from OKDHS Appendix C-3 and subtract that amount to determine the net monthly income. The earned income deduction is not allowed on any portion of income earned under a work supplementation or support program that is attributable to public assistance.

(C) Add the net monthly earned income and the total monthly unearned income of all household members, minus income exclusions.

(D) Subtract the standard deduction as shown in OKDHS Appendix C-3.

(E) Subtract medical expenses ~~which~~ that exceed $35 for ~~the~~ elderly or disabled household members only. Thirty-five dollars is subtracted only once for the household rather than for each household member.

(F) Subtract monthly dependent care expenses. A dependent care deduction cannot be allowed for dependent care expenses ~~which~~ that are reimbursed or paid for under an E&T program or other source.

(G) Subtract verified legally-binding child support payments made to someone outside the food benefit household.

(H) Add the allowable shelter expenses to determine the total shelter costs. Subtract from the total shelter costs 50% of the adjusted income, the household's monthly income after all of the deductions in (A) through (G) of this paragraph have been subtracted. The remaining amount, if any, is the excess shelter costs. If there are no excess shelter costs, the net monthly income has been determined. If there are excess shelter costs, go to the next step.

(I) To apply the excess shelter costs, subtract excess shelter costs from the adjusted income.

(c) **Food benefit allotment.**

(1) **Initial month proration.**

(A) Initial month means the first month the household is certified for food benefits following any period during which the household was not certified. Food benefit allotments for an initial month are based upon the date of the application and prorated from the date of application.

(i) Proration of benefits from the application date applies to the new case if one food benefit household separates into two or more food benefit households.

(ii) Migrant and seasonal farm worker's food benefits are not prorated when the household has received food benefits in the prior month.

(iii) While a household's eligibility for the initial month is determined by considering the household's circumstances for the entire month of application, the benefit is based on the day of the month the household applies for benefits.

(iv) The monthly benefit that the recipient would be eligible to receive if proration did not apply must be determined prior to computation by using the prorated benefit on OKDHS Appendix B, Prorated TANF and Food Benefits: Proration Payment Form, or by using the formula: (31 minus the application date) x monthly benefit divided by 30 = the prorated benefit.

(B) The prorated benefit is rounded down to the lower dollar. If the answer is less than $10, the household is denied for the month of application but certified for the next month. If the household applies on the 31st day of the month, use the 30th for the application date for purposes of this provision. Households that apply after the 15th of the month are issued the prorated benefits for the month of application and the benefits for the first full future month on the same day.

(C) When a household is certified for the month following the month of initial application because the household failed to furnish necessary information, benefits are prorated from the date the household furnished the information. The application date becomes the date information was furnished to OKDHS.

(2) **Monthly benefit.** The monthly benefit for all months except the initial month is the amount listed on OKDHS Appendix C-3 for the appropriate household size and net income.

(d) **Delayed applications.** Applications that are not approved or denied by the 30th calendar day are considered delayed applications. On the 30th calendar day following the application date, every delayed application is assessed to determine who caused the delay. The purpose of this assessment is to determine if the benefits are denied and what date is used to prorate benefits if the household is determined eligible at a later date.

(1) **Delay caused by ~~the Oklahoma Department of Human Services (OKDHS)~~.** When the processing delay is caused by OKDHS, the application remains in pending status. At the end of the first 30 calendar days the household is notified of the reason the application is still pending using Form 08MP039E, Notice to Client of Action Taken. If the household is later determined eligible, the case is certified back to the date of application. OKDHS caused delays include, but are not limited to, the circumstances given in (A) through (F) of this ~~subparagraph~~ paragraph.

(A) The household's first interview was scheduled on or before the 20th day following the date of application. The household appeared for the interview but subsequently failed to provide the required verification. During the interview the worker did not explain to the household or provide the information in writing regarding:

(i) what factors must be verified;

(ii) what is considered acceptable verification; or

(iii) by what date the information must be supplied.

(B) An interview was never scheduled for the household.

(C) The worker did not offer or provide assistance to the household in obtaining the verification as required or did offer assistance but failed to follow through on collateral contacts or release of information.

(D) The worker discovered that additional information was required after the interview but the client did not have ten calendar days between the request for the verification and the 30th calendar day of the application process.

(E) The household missed their first interview on or before the 30th calendar day and requested that the interview be rescheduled. The human services center (HSC) was unable to schedule the second interview date until after the 30th calendar day.

(F) The eligible household provided all the required verification on or before the 30th day, and the application was not approved or denied.

(2) **Delay caused by the household.** When the processing delay is caused by the household, the application is denied on the 30th calendar day. The household is notified by computer-generated notice that the application is denied. When the household provides the required verification in the second 30 calendar days, a new application is not required. If the household is determined eligible, the food benefit allotment is prorated from the date the household provided the verification. Household caused delays include, but are not limited to, the circumstances given in (A) through (C) of this subparagraph.

(A) The household's first interview was scheduled on or before the 20th calendar day following the date of application. The household appeared at the interview but subsequently failed to provide the required verification. The worker provided the household with a statement of required verification, offered to assist the household in obtaining the verification, and also allowed the household sufficient time to provide the verification.

(B) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The interview was rescheduled to be held on the 30th calendar day; however, the household did not provide all the required verification at the rescheduled interview.

(C) The household missed their first interview and requested on or before the 30th calendar day that the interview be rescheduled. The household stated they could not come in until after the 30th calendar day.

(e) **Certification periods.** Definite certification periods are established for each eligible household to receive benefits. At the expiration of each certification period, entitlement to food benefits is established only upon a recertification based upon a newly completed application, an interview, and required verification provided. [OAC 340:50-3-2] Under no circumstances are benefits continued beyond the end of a certification period without a redetermination of eligibility.

(1) **Month of application.** The month of application is the first month in the certification period for initial applicants if eligibility is determined within the 30-day period.

(A) Because of anticipated changes, a household may be eligible for the application month ~~of application~~ but ineligible for the subsequent month. In this situation, the household is certified for the application month ~~of application~~ only.

(B) If a household is found to be ineligible and is denied benefits for the application month ~~of application~~ but is eligible for subsequent months, a new application ~~form~~ is not needed and the case is certified effective the month following the application month ~~of application~~.

(2) **Missed interview.** During the application process, a household who did not appear for their first scheduled interview may request a new interview date be scheduled through the 30th day following their application date. See delayed applications in paragraph (d) of this Section to determine the proration date of the food benefit allotment.

(3) **Information furnished after the application is denied.** When an application is denied because the household did not provide the requested information and the applicant furnishes the required information to determine eligibility within the second 30-day period, a new application is not required. The worker certifies food benefits using the date the information or verification is furnished as the application, certification, or proration date.

(f) **Length of certification periods.** Households are assigned the longest certification period possible based on the predictability of the household's circumstances.

(1) **One month.** A one-month certification is assigned to:

(A) households eligible only for the application month ~~of application~~; and

(B) migrant farm worker households, in the work stream, who apply before the 16th of the month.

(2) **Two months.** A two-month certification is assigned to:

(A) households eligible only for the certification month ~~of certification~~ and subsequent month; and

(B) migrant farm worker households, in the work stream, who apply after the 15th of the month.

(3) **Twelve months.**

(A) A 12-month certification period is assigned to households at certification unless:

(i) the household includes an able-bodied adult without dependents (ABAWD) member who is not meeting the work requirement or is not otherwise exempt; or

(ii) all adult household members are elderly or disabled with no earned income.

(B) These households are required to complete ~~Form 08MP004E, Benefit Review Report,~~ a review at six-month intervals. They are known as semi-annual reporters.

(4) **Twenty-four months.** A 24-month certification period is assigned to households when all adult members are elderly or disabled with no earned income. These households are required to complete ~~Form 08MP004E~~ a review at 12-month intervals. They are known as annual reporters.

340:50-9-5. Changes after application and during the certification period

(a) **Applicant households.** Applicant households must report all changes related to their food benefit eligibility and benefit amount. Households must report changes that occur after the interview but before the date of the notice of eligibility, within ten calendar days of the date of the notice.

(b) **Certified households.** Those households assigned a certification period other than 12 or 24 months are required to report within ten calendar days changes in:

(1) sources of income;

(2) unearned income of $50 per month or more;

(3) earned income of more than $100 per month;

(4) household composition, such as an addition or loss of a household member;

(5) residence and resulting changes in shelter costs;

(6) the acquisition of licensed vehicles not fully excluded; and

~~(7) cash on hand, stocks, bonds, and money in bank checking or savings accounts or savings institutions, when the balance reaches or exceeds a total of $2,000; and~~

(~~8~~7) the legal obligation to pay child support.

(c) **Change affecting food benefit.** If a reported change affects the household's eligibility or food benefit amount, the household is notified of the adjustment to be made and the effective date. The worker has ten calendar days from the date the change is reported to take the necessary action.

(1) If the household fails to report a change within the ten-day period and, as a result, receives benefits to which it is not entitled, an ~~overissuance~~ overpayment claim is referred to the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section.

(2) If the worker fails to take action on a reported change within the prescribed time limits and benefits are lost, they are restored to the household.

(d) **Changes that increase benefits.** Changes resulting in a benefit increase must be verified. The household is allowed ten calendar days to verify the information.

(e) **Changes ~~which~~ that decrease or ~~terminate~~ close benefits.** Food benefits are closed, **never** suspended, if a change in household circumstances causes a household to be ineligible for food benefits. When a household's benefit ~~level~~ decreases or ~~is terminated~~ closes, an advance notice is required unless exempt from such a notice for a reason listed in (1) and (2) of this subsection. When an advance notice is required, the decrease or termination of the benefit is effective no later than the month following the month in which the advance notice period expired. When the change is reported less than ten calendar days before the advance notice deadline, the action must be taken before advance notice deadline the following month. Advance notice is not required when the:

(1) Oklahoma Department of Human Services (OKDHS) receives a clear written statement signed by a responsible household member stating he or she no longer wishes food benefits or ~~giving~~ gives information which requires ~~termination~~ closure or reduction of food benefits and stating that he or she understands the food benefit will be reduced or ~~terminated~~ closed. The household retains its right to a fair hearing and ~~to continue~~ continuation of benefits if a fair hearing is requested within ten calendar days of the change notice; and

(2) reduction or ~~termination~~ closure of food benefits is based on situations listed in ~~(j)~~ (k) of this Section.

(f) **When benefits may be reopened following closure.** The food benefit may be reopened following closure using current eligibility information when:

(1) policy and procedures were not administered correctly. The food benefit is reopened back to the first day of the month of closure; or

(2) the household provides all required verification by the last day of the month of closure for failure to complete the review. The food benefit is reopened and prorated from the date the review is completed.

(~~f~~g) **Annual reporting households.** Food benefit households with all adult members elderly or disabled with no earned income are known as annual reporters. A 24-month certification period is automatically assigned. These households are only required to report changes that result in their gross monthly income exceeding 130 percent of the monthly poverty income guidelines for their household size unless it is the review or recertification month. The worker must act on any changes reported by ~~these~~ households that increase ~~their benefits. The worker also acts on changes reported by the household that result in a~~ or decrease ~~in~~ their benefits. The system determines if the change results in ~~a~~ an increase or decrease in benefits. ~~A~~ Between review or recertification months, a decrease in benefits does not occur unless the:

(1) household has requested closure of the case; or

(2) worker has information about the household's circumstances considered verified upon receipt.

(~~g~~h) **Benefit review ~~form~~ for annual reporters.** Annual reporting households are sent ~~computer-generated Form 08MP004E, Benefit Review Report,~~ notification in the 11th month of certification that the review is due. ~~The intent of this form is to allow the household's circumstances to be reviewed without requiring face-to-face contact.~~ An interview is not required. In order to continue to receive benefits, the household must complete the review, that includes providing all required verification, by the last day of the 12th month of certification. OKDHS reviews information to determine whether changes are needed.

(1) ~~The worker must act on any changes~~ Changes reported ~~on Form 08MP004E~~ at review must be acted on.

(2) If the reported changes result in a ~~reduction~~ decrease or ~~termination~~ closure of benefits, an advance notice must be sent to the household.

(3) If the household fails to provide sufficient information regarding a deductible expense requiring verification, the ~~benefits are not terminated, but~~ review is processed without regard to the deduction.

~~(4) Form 08MP004E must be completed and returned to the human services center (HSC), along with all required verification, by the last day of the 12th month of certification.~~

(~~h~~i) **Semi-annual reporting households.** All food benefit households, except those considered annual reporters or certain households containing one or more able bodied adults without dependents (ABAWD), are assigned a

~~(1)~~ ~~A~~ 12-month certification period ~~is assigned to food benefit households at certification unless the household contains:~~

~~(A) a member who is an able-bodied adult without dependents (ABAWD) who is not meeting the work requirement;~~

~~(B) an ABAWD who is not otherwise exempt; or~~

~~(C) all adult household members who are elderly or disabled with no earned income~~.

(~~2~~1) ~~These~~ Between the month of review or recertification, households are only required to report changes that result in their gross monthly income exceeding 130 percent of the monthly poverty income guidelines for their household size unless their household contains an ABAWD meeting the work rule per OAC 340:50-5-64(a). Households with an ABAWD ~~who is~~ meeting the work rule at certification must report if the hours decrease below an average of 20 per week or 80 per month.

(2) The worker must act on any changes reported by ~~these~~ households that increase ~~their benefits. The worker also acts on changes reported by the household that result in a~~ or decrease ~~in~~ their benefits. The system determines if the change results in ~~a~~ increase or decrease in benefits. ~~A~~

(3) Between the month of review or recertification a decrease in benefits does not occur unless the:

(A) household has requested closure of the case; or

(B) worker has information about the household's circumstances considered verified upon receipt.

(~~i~~j) ~~**Benefit review form**~~ **Review for semi-annual reporters.** Semi-annual reporting households are sent ~~a computer-generated Form 08MP004E~~ notification in the fifth month of certification that the review is due. An interview is not required. In order to continue receiving benefits, the household must complete the review, that includes providing all required verification, by the last day of the sixth month of certification. OKDHS reviews information provided to determine whether changes are needed.

(1) ~~The worker must act on any changes~~ Changes reported ~~on Form 08MP004E~~ at review must be acted on.

(2) If the reported changes result in a ~~reduction~~ decrease or ~~termination~~ closure of benefits, an advance notice must be sent to the household.

(3) If the household fails to provide sufficient information regarding a deductible expense, the ~~benefits must not be terminated, but~~ review is processed without regard to the deduction.

~~(4) Form 08MP004E must be completed and returned to the HSC, along with all required verification, by the last day of the sixth month of certification.~~

(~~j~~k) **Notice of adverse action not required.**

(1) **Mass changes.** The individual notification requirement is waived when changes affecting the entire caseload or significant portions of the caseload are initiated because of changes or requirements in federal or state law. In these situations, FSSD mails notices to the households informing them of the changes that are about to be made.

(2) **Notice of death.** If the worker determines, based on reliable information, that all members of the household are deceased, notice of adverse action is not required.

(3) **Moved out of county.** Notice of adverse action is not required when the worker determines, based on reliable information, that the household has moved out of the county and that a transfer request has not been received.

(4) **Completion of restoration of lost benefits.** Notice of adverse action is not required if the household is previously notified in writing when restoration of lost benefits is completed and the household's food benefit is reduced due to completion of restoration of lost benefits.

(5) **Variable food benefit.** The household benefit amount varies from month to month within the certification period to take into account changes that were anticipated at the time of certification and the household was so notified at the time of certification.

(6) **Willful misrepresentation.** Notice of adverse action is not required if a person in the household is disqualified for willful misrepresentation. If there is more than one person in the household, the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member.

(7) **Food benefit recoupment.** A notice of adverse action is not required if the household fails to make agreed upon cash or food benefit repayment of an overpayment.

(8) **Drug or alcohol treatment center or group home loses approved status.** If a household's eligibility is being terminated because the drug or alcohol treatment center or group home facility is no longer approved, an individual notice of adverse action is not required.

(~~k~~l) **Action on changes when fair hearings are requested.** When a household requests a fair hearing within ten calendar days of the date shown on the adverse action notice, the household may continue to receive food benefits.

SUBCHAPTER 11. SPECIAL PROCEDURES

PART 1. HOUSEHOLDS ENTITLED TO EXPEDITED SERVICE

340:50-11-5. Procedures for expediting services

To expedite the certification process, the worker must verify the applicant's identity. All reasonable efforts to verify the household's residency, income declaration, including a statement that the household has no income, ~~liquid resources,~~ and other factors of eligibility ~~is~~ are made. Verification is done by seeing documentary evidence or through a collateral contact when documentary evidence is not readily available. Verification of factors other than identity that could not be made during the expedited service processing time limits may be postponed. In most instances, it is expected that the applicant verify at least residence~~,~~ and income, ~~and resources are verified~~ within the time limit. Benefits cannot be delayed beyond the time limit solely because factors other than identity were not verified.

(1) Except for the applicant, work registration of household members may be postponed when it cannot be accomplished within the expedited service processing time limit.

(2) Households entitled to expedited service are asked to furnish a Social Security number for each person applying for benefits before the second full month of participation with the exception of newborns.

(3) ~~Households~~ The worker certifies households who have furnished all necessary verification for determining continued eligibility ~~are certified~~ for a normal certification period. If the interview or verification is postponed, the worker provides the household ~~is provided~~ with Form 08AD092E, Client Contact and Information Request, setting an interview date and listing needed verification that must be provided before further benefits are approved. ~~These verifications must be furnished~~ The interview must be completed and verification provided within 30 calendar days of the application date in order to avoid a break in benefits. If the interview is completed and postponed verification provided within 60 calendar days of the date of application, a new application is not needed. Benefits are prorated from the date the interview is completed and verification provided.

(4) When ~~verifications are~~ verification is received, the worker approves the household, ~~is approved~~ if eligible, for a normal certification period~~, if eligible~~. This approval must be ~~completed and teleprocessed~~ certified within seven calendar days of the receipt of the verification and completion of the interview.

(5) If~~, after certification with~~ the household does not complete the interview or provide postponed verification within 60 calendar days of the application date, the household ~~reapplies for food benefits on an expedited basis, the household~~ must complete ~~provide verifications required which were postponed on the previous application before it is entitled to expedited service~~ a new application in order to receive further food benefits.

(6) There is no limit to the number of times a household can be certified under expedited procedures as long as prior to each expedited certification the household ~~either~~ completes the interview requirement, if postponed, and provides the postponed verification ~~requirements that were postponed at~~ from the last expedited certification or was certified under normal processing standards since the last expedited certification.

PART 7. REPLACEMENT WHEN FOOD PURCHASED WITH FOOD ~~STAMP~~ BENEFITS IS DESTROYED

340:50-11-64. Destroyed food purchased with benefits

(a) In households where food purchased with benefits is destroyed in a household misfortune such as a fire, tornado, or flood, a replacement of the actual value of loss, not to exceed the household's monthly allotment, may be made if the loss is reported within ten days of the loss and the loss is verified. Food loss through loss of electricity or malfunction of appliances unless caused by a storm, does not qualify as a household misfortune and the food loss may not be replaced.

(b) Prior to issuing the replacement, a household member must complete Form 08FB0012E, Request for Replacement of Destroyed Food, attesting to the loss within ten days of the report of the loss. When the Oklahoma Department of Human Services is not open for business on the 10th day, the form must be received by the next business day. The worker must issue the replacement within ten calendar days of the reported loss or within two business days of receiving the completed form, whichever is later.

PART 12. CATEGORICALLY ELIGIBLE HOUSEHOLDS

340:50-11-111. Categorically eligible household

(a) **Purpose.** This Part includes the requirements for establishing categorically eligible households for the Supplemental Nutrition Assistance Program (SNAP).

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

(1) **"Categorically eligible household"** means:

(A) any household, as defined in OAC 340:50-11-20, in which all members receive or are authorized to receive:

(i) Temporary Assistance for Needy Families (TANF) cash assistance; or

(ii) a combination of Supplemental Security Income (SSI) and TANF cash assistance;

(B) any household in which all members receive or are authorized to receive SSI; or

(C) any household in which members receive or are authorized to receive services through the Oklahoma Marriage Initiative except as excluded in (d) of—this Section.

(2) **"Authorized to receive"** means ~~that~~ the person has been determined eligible for benefits and has been notified of this determination even though the benefits have not yet been received. 2

(c) **Suspended, recouped, or benefit not issued.** The fact that TANF or SSI benefits ~~have been~~ were suspended, recouped, or are less than the minimum amount paid has no impact on a determination of categorical eligibility.

(d) **Ineligible households.** A household ~~may~~ is not ~~be~~ classified as a categorically eligible household when the:

(1) ~~the~~ entire household is institutionalized and the institution is not listed at OAC 340:50-5-25 as an institution where residents may participate in SNAP; or

(2) ~~any member of the household is disqualified for an intentional program violation as defined in OAC 340:50-15-25~~ household contains a sponsored alien.

340:50-11-112. When to classify categorically eligible households

Food benefit households are immediately classified as ~~a~~ categorically eligible ~~household when all household members~~ households unless the households meet the criteria defined at OAC 340:50-11-111(~~b~~d) ~~and have not been disqualified for an intentional program violation as defined in OAC 340:50-15-25~~ for ineligible households.

340:50-11-113. Financial eligibility factors

(a) When all household members meet categorical eligibility ~~in accordance with~~ per OAC 340:50-11-111(b)(1)(A) through (B), they are not subject to income ~~or resource~~ limits of the Supplemental Nutrition Assistance Program (SNAP). Income for the household must be verified.

(b) Households authorized to receive services through the Oklahoma Marriage Initiative (OMI) are~~:~~

~~(1) not subject to the resource limits as shown in OAC 340:50-7; and~~

~~(2)~~ subject to the income limits as shown on Oklahoma Department of Human Services ~~OKDHS~~ Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions (Maximum gross income standards without elderly/disabled members or Maximum net income standards for households with elderly/disabled members that are not pure SSI and/or TANF households).

(c) Households with a person who is determined to have an intentional program violation (IPV) in SNAP are subject to ~~both~~ income ~~and resource~~ limits at OAC 340:50-7.

340:50-11-115. Review of categorical eligibility

When all or some of the household members lose eligibility for Supplemental Security Income (SSI) or Temporary Assistance for Needy Families (TANF) for any reason except recoupment or suspension, ~~the worker must review the household's eligibility status.~~

~~(1)~~ ~~The~~ the household is no longer categorically eligible based on income. The food benefits must be closed when the household's income exceeds standards on Appendix C-3, Maximum Food Benefit Allotments and Standards for Income and Deductions for non-categorically related households.

~~(2) The household remains categorically eligible based on resources unless a household member has been determined to have committed an intentional program violation (IPV) according to OAC 340:50-15-25.~~

SUBCHAPTER 15. OVERPAYMENTS AND FRAUD

PART 3. FRAUD

340:50-15-25. Cases referred for intentional program violation determination

(a) **Cases determined by administrative disqualification hearing (ADH).** For a determination of intentional program violation, Family Support Services Division (FSSD) Benefit Integrity and Recovery Section and Oklahoma Department of Human Services (OKDHS) Office of Inspector General (OIG) staff make referrals for an ADH to the OKDHS Legal Division Appeals Unit. The cases referred contain documentary evidence of intentional program violation, but do not warrant civil or criminal prosecution.

(1) **Waiving of ADH.** A client suspected of intentional program violation may choose to waive his or her rights to an ADH. The client must complete and sign Form 08OP016E, Administrative Disqualification Hearing Waiver, if the client requests a waiver. A waiver of the hearing subjects the client to the same penalties as if the hearing process determined intentional program violation.

(2) **Penalties for intentional program violation.** When the ADH results in an intentional program violation determination or the client waives his or her right to the hearing process, the FSSD Benefit Integrity and Recovery Section imposes the penalties in (A) - (B) of this paragraph.

(A) **Disqualification.**

(i) **Notification.** FSSD Benefit Integrity and Recovery Section sends Form 08AD019E, Program Penalty/Disqualification Notice, to the disqualified member. Form 08AD019E includes information regarding the remaining household members' eligibility.

(ii) **Period of disqualification.** The period of disqualification for a person is one year for the first violation, two years for the second violation, and permanently for the third violation.

(I) Any person disqualified for intentional program violation prior to April 1, 1983, is considered to have one violation regardless of the number of prosecutions.

(II) A person is disqualified for a period of ten years if the person is found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple benefits simultaneously under the Supplemental Nutrition Assistance Program (SNAP).

(iii) **Disqualification effective date.** Disqualification begins the first possible effective month following the date of Form 08AD019E, or the date specified on the ADH decision letter. Once the disqualification begins, it runs continuously until the end of the period imposed.

(iv) **Disqualification computation.** Either the worker or FSSD Benefit Integrity and Recovery staff removes the disqualified person from the household size. The worker counts the ~~resources and~~ gross income of the disqualified person in their entirety as available to the remaining household members and allows all applicable deductions for remaining household members.

(B) **Repayment.** A client must repay food benefit overpayments regardless of any disqualification penalty. FSSD Benefit Integrity and Recovery Section notifies the client of the necessity for making a repayment plan by Form 08OP118E, Food Benefit Repayment Agreement. The options for the repayment plan are the same as those listed in OAC 340:50-15-6.

(b) **Cases determined by a court.** The FSSD Benefit Integrity and Recovery Section refers all cases suspected of intentional program violation to OIG to make a determination of whether court action is feasible.

(1) OKDHS staff must not discuss the overpayment claim with the client until court action is completed or the FSSD Benefit Integrity and Recovery Section notifies the human services center ~~(HSC)~~ of any action to be taken. Local staff forwards further information or directs client inquiries to the FSSD Benefit Integrity and Recovery Section.

(2) A court of appropriate jurisdiction may find one or more persons in the household guilty of obtaining food benefits by fraudulent means. The court may charge the person with either a misdemeanor or felony depending on the amount of food benefits fraudulently obtained ~~fraudulently~~.

(3) Procedures for disqualification penalties are the same as in cases determined by administrative disqualification hearings at (a)(2) of this Section with the exceptions included in (A) through (D).

(A) The court may specify the length of the disqualification. These court specified periods of disqualification override (a)(2)(ii) of this Section.

(B) A person determined by a court to have committed intentional program violations of trading benefits for firearms, ammunition, explosives, or controlled substances is subject to disqualification:

(i) for two years for the first offense and permanently for the second offense involving the sale of a controlled substance for food benefits; and

(ii) permanently for the first offense involving the sale of firearms, ammunition, or explosives for food benefits.

(C) A person convicted of trafficking food benefits of $500 or more is permanently disqualified from participation in SNAP. Trafficking includes:

(i) fraudulently using, transferring, altering, acquiring, or possessing Electronic Benefit Transfer (EBT) cards or access devices; or

(ii) presenting food benefits for payment or redemption knowing the same to have been fraudulently obtained or transferred.

(D) A person is disqualified from participation in SNAP for a 10-year period if the person is found to have made a fraudulent statement or representation with respect to identity or place of residence in order to receive multiple benefits simultaneously under SNAP.

(4) The court may also stipulate a repayment plan. The repayment plan cannot be renegotiated. The FSSD Benefit Integrity and Recovery Section may refer the case back to the district attorney's office if the client fails to comply with the repayment plan.

[OAR Docket #11-553; filed 4-22-11]

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

[OAR Docket #11-554]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Eligibility for Benefits
340:65-3-1 through 340:65-3-2.1 [AMENDED]
340:65-3-4 through 340:65-3-6 [AMENDED]
340:65-3-8 through 340:65-3-9 [AMENDED]
Subchapter 5. Procedures Relating to Case Changes
Part 1. General Provisions
340:65-5-1 [AMENDED]
340:65-5-3 [AMENDED]
Subchapter 9. Overpayments and Fraud in Temporary Assistance for Needy Families and State Supplemental Payment Benefits
340:65-9-1 through 340:65-9-2 [AMENDED]
340:65-9-4 through 340:65-9-6 [AMENDED]
340:65-9-8 [AMENDED]
(Reference APA WF 10-18)

AUTHORITY:
Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Sections 161 et seq. of Title 56 of the Oklahoma Statutes; and Section 41.19 of Title 62 of the Oklahoma Statutes.
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The proposed permanent rule amendments to Subchapter 3 of Chapter 65 amend the rules to: (1) update information about the application process that includes filing requirements, online applications, removing specific forms used, clarifying verbal requests, adding and revising information about time frames, and worker responsibility to determine receipt of out-of-state benefits before certification; (2) add information about the Oklahoma Health Care Authority (OHCA) Online Enrollment which includes removing certification information for the SoonerCare (Medicaid) populations in Online Enrollment; (3) add information for the Low Income Home Energy Assistance Program (LIHEAP) regarding Social Security number requirement, who can be payee for the benefit, and use of the Systematic Alien Verification for Entitlement (SAVE) system; (4) add requirement to close the State Supplemental Payment (SSP) when the client does not pin the debit card within 90 calendar days; (5) update information about reviews that includes changing the time frame for subsidized child care, removing the interview requirement for most subsidized child care reviews and food benefit recertifications for elderly and disabled households with no earned income, revising notification information, adding information about eligibility determinations, and reordering information for greater readability; (6) update information regarding birth verification; and (7) add clarifying information regarding data exchange, notices, and for readability and understanding.

The proposed permanent rule amendments to Subchapter 5 of Chapter 65 amend the rules to: (1) update information about benefit changes for all programs; (2) add two reasons advance notice is not required; (3) add clarifying information; and (4) update language to current terminology.

The proposed permanent rule amendments to Subchapter 9 of Chapter 65 amend the rules to: (1) update information regarding overpayments for the Temporary Assistance to Needy Families (TANF) and SSP programs including deductions allowed, the length of time for which the Oklahoma Department of Human Services (OKDHS) may determine overpayments, and when OKDHS does not initiate collection efforts; and (2) update language and forms to current terminology.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Policy Management Unit, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 3. ELIGIBILITY FOR BENEFITS

340:65-3-1. Determination of eligibility

(a) **Eligibility determination.** The determination of eligibility is a continuous process that begins with an application. It includes the final disposition of the application and all subsequent activities related to determining ~~continuing~~ continued eligibility. The applicant has the right and the responsibility to participate in the eligibility determination and is relied on as the first source of information.

(1) In instances when it is difficult for the applicant to complete the application, someone acting on the applicant's behalf such as an authorized representative or a person with power-of-attorney may complete the application for all programs except Temporary Assistance for Needy Families (TANF).

(2) When someone other than the applicant applies on behalf of the applicant, he or she must bring a signed statement from the applicant giving this person permission to act on behalf of the applicant or the applicant must have designated this person as his or her authorized representative on the signed application. The SoonerCare (Medicaid) programs allows others to apply for the applicant without a written designation.

(b) ~~**Application forms**~~ **Filing an application.** ~~Application forms used include:~~

~~(1) Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E, Responsibilities and Signature for Benefits, to apply for:~~

~~(A) food benefits;~~

~~(B) State Supplemental Payment (SSP);~~

~~(C) Supplemental Security Income Disabled Children's Program (SSI-DCP);~~

~~(D) TANF;~~

~~(E) SoonerCare (Medicaid) benefits. Form SC-1, SoonerCare Health Benefits Application, may be used instead for pregnant women and families with children; or~~

~~(F) child care benefits; or~~

~~(2) computer-generated Form 08LH001E, Application for Low Income Home Energy Assistance (Heating), or Form 08LH002E, Application for Low Income Home Energy Assistance - Walk In, to apply for Low Income Home Energy Assistance Program (LIHEAP).~~ Each household wishing to apply for the Child Care Subsidy Program, Low Income Home Energy Assistance Program (LIHEAP), SoonerCare (Medicaid) Program, Supplemental Nutrition Assistance Program (SNAP), State Supplemental Payment (SSP), Supplemental Security Income Disabled Children's Program (SSI-DCP), or TANF must complete an application. The applicant may request one or more benefits on the same application with the exception of LIHEAP which is not an ongoing benefit.

(c) **Signature requirements.** The applicant, guardian, or someone acting on the applicant's behalf such as an authorized representative or a person with power-of-attorney must sign the application ~~form~~. TANF applications must be signed by the applicant. If the applicant is living with his or her spouse, both must sign the application ~~form~~. The applicant may voluntarily withdraw the request for benefits or services either before or after signing the application ~~form~~. An applicant who is:

(1) eligible for Medicare signs the application using the name on his or her Medicare Health Insurance Benefits (HIB) card; or

(2) not eligible for Medicare signs the application using the name shown on his or her Social Security card.

(d) **Interview requirements.** Whether an interview is required varies depending on the program.

(1) Prior to approval for benefits, the applicant must complete a face-to-face interview for ~~the~~:

(A) ~~Supplemental Nutrition Assistance Program (~~SNAP~~)~~. Exceptions are found at OAC 340:50-3-2~~(b)~~; or

(B) the TANF Program.

(2) A telephone or face-to-face interview is required for the:

(A) Child Care Subsidy Program;

(B) SSP Program;

(C) SoonerCare (Medicaid) long-term care programs such as Advantage Waiver, nursing home care, or personal care; or

(D) SoonerCare (Medicaid) programs that categorically relate to the aged, blind, and disabled population such as Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB), Qualified Disabled and Working Individuals (QDWI), or Qualified Medicare Beneficiary Plus (QMBP).

(3) An interview is not required prior to approval for the SoonerCare (Medicaid) ~~for pregnant women and families with children~~ population in Online Enrollment with the Oklahoma Health Care Authority (OHCA) or LIHEAP benefits.

(e) **Worker responsibilities.** The worker is responsible for:

(1) advising the applicant during the application process of the:

(A) Oklahoma Department of Human Services (OKDHS) responsibility for reaching a decision and notifying the applicant of eligibility or ineligibility within the appropriate time limits;

(B) applicant's right to request a fair hearing per OAC 340:2-5, either orally or in writing, and be represented at the hearing by any person the applicant chooses. A hearing may be requested when there is a:

(i) delay beyond the established time limits for determining eligibility per OAC 340:65-3-5; or

(ii) disagreement with any action taken on the case;

(C) applicant's legal responsibility for reporting all facts pertinent to eligibility;

(D) types of changes the applicant must report within ten calendar days;

(E) penalty for failure to report changes;

(F) information needed to establish eligibility. When requesting information or verification from the

applicant, the worker uses Form 08AD092E, Client Contact and Information Request, and gives the applicant at least ten calendar days to respond to the request per OAC 340:65-3-2.1;

(G) assistance provided by OKDHS in establishing eligibility;

(H) permission the applicant gives OKDHS to obtain information from sources other than the applicant by signing the application; and

(I) requirement that the applicant must cooperate with state and federal officials if the applicant's case is selected for a Quality Control review;

(2) collecting information necessary for determining the applicant's initial and continuing eligibility. Information considered verified upon receipt if that information is not questionable or inconsistent with known facts, and the provider of the information is the primary source of the information, is the:

(A) applicant's statement concerning:

(i) residency;

(ii) relationship;

(iii) age;

(iv) living in the home of a relative payee;

(v) minor parent living in the home of a relative;

(vi) Social Security number (SSN);

(vii) non-liquid resources;

(viii) household members;

(ix) school attendance; and

(x) third party insurance;

(B) unearned income information obtained through:

(i) Beneficiary and Earnings Data Exchange System (BENDEX), from the Social Security Administration (SSA);

(ii) Supplemental Security Income (SSI)/State Data Exchange System (SDX), from SSA;

(iii) Unemployment Insurance Benefits (UIB), from the Oklahoma Employment Security Commission (OESC); and

(iv) workers' compensation documents from Workers' Compensation Court; and

(C) alien status information obtained through Systematic Alien Verification for Entitlements (SAVE), from the United States Citizenship and Immigration Services (USCIS);

(3) contacting other persons who may be able to help in establishing eligibility if the applicant is unable to participate in the eligibility determination because of physical or mental disability, inability to speak English, or other difficulties;

(4) determining whether the applicant is currently receiving benefits from another state when he or she has lived in Oklahoma less than 12 months;

(~~4~~5) recognizing expressed or implied needs~~;~~ which includes:

(~~5~~A) determining whether there is a need for crisis intervention;

~~(6) making appropriate referrals;~~

(~~7~~B) ~~ensuring all of~~ addressing the applicant's social services needs ~~are addressed and met~~; and

(C) making appropriate referrals; and

(~~8~~6) denying the application if sufficient facts are available to substantiate ineligibility.

(f) **Requirement for SSN.** A verifiable SSN or application for a SSN is required for every person whose needs are included for food benefits, SSP, SSI-DCP, LIHEAP, or TANF benefits. The requirement for a verifiable SSN also applies to all persons whose needs are included for SoonerCare (Medicaid) benefits, except newborn children deemed eligible and aliens who are residing in the United States (U.S.) unlawfully.

(1) The worker accepts the applicant's statement to document the SSN unless the information is inconsistent or there are other facts or observations which cause the worker to question the statement.

(A) Persons for whom a SSN is required but not available must be referred to the appropriate SSA office for SSN enumeration.

(i) The worker uses Form 08AD101E, SSN Enumeration Referral, to refer persons to the SSA office for a SSN application.

(ii) The return of Form 08AD101E to the human services center (HSC) validates the application(s) or indicates which persons have not provided SSA appropriate original evidence of age, identity, and citizenship.

(B) Parents of newborns who participate in Enumeration at Birth (EAB) receive from hospital personnel Form SSA-2853-OP3, Message From Social Security. This receipt form is verification the newborn was enumerated at birth.

(2) The worker denies the application or does not include the person for benefits if the person fails or refuses to furnish or to apply for a SSN.

(A) For TANF purposes, the person's needs are included; however, a 25% payment standard reduction penalty is imposed until an application for or a SSN is provided.

(B) For food benefit and SoonerCare (Medicaid) purposes, only the needs of the person for whom a SSN is not provided or applied for are not included.

(g) **Citizenship requirement.** All persons who are applying for state or federal public benefits such as child care subsidy, food benefits, LIHEAP, SoonerCare (Medicaid), SSP, or TANF must declare whether they are residing in the U.S. lawfully. Initially, the applicant must declare the citizenship or alien status for each household member applying for such benefits on the application ~~form~~. Citizenship and alien status for persons applying for SoonerCare (Medicaid) benefits is determined using specific program requirements found at OAC 317:35-5-25. The following citizenship requirements are pursuant to Section 71 of Title 56 and Section 20j of Title 74 of the Oklahoma Statutes. Form 08MP022E, Declaration of Citizenship Status, is completed to declare the citizenship or alien status of additional household members who request benefits after certification. The application ~~form~~ and Form 08MP022E

contain a statement advising the applicant that fraudulent claims of citizenship or lawful alien status are reported to the U.S. Attorney and may be subject to criminal prosecution.

(1) When the applicant declares that some or all of the household members applying for benefits are aliens, the worker must follow the SAVE procedures described at OAC 340:65-3-4 to determine if the documents provided to verify legal alien status are valid.

(2) The worker also must follow specific program policy regarding citizenship and alien status requirements to determine benefit eligibility found at:

(A) OAC 340:40-7-5 for child care subsidy benefits;

(B) OAC 340:50-5-67 for food benefits;

(C) OAC 340:20-1-8, ~~OAC~~ 340:20-1-10, and ~~OAC~~ 340:50-5-67 for LIHEAP;

(D) OAC 317:35-5-25 for SSP; and

(E) OAC 340:10-15-1 for TANF.

(3) Lawful status in the U.S. is considered verified if each person applying for benefits has furnished a SSN or Form 08AD101E from SSA indicating that the person has completed the application to apply for a SSN. OKDHS, ~~then~~ through an automated data exchange transaction, attempts to match SSN data exchange information with SSA.

(4) When OKDHS is unable to match the SSN with SSA for a person 14 years of age or older who is applying for benefits, that person must sign and have notarized Form 08MP005E, Citizenship Affidavit, attesting to his or her U.S. citizenship or alien status unless lawful status has been verified by a U.S. birth certificate, U.S. passport, or a Certificate of Naturalization. Documents acceptable as verification of citizenship for SoonerCare (Medicaid) described at OAC 317:35-5-25 are also acceptable as verification of lawful status.

(5) When the person fails or refuses to sign and have notarized Form 08MP005E, benefits are denied or closed for that person.

(6) When the worker finds that a person who signed Form 08MP005E attesting to U.S. citizenship or legal alien status made a false claim:

(A) the worker sends to Family Support Services Division (FSSD) any applicable evidence and a memo that includes:

(i) the benefits the person fraudulently applied for or obtained;

(ii) the time frame benefits were received; and

(iii) how the worker knows the claim was false;

(B) FSSD staff in consultation with ~~Legal Division~~ Office of General Counsel staff review the memo and any evidence provided by the worker; and

(C) when FSSD and ~~Legal Division~~ Office of General Counsel staff determine the person made a false claim, a complaint is filed with the U.S. Attorney for the applicable district based upon the venue in which the affidavit was executed.

340:65-3-2. Definitions

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

"Applicant" means a person who directly or through a person acting responsibly on the applicant's behalf requests a formal determination of eligibility for one or more programs administered by the Family Support Services Division (FSSD) of the Oklahoma Department of Human Services (OKDHS).

"Application process" means the process by which the applicant's request is formalized. The applicant may start the application process ~~may consist of an interview, either face-to-face or by telephone depending on the program, by the~~ with a worker ~~during which the applicant provides information regarding his or her situation,~~ using the Family Assistance/Client Services (FACS) system or by submitting an online or ~~a~~ paper application ~~form~~. The application process may require an interview with a worker, either face-to-face or by telephone, depending on the program. Any person who fraudulently represents facts, acts without authority, or exceeds his or her authority to perform a transaction may be prosecuted under all applicable criminal and civil laws.

"Client" means a person who is applying for or receiving services, cash assistance, or other benefits.

"Date of application" means, for:

(A) child care benefit applications, the date the applicant or a person acting on the applicant's behalf completes the child care interview and provides all necessary verification, including the name of the child care provider the applicant wishes to use.

(B) Temporary Assistance for Needy Families (TANF), food benefits, ~~and~~ SoonerCare (Medicaid), State Supplemental Payment (SSP), and the Low Income Home Energy Assistance Program (LIHEAP), the date the applicant or a person acting on the applicant's behalf signs the application ~~form~~. If the application is initiated outside of OKDHS, the application date is the date the application ~~form~~ is stamped ~~into~~ or received electronically in the human services center (HSC). Receipt of Form 08MA005E, Notification of Needed Medical Services, preserves the date of application for SoonerCare (Medicaid) populations not included in Oklahoma Health Care Authority OHCA Online Enrollment per OAC 317:35-6-15(b).

(~~i~~C) ~~If an oral~~ When a verbal request is received prior to the date of signature on the application, the date of the ~~oral~~ verbal request is entered in red above the signature date. The date of the ~~oral~~ verbal request is the date of application for the TANF, SSP, and the SoonerCare (Medicaid) Programs not included in the Online Enrollment.

(~~ii~~i) ~~When the applicant accepts an appointment to return at a later date to complete and sign the application form, the application date is the date of the original request and is handled the same as an oral request.~~ Per OAC 340:50-3-1, a verbal request for food benefits does not preserve

the application date. The only exception is when the applicant advises staff a hardship exists that prevents him or her from signing a request on that date.

(ii) A verbal request for LIHEAP does not preserve the application date as funding for the program is limited.

(iii) ~~The oral~~ When the verbal request date preserves the application date for a program, it is protected only if the application is signed within 30 calendar days.

(I) If the applicant fails to sign the application within 30 calendar days, no application request is considered made. ~~The applicant's contact with OKDHS is documented in the record or as information and referral only if a record does not exist.~~

(II) If the applicant subsequently contacts OKDHS after 30 calendar days and completes the application process, the application date is the date the ~~application is completed and signed~~ applicant completes and signs the application.

~~(iv) Receipt of Form 08MA005E, Notification of Needed Medical Services, preserves the date of application for medical benefits.~~

(D) When the applicant comes to the HSC to request benefits and cannot stay to complete the application with a worker or no appointment times are available that day, OKDHS staff advises the applicant to submit a completed and signed Form 08MP001E, Request for Benefits, to the HSC to preserve the application date. When the applicant does not leave a completed and signed Form 08MP001E at the HSC, an application date is not preserved and an appointment for an interview is not set.

"Inquiry" means a request for information but does not imply a request for assistance.

"Near real-time (NRT) benefit processing" means the application for child care benefits is processed within two business days of receiving verification needed to determine eligibility for assistance.

"Payee" means the person in the household in whose name benefits are issued. The person considered the payee varies depending on the requested programs. The payee may or may not be included in the benefit.

(A) For the Child Care Subsidy Program, the payee must be the person responsible for the child for whom benefits are requested. The payee does not have to be related to the child. If the parent of the child is in the home, the parent is considered the payee, per OAC 340:40-3-1(a)(3).

(B) For the TANF Program, the payee must have a certain degree of relationship to the child for whom benefits are requested, per OAC 340:10-3-56 and 340:10-9-1.

(C) For the Supplemental Nutrition Assistance Program (SNAP), the payee ~~can~~ may be any responsible adult living in the home. If the only adult living in the home is a non-household or ineligible member ~~in accordance with OAC 340:50-3-1, 340:50-5-5, and 340:50-5-8.1~~, that person is shown as the payee on the case per OAC 340:50-3-1, 340:50-5-5, and 340:50-5-8.1.

(D) For the SoonerCare (Medicaid) Program, the payee is the person for whom benefits are requested or the person responsible for the minor child for whom benefits are requested. The payee does not have to be related to the child. If the parent of the child is in the home, the parent is considered the payee, per OAC 317:35-7-15.

(E) For the ~~State Supplemental Payment (~~SSP~~)~~ Program, the payee is the person for whom benefits are requested. If the person for whom benefits is requested is a minor child, the child is coded as a ~~person~~ payee with a guardian.

(F) For LIHEAP, the payee may be any responsible adult living in the home. When the household receives other benefits, the payee is the same person shown as payee for the other benefits.

"Recipient" means a person who receives services, cash assistance, or other benefits.

340:65-3-2.1. ~~Computing~~ Counting days for providing verification, interview dates, and application time limits

~~In computing any period of time allowed in this Chapter, the first day of the time period is not counted. The last day of the time period is included, unless it is a Saturday, Sunday, or legal holiday as defined by the Oklahoma Statutes or any other day when the DHS office does not remain open for public business until 4:00 p.m., in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday as defined by the Oklahoma Statutes, or any other day when the DHS office does not remain open for public business until 4:00 p.m.~~ When counting days for providing verification, interview dates, and application time limits, the worker does not count the first day in the time period but does count the last day unless the Oklahoma Department of Human Services (OKDHS) is not open for business on that date. When the office is not open on the last day of the time period, the client is given until the next business day to comply with eligibility requirements.

(1) **Providing verification.** When the client must provide information to verify his or her situation before receiving or continuing to receive benefits, the worker gives the client at least ten calendar days to provide needed verification.

(2) **Interview date.** When the client must be interviewed, the worker sets the interview date at least ten calendar days in the future unless an earlier date is agreed upon by the worker and the client. When the client appears eligible for expedited services, the interview must be completed as soon as possible not to exceed seven calendar days.

(3) **Application time limits.** Refer to OAC 340:65-3-5 for application processing time limits. To be considered

timely, the worker must certify or deny an application no later than the last business day of the time limit. When the time limit ends on a day OKDHS is not open for business, the client has until the next business day to comply with eligibility requirements.

340:65-3-4. Investigation of eligibility conditions and services planning

The worker is responsible for collecting information necessary for determining the client's eligibility for benefits and addressing the client's social services needs. When verification of information from a source other than the client's statement is necessary, the sources described in this Section are used.

(1) **Home visits.** Home visits are sometimes necessary for Field Operations Division (FOD)~~,~~ Family Support Services (FSS) staff to provide services and benefits and to promote safety and stability for families. All home visits must be planned and coordinated to prevent duplication of efforts.

(A) FOD, Adult Protective Services (APS) staff may make home visits and client contacts outside normal working hours within policy as outlined in OAC 340:5.

(B) ~~Workers~~ All other FSS workers may make home visits or other client contacts outside normal working hours when it is in the best interest of the client and approved by appropriate supervisory personnel. Home visits are made when:

(i) there is a need to confirm the accuracy of statements and documentation cannot be obtained from other sources;

(ii) an office visit would create a hardship ~~on~~ for the household;

(iii) a Temporary Assistance for Needy Families (TANF) case is closed due to failure to cooperate ~~according to~~ per OAC 340:10-2-2;

(iv) it is the best method to complete or review the employability plan;

(v) protective services are needed; or

(vi) the worker deems it necessary.

(2) **Collateral sources.** The client's signature on the application ~~for assistance~~ or review is the necessary authorization for securing required information or verification from collateral sources. If the collateral source requires written authorization before supplying information to the Oklahoma Department of Human Services (OKDHS), the client signs Form 08AD060E, Request for Release of Information, ~~is completed~~ to give authorization. This authorization includes the permission of the client's spouse for information regarding his or her circumstances to be given in connection with the same application or review and of the client's parents when the client is a dependent child who is blind or disabled. The worker is responsible for discussing with the client any inconsistent information obtained from collateral sources related to the client's eligibility.

(A) ~~Persons who are~~ The worker advises persons contacted for information related to the client's eligibility ~~are advised~~ of how the information is used and the reason it is needed. If the person is unwilling for the client to know his or her identity, the person's name is not recorded in the case record and is not revealed to the client.

(B) When someone contacts OKDHS with information related to the client's eligibility and requests anonymity, that person's name is not recorded in the case record nor revealed to the client.

(3) **Public records.** Sources of information in the form of public records that provide essential information may be obtained without consent from any person whose transactions are involved.

(4) **Data exchange.** Automated data exchange with other agencies provides benefit, wage, ~~and~~ tax information ~~that is matched with~~ , and verification of Social Security numbers. The information obtained is electronically compared with data stored within OKDHS electronic records to determine if there are discrepancies that need to be addressed. Automated data exchange information is also available within the OKDHS system to determine discrepancies. The worker is responsible for:

(A) reviewing data exchange information at the time of application and review of eligibility. Data exchange information screens available are:

(i) Beneficiary and Earnings Data Exchange System (BENDEX);

(ii) Buy-In Data Exchange (BIL);

(iii) Supplemental Security Income (SSI)/State Data Exchange System (SDX);

(iv) Social Security Administration (SSA) Beneficiary Earnings Exchange Record (BEER/BWG);

(v) New Hire Employee list (NHL);

(vi) Social Security Number (SSN) Verification - SSN Enumeration;

(vii) Wage Data Exchange;

(viii) Unemployment compensation; and

(ix) Unearned Income Eligibility Verification System (IEVS) income report (IEVS-IRS) and resource data from the Internal Revenue Service (IRS);

(B) initiating appropriate queries; and

(C) resolving data exchange discrepancy messages within 30 calendar days of the date the message is posted on the data exchange inquiry screen.

(5) **Systematic Alien Verification for Entitlement (SAVE).** All applicants and recipients of the TANF, SoonerCare (Medicaid), Supplemental Nutrition Assistance Program (SNAP), Low Income Home Energy Program (LIHEAP), State Supplemental Payment (SSP), and Child Care Subsidy Program benefits are required to declare their citizenship status. Persons who declare themselves or their minor ~~child(ren)~~ child non-citizens must present documentation of their legal alien status from the United States Citizenship and Immigration Services (USCIS) or

other acceptable ~~resource~~ source. The status, as determined from the documentation, must be verified through the Alien Status Verification Index (ASVI) maintained by USCIS.

(6) **Workers' compensation.** Family Support Services Division (FSSD) staff reviews copies of all Workers' Compensation Court documents by matching SSNs with OKDHS records. Any court action that appears to potentially impact eligibility is forwarded to the servicing human services center (HSC) for clearance. A copy of the document is retained in the case record.

(7) **~~Vital records~~ Birth verification.** ~~Verification of birth records, when not otherwise available, for~~ For persons born in Oklahoma, ~~may be secured by sending a completed Form 08AD064E, Division of Vital Records, in duplicate to FSSD Benefit Integrity and Recovery Section~~ OKDHS has an agreement with the Oklahoma State Department of Health to verify birth electronically for persons with an open SoonerCare (Medicaid) benefit. ~~Form 08AD064E must be retained in OKDHS case files only and not copied for any person or agency, in accordance with the agreement between OKDHS and the Oklahoma State Department of Health.~~

(8) **Food stamp disqualification (FSD).** ~~The FSD transaction is used to determine if a client has been disqualified from SNAP due to fraud. If~~ When a client has been disqualified for food benefits due to fraud, the FSD screen shows the date the disqualification began and the length of the disqualification period.

340:65-3-5. ~~Certification~~ Application process

Each application is processed by a certification of eligibility or ineligibility unless denied at the applicant's request.

(1) **Application processing time limits.** An application must be processed within certain time limits. ~~If near real-time (NRT) benefit processing time frames are used, application processing must be completed within two working days of the date required verification is provided.~~ Refer to OAC 340:65-3-2.1, when the last day of the time limit falls on a day the Oklahoma Department of Human Services (OKDHS) is not open for business.

(A) When it is not possible to process the application timely, the applicant is notified in writing of the specific reasons for the delay. The applicant is also informed of his or her right to request a fair hearing and the procedures for requesting the hearing. An application is completed timely if the first month's benefits or notice of eligibility or ineligibility is processed within specified time limits. The time limits are:

(i) Temporary Assistance for Needy Families (TANF) - 30 calendar days;

(ii) Title IV-E Foster Care - 30 calendar days;

(iii) Energy Crisis Assistance Program (ECAP) - 48 hours;

(iv) Supplemental Nutrition Assistance Program (SNAP) - 30 calendar days unless the household is eligible for expedited service. When the household is eligible for expedited service, the application must be completed within seven calendar days per OAC 340:50-11-4;

(v) SoonerCare (Medicaid) benefits for:

(I) ~~women categorically related to pregnancy related services and persons categorically related to Aid to Families with Dependent Children (AFDC) - 20 days;~~

~~(II)~~ presumptive eligibility for pregnant women - 5 working days;

(~~III~~II) persons categorically related to Aid to the Aged - 30 calendar days;

(~~IV~~III) persons categorically related to Aid to the Blind or Disabled - 60 calendar days;

(~~V~~IV) Optional Tuberculosis (TB) Coverage group - 45 calendar days; and

(~~VI~~V) persons requesting long-term care services - 45 calendar days;

~~(VII) women categorically related to the Breast and Cervical Cancer Treatment Program - 30 days; and~~

~~(VIII) adults categorically related to the Family Planning Waiver Program - 20 days;~~

(vi) Diversion Assistance - 7 working days;

(vii) TANF Emergency Assistance - 5 working days;

(viii) Low Income Home Energy Assistance Program (LIHEAP) - ~~30~~ 10 calendar days~~;~~ of:

(I) the date of application when all verification is provided at the time of application; or

(II) giving or mailing Form 08AD092E, Client Contact and Information Request, to the applicant requesting needed verification;

(ix) Refugee Medical Assistance - 30 calendar days; and

(x) Child Care subsidy benefits - 2 working days from the date required verification is provided or, if not provided, within 30 calendar days.

(B) An application is not denied when it cannot be processed timely due to:

(i) circumstances beyond the control of the applicant which result in failure or delay on the part of the applicant to provide needed information;

(ii) failure or delay on the part of an examining physician to supply needed information;

(iii) failure or delay on the part of the Social Security Administration in making a decision on disability; or

(iv) administrative or other emergency that could not reasonably be controlled by the local human services center (HSC).

(2) **Certification of eligibility for cash assistance.** When all conditions of TANF eligibility are established for the month of application, certification is effective the date of application and benefits are prorated from the date of application. When all conditions of SSP eligibility are established for the month of application, certification is

effective from the first day of the month and the SSP is not prorated.

(A) Certification cannot be effective prior to the application date.

(B) When an application is taken for TANF and all other conditions of eligibility are determined prior to a child's entry to the home, the certification date cannot be prior to the actual date of entry.

(C) A retroactive payment may be authorized for any month eligibility is established. An application denied in error must have payment authorized for the period eligibility is established. The applicant is not penalized if the certification is delayed beyond the time limit for disposition due solely to ~~Oklahoma Department of Human Services (~~OKDHS~~)~~ failure to take timely action.

(D) A certification is valid even if a month of ineligibility is determined between application and authorization. An applicant, who is ineligible for the month of application but is eligible for a subsequent month, is certified effective the first day of the subsequent month.

(3) **Certification of ineligibility.** When an applicant is ineligible, a computer-generated notice is sent to the applicant giving the effective date and explaining the reason for ineligibility. If the applicant is dissatisfied with the action taken, the applicant may request a fair hearing within the period of time specified in the notice.

(4) **Proration of TANF benefits.** The proration of TANF benefits applies when the applicant is determined eligible during the month of application unless the applicant received a TANF benefit for the previous month and is eligible to be reopened ~~in accordance with~~ per OAC 340:65-5-6. Certification is ~~made~~ effective from the date of application. Proration also applies when a person is added to an existing case. The family is eligible for the full TANF benefit effective the following month if applicable.

(A) For the month of application only, the TANF benefits are prorated from the date of application. The TANF benefits that the recipient would be eligible to receive if proration did not apply must be determined prior to the computation.

(B) The formula used ~~for~~ to determine the prorated amount is: 31 - application date x TANF money benefit ÷ 30 = the prorated payment. The prorated payment is rounded down to the lower dollar amount.

(i) If the prorated benefit is below $10, the family is not eligible for a money payment but is eligible for SoonerCare (Medicaid) benefits for the entire month.

(ii) When food benefits are requested in the TANF case for the month the TANF payment is prorated, the food benefit unearned income is automatically updated to show the TANF benefit before proration.

(iii) The notification to the client is computer-generated and shows the amount for the initial month and following month.

340:65-3-6. Payment method for TANF and SSP benefits

(a) When an applicant applies for Temporary Assistance for Needy Families (TANF) or State Supplemental Payment (SSP) benefits, the worker advises the applicant that these benefits are issued on a debit card.

(1) When a debit card has not previously been issued to the applicant, it is issued when benefits are placed in application status or after benefits are approved. When a debit card has previously been issued to the applicant, a new one is not sent. It is activated once benefits are approved.

(2) Once the client receives the debit card, he or she must call the customer service telephone number located on the back of the debit card to activate the card and choose a personal identification number (PIN).

(3) The client may choose another person to be a secondary cardholder for the benefits. The client must either contact the customer service telephone number located on the back of the debit card to request this or ~~print~~ download the alternate cardholder request form from the www.eppicard.com Web site. The client and the secondary cardholder must complete and sign the form and return it to the address on the form before a debit card is issued to the secondary cardholder. After the secondary cardholder receives the debit card, he or she must choose a PIN number before accessing benefits.

(4) When the client advises the Oklahoma Department of Human Services (OKDHS) staff that he or she never received the debit card, the worker checks to see if it was returned as undeliverable.

(5) There are certain fees a client may be charged when using a debit card. A list of fees ~~can~~ may be found at www.eppicard.com. The client is sent information about fees when a debit card is first issued. The client ~~can~~ may access account and transaction information ~~on-line~~ online at www.eppicard.com free of charge at any time.

(6) If the client fails to activate his or her debit card within 90 calendar days, the benefits are expunged and the contractor returns any funds loaded on a debit card to OKDHS. These funds may be reloaded on the client's debit card if he or she pins the debit card and requests from OKDHS reissuance within 365 days of the date of issuance.

(A) For SSP, when the client fails to pin the debit card within 90 calendar days and attempts have been made to urge the client to do so, the worker closes the benefit due to non-cooperation.

(B) For TANF, the worker does not close the benefit when the client fails to pin the debit card within 90 calendar days.

(b) When the client prefers to receive benefits through direct deposit, he or she must call the contractor's call center telephone number to request direct deposit. The contractor's staff mails or faxes a direct deposit form to the client to complete

and return before benefits ~~can be~~ are issued by direct deposit. The client ~~can~~ may also obtain a direct deposit form by ~~going to the~~ accessing www.eppicard.com ~~Web site~~ and ~~printing~~ downloading it ~~off~~.

(1) The client must complete the direct deposit form, provide a voided check or a savings account deposit slip, and return them to the address on the form.

(2) Once the form is completed and account information confirmed, the contractor has five working days to enter direct deposit information in the system.

(3) Benefits are changed to direct deposit for the next payment due after direct deposit information is entered in the system.

(4) Funds cannot be transferred from a debit card to direct deposit.

(c) The client's cash benefit is deposited in the client's checking or savings account on the first banking day of each month or loaded on the client's debit card on the first day of each month.

(1) The funds are available for withdrawal after deposit.

(2) After the monthly benefit is deposited in the client's account or loaded on the debit card, OKDHS is not responsible if someone other than the payee withdraws the funds. Banking regulations govern withdrawals.

(3) Clients are encouraged to be prudent about giving withdrawal privileges or debit card access to other people.

(d) The client may switch from direct deposit to the debit card or from the debit card to direct deposit by calling the contractor's call center to request the change and following directions given by the contractor's staff.

(e) When problems occur with direct deposit or debit card deposits, procedures for dealing with these problems are detailed in (1) through (5) of this subsection.

(1) When direct deposit cannot be accomplished for a benefit, the contractor's staff attempts to contact the client to obtain current banking information. When the client fails to provide current information or five days elapse without contact, the contractor converts the payment method to a debit card. If the client wishes to receive direct deposit again, the client must complete a new direct deposit form and provide current account information.

(2) If a client reports that a deposit was not made to his or her account or loaded on the debit card, the client reports this to the contractor's call center. The contractor handles any communication with banking institutions or MasterCard and then contacts the client regarding resolution.

(3) Payments may be made by direct deposit or debit card after the death of the payee.

(A) When a payment is made after the death of the payee for which the payee is not eligible, an overpayment may be established against the estate.

(B) If there are unused benefits on the debit card at the time of death for which the client was entitled and someone contacts OKDHS to request these benefits, he or she is advised to contact the customer service number located on the back of the client's debit card for assistance.

(4) When a cash benefit is closed, the closure action automatically closes out direct deposit or debit card payments.

(A) When the client's cash benefit is closed due to transfer of eligibility to another TANF or SSP case, direct deposit or debit card deposit is automatically transferred to the new case provided the client number of the payee in the closed and new case is the same.

(B) When the client's cash benefit is closed and he or she later reapplies and is approved with the same client number, the previously chosen payment method is used to issue the cash benefit. The client must call the contractor's call center to change the payment method.

(5) When the payee for the cash benefit changes for any reason, he or she is assigned a new client number and a debit card is issued if one has not previously been issued for the new client number. The client must call the contractor's call center to set up direct deposit if he or she prefers that payment method. The new payee does not have access to benefits issued prior to the payee change.

340:65-3-8. Determination of continuing eligibility

(a) **Determination of continuing eligibility.** Determining continuing eligibility is a process which must be carried out at appropriate intervals. The appropriate interval for reviewing eligibility depends on the type of benefit received. The worker is responsible for:

(1) advising the recipient at each contact of the recipient's responsibility to report changes within ten calendar days of the date the change becomes known;

(2) making contacts at unspecified intervals to ensure continuing eligibility;

(3) synchronizing the review dates for all benefits received by the household ~~whenever~~ when possible; and

(4) determining continuing eligibility.

(b) **Review or recertification time frames.** The periodic review or recertification time frame varies depending on the program.

(1) A review must be completed at six month intervals with a:

(A) Temporary Assistance for Needy Families (TANF) recipient due to:

(i) pending required immunizations per OAC 340:10-14-1;

(ii) payment standard reductions because of program violations per OAC 340:10-3-57(g);

(iii) hardship extension approvals per OAC 340:10-3-56(a)(2)(E);

(iv) earned income per OAC 340:10-3-31 through 340:10-3-40; or

(v) a work-eligible person exempt from TANF Work activities because of incapacity or to care for a disabled family member living in the household per OAC 340:10-2-1;

(B) child care recipient per OAC 340:40-9-1; or

(C) food benefit recipient subject to a semi-annual review per OAC 340:50-9-5(i) and (j).

(2) A review or recertification must be completed at 12-month intervals, unless an earlier review date is warranted, with a:

(A) TANF recipient;

(B) State Supplemental Payment (SSP) recipient;

(C) child care recipient who is receiving TANF or SSP benefits;

(D) food benefit household subject to an annual review per OAC 340:50-9-5(g) and (h);

(E) food benefit household whose recertification must be completed at 12-months per OAC 340:50-9-6; or

(F) SoonerCare (Medicaid) recipient per OAC 317:35.

(3) The worker completes a food benefit recertification at 24 month intervals for households subject to an annual review per OAC 340:50-9-6.

(~~b~~c) **Eligibility review or recertification ~~forms~~.** ~~Form 08MP001E, Request for Benefits, Form 08MP002E, Eligibility Information for Benefits, and Form 08MP003E, Responsibilities and Signature for Benefits, are used as the review or recertification forms~~ The recipient is sent notification when the review or recertification is due for food benefits, subsidized child care benefits, ~~Temporary Assistance for Needy Families (~~TANF~~)~~, ~~State Supplemental Payment (~~SSP~~)~~, or SoonerCare (Medicaid) benefits. ~~Other forms that may be used include:~~

~~(1) computer-generated Form 08MA007E, Recertification of Eligibility for SoonerCare Health Benefits, for pregnant women and families with children approved for SoonerCare (Medicaid) benefits;~~

~~(2) computer-generated Form 08MP004E, Benefit Review Report, for persons subject to benefit review. These may include recipients of food, child care, or SoonerCare (Medicaid) benefits; or~~

~~(3) Form 08MA017E, SSI-DCP Service Plan, for children receiving Supplemental Security Income Disabled Children's Program (SSI-DCP) services per OAC 340:70-8-1.~~ The recipient must complete the review or recertification in order to continue receiving benefits.

(~~c~~d) **Signature requirements.** The ~~review or recertification form must be signed by the~~ recipient, guardian, or a person acting on the recipient's behalf, such as an authorized representative or a person with power-of-attorney must sign the review. TANF reviews must be signed by the recipient. If the recipient is living with his or her spouse, both must sign the review ~~form~~. The only exception to the signature requirement is for a SoonerCare (Medicaid) review completed over the telephone ~~using Form 08MA007E or Form 08MP004E~~.

~~(d) **Review or recertification time frames.** A periodic review or recertification time frame varies depending on the program.~~

~~(1) The worker completes a review at six month intervals with a:~~

~~(A) TANF recipient due to:~~

~~(i) pending required immunizations;~~

~~(ii) payment standard reductions because of intentional program violations;~~

~~(iii) hardship extension approvals;~~

~~(iv) earned income;~~

~~(v) a work-eligible person exempt from TANF Work activities because of incapacity; or~~

~~(vi) a work-eligible person exempt from TANF Work activities to care for a disabled family member living in the household;~~

~~(B) child care recipient who is receiving child care benefits because of a protective or preventive reason per OAC 340:40-7-8; or~~

~~(C) food benefit recipient subject to semi-annual benefit reporting per OAC 340:50-9-5(i).~~

~~(2) The worker completes a review or recertification at 12-month intervals with a:~~

~~(A) TANF recipient unless an earlier review date is warranted;~~

~~(B) State Supplemental Payment (SSP) recipient based on the review of need for SoonerCare (Medicaid);~~

~~(C) child receiving SoonerCare (Medicaid) who is in state or tribal custody;~~

~~(D) child care recipient unless an earlier review date is warranted per OAC 340:40-9-1;~~

~~(E) food benefit household who is subject to semi-annual benefit reporting per OAC 340:50-9-5(i). The food benefit household must complete a recertification using Forms 08MP001E, 08MP002E, and 08MP003E;~~

~~(F) food benefit recipients subject to annual benefit reporting must complete Form 08MP004E in the 11th month of certification; or~~

~~(G) SoonerCare (Medicaid) recipient unless benefits are approved for less than 12 months.~~

~~(3) The worker completes a food benefit recertification form at 24 month intervals for a food benefit household who is subject to annual benefit reporting per OAC 340:50-9-5(g).~~

(e) **Interview requirements.** Whether an interview is required for a review or recertification varies depending on the program.

(1) A face-to-face interview is required for the:

(A) TANF Program; or

(B) Supplemental Security Income-Disabled Children's Program SSI-DCP service plan review per OAC 340:70-8-1.

(2) A telephone or face-to-face interview is required ~~for the Child Care Subsidy Program review and the Supplemental Nutrition Assistance Program (SNAP)~~ at recertification for households receiving food benefits except for (e)(3)(C) of this Section.

(3) An interview is not required for:

(A) any of the SoonerCare (Medicaid) programs as long as the review ~~form~~ is complete, including the signature, all required verification provided, and none of the information is questionable. When information is not complete or is questionable, the worker contacts the recipient to obtain needed information~~.~~;

(B) the Child Care Subsidy Program reviews unless the child care recipient receives child care benefits because of a protective or preventive reason per OAC 340:40-7-8; or

(C) food benefit households completing a:

(i) review, not a recertification, at six or 12-month intervals; or

(ii) recertification when all household members are elderly or disabled and there is no earned income in the household.

(f) **Eligibility determination.** An eligibility determination is made once the review or recertification is signed, all required information has been provided, an interview, if required, is conducted, and all information evaluated.

(1) The eligibility determination may be to:

(A) complete the review without changes;

(B) complete the review with changes; or

(C) close the benefit or benefits.

(2) Benefits closed may be reopened when the recipient provides required information by the last day of the month of closure.

340:65-3-9. Variable conditions of eligibility

The conditions of eligibility subject to change and ~~redetermination~~ review are:

(1) income and resources;

(2) state residence;

(3) residence in a public institution;

(4) blindness and disability in State Supplemental Payment (SSP) ~~for the blind and the disabled~~ and incapacity in Temporary Assistance for Needy Families (TANF) are based on continuous receipt of a disability payment from the Social Security Administration or decision of the Oklahoma Health Care Authority, Level of Care Evaluation Unit;

(5) concurrent receipt of assistance;

(6) age;

(7) living in the home of a relative for TANF per OAC 340:10-9-1;

(8) school attendance for each minor child in TANF per OAC 340:10-13-1;

(9) immunizations for each minor child ~~in~~ receiving TANF per OAC 340:10-14-1;

(10) deprivation of parental support for TANF per OAC 340:10-10-1 through 340:10-10-7;

(11) participation in a TANF Work activity for TANF per OAC 340:10-2-1 through 340:10-2-8; ~~and~~

(12) need for child care per OAC 340:40-7-7 and 340:40-7-8;

(13) lawful status for non-citizens;

(14) household composition; and

(15) pursuit of child support.

SUBCHAPTER 5. PROCEDURES RELATING TO CASE CHANGES

PART 1. GENERAL PROVISIONS

340:65-5-1. Case changes

(a) The client must report within ten calendar days any changes in his or her circumstances that would result in an increase or decrease in benefits. For the Supplemental Nutrition Assistance Program (SNAP), see OAC 340:50-9-5 for reporting exceptions. The worker gives the client ten calendar days to provide any required proof. The worker promptly acts on changes that increase or decrease benefits or result in benefit closure. To be considered prompt, the change must be made within ten calendar days of the date the change was reported and required proof was received. Failure to report changes timely may result in an overpayment assessment against the client. Examples of changes the client must report include:

(1) household income;

(2) household resources;

(3) household composition;

(4) the client's address or telephone number;

(5) legal alien status of non-citizens;

(6) insurance coverage;

(7) in addition, for the for the Temporary Assistance for Needy Families (TANF) Program:

(A) deprivation of parental support;

(B) when the TANF Work activity stops or starts;

(C) when a child in the assistance unit stops attending school; and

(8) in addition for the Child Care Subsidy Program:

(A) the names of household members in child care;

(B) the reason child care is needed for the Child Care Subsidy Program;

(C) the parent's or caretaker's work or school schedule or any other change affecting the days and hours child care is needed;

(D) the name of the child care facility the child is attending.

(b) ~~All~~ After certification, all reported changes, except ~~applications and certifications~~ those reported prior to certification, must be processed by the deadline date shown on Oklahoma Department of Human Services (OKDHS) Appendix B-2, Deadlines for Case Actions, to be effective the first day of the month following the deadline. A computer-generated notice is sent to advise the recipient of any increase or decrease in benefits. Advance notice of adverse action may be required.

(1) **Advance notice required - when fraud is not probable.** If the reason for the suspension, termination, or reduction is other than one of the items listed under paragraph (3) and there is no indication of probable fraudulent acts on the part of the client, a computer-generated notice is sent to the client.

(A) If advance notice is required, action must be taken by the date shown on Schedule I, of ~~Oklahoma Department of Human Services (~~OKDHS~~)~~ Appendix B-2~~, Deadlines for Case Actions,~~ to be effective on the first day of the following month.

(B) ~~The~~ Following the issuance of the advance notice, the recipient ~~has ten calendar days following the issuance of the advance notice to~~ may present information to show that the action is incorrect and request reinstatement until the last day of the month of closure.

(C) ~~If~~ When the ~~recipient~~ client requests a fair hearing ~~during the ten day period, he or she can request continuation or reinstatement of~~ regarding the action and wants benefits to be reinstated at the same level ~~during the period of the fair~~ until a hearing decision is made, he or she must request the fair hearing within ten calendar days following the issuance of the advance notice. The worker is responsible for explaining to the client that if benefits are continued and the appeal is not decided in the client's favor, he or she will be expected to repay the benefits.

(i) If the Office of General Counsel Appeals ~~Committee~~ Unit denies the appeal, benefits are continued through the end of the month in which the final decision on the fair hearing is reached.

(ii) The human services center (HSC) is responsible for taking the action needed to carry out the decision of the Appeals ~~Committee~~ Unit.

(iii) The Appeals ~~Committee~~ Unit sends a letter of decision to the client.

(2) **Advance notice required if fraud is probable.** When the suspension, termination, or reduction in benefits is necessary because of probable fraudulent acts on the part of the recipient and the actual facts have been verified, the same policies and procedures as in subparagraph (1) of this Section apply except the advance notice period is five calendar days instead of ten calendar days.

(3) **Advance notice not required.** Advance notice of action is not required if the suspension, termination, or reduction in benefit resulted from:

(A) death of a recipient or Temporary Assistance for Needy Families (TANF) payee when there is not a relative available to serve as a new payee;

(B) transfer from one category of assistance to another without a resulting decrease or interruption in ~~assistance payments~~ benefits;

(C) benefit reduction because the spouse included in the TANF benefit is being removed and certified for a State Supplemental Payment (SSP) for the aged, blind, or disabled without a resulting decrease in assistance to the family or interruption in assistance;

(D) approval of care in a skilled nursing facility or intermediate care facility;

(E) certification of assistance in another state with no interruption in ~~the assistance payment~~ benefits;

(F) an automatic increase in benefits brought about by federal legislation, such as to all beneficiaries of Social Security, Railroad Retirement, or Veterans' benefits;

(G) admission of the recipient to a public institution where his or her needs are fully supplied;

(H) receipt of a clear written statement signed by the recipient that states he or she no longer wishes assistance or that gives information which requires termination or reduction of assistance and the recipient has indicated in writing that he or she understands this will cause a reduction or termination of his or her ~~assistance payment~~ benefits;

(I) the recipient's whereabouts being unknown and OKDHS mail directed to him or her has been returned by the post office indicating no known forwarding address. The recipient's benefit must be made available to him or her if his or her whereabouts become known during the payment period covered by the returned benefit; ~~or~~

(J) a TANF child being removed from the home as a result of a judicial determination or voluntarily placed in foster care by the legal guardian for a period in excess of 30 calendar days;

(K) a change in state or federal law that affects all households; or

(L) a reduction in SSP benefits that is necessary to comply with federal law pertaining to maintenance of effort or a state mandate.

340:65-5-3. Suspension of benefits

~~Temporary Assistance for Needy Families (TANF),~~ State Supplemental Payment (SSP)~~,~~ or SoonerCare (Medicaid) benefits may be temporarily discontinued by suspension. Suspensions cannot exceed one month. Benefits are not issued on cases in suspended status. Suspensions are appropriate when:

(1) the recipient is ineligible as there are resources available to meet needs for a brief time. If the amount of resources indicates that the recipient will be ineligible for a longer period, the benefit is terminated; ~~or~~

(2) the facts indicate a change or discontinuance of an assistance payment but sufficient evidence for a determination of proper action cannot be obtained in time to change the next month's benefit; or

(3) Form 08TA018E, Continued Medical Benefit Reply Form, is not received timely per OAC 340:10-3-75 for households whose TANF benefit has been closed and SoonerCare (Medicaid) continues.

SUBCHAPTER 9. ~~OVERPAYMENTS~~ OVERPAYMENT CLAIMS AND FRAUD IN TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND STATE SUPPLEMENTAL PAYMENT BENEFITS

340:65-9-1. Scope and applicability

An ~~overissuance or~~ overpayment claim occurs when a household receives more benefits than it is entitled to receive. Overpayments may be classified as inadvertent ~~client~~ household errors (IHE), agency error (AE), willful misrepresentation, or intentional program violation (fraud).

(1) Instances which may result in referral for an overpayment determination include, but are not limited to:

(A) the household:

(i) failed to provide the Oklahoma Department of Human Services (OKDHS) with correct or complete information;

(ii) failed to report changes in its circumstances; or

(iii) elected to receive benefits pending a fair hearing decision, which subsequently found the family ineligible or eligible for fewer benefits; or

(B) the worker:

(i) failed to take prompt action on a change reported by the household;

(ii) incorrectly computed the household's income, deductions, or both; or

(iii) incorrectly authorized issuance of benefits to a household; or

(C) any overissuance discovered as a result of a Quality Control Review.

(2) When the worker determines that an ~~overissuance or~~ overpayment claim has occurred, he or she documents the circumstances leading to the overpayment and computes the amount of the overpayment.

(A) If the client does not report earned income in a timely manner for Temporary Assistance for Needy Families (TANF) overpayment claims, the client is not allowed an earned income deduction.

(B) If the client does not report earned income timely for State Supplemental Payment (SSP) overpayment claims, the client is allowed the earned income deduction even when the earned income is reported untimely.

(C) Overpayments may cover ~~the entire time~~ up to six years prior to the date the overissuance ~~occurred~~ was discovered.

(3) When the worker suspects fraudulent intent but has insufficient information to complete an overpayment, he or she sends Form 19MP019E, Referral Form, to the Office of the Inspector General (OIG). When OIG staff determines that an overpayment occurred, ~~he or she documents and computes the overpayment amount~~ it is sent to the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section (BIRS) where the claim is calculated.

(4) Once the overpayment claim has been ~~completed~~ calculated and notices sent, the overpayment is considered to be established. The establishment of an overpayment claim is made by the worker's supervisor or staff in ~~the Family Support Services Division (FSSD) Benefit Integrity and Recovery Section~~ FSSD BIRS. Notices sent include:

(A) ~~Form 08AD012E,~~ Notification of Overpayment~~,~~ to the client; and

(B) ~~Forms 08AD012E~~ Notification of Overpayment and Form 08OP025E, Chart of Temporary Assistance to Needy Families and State Supplemental Payment Overpayments, to the local human services center (HSC).

(5) The FSSD ~~Benefit Integrity and Recovery Section~~ BIRS staff postpones notification to the client ~~by Form 08AD012E~~ on cases referred for a judicial court decision until after a court decision has been made.

(6) For TANF overpayment claims, OIG staff may make a referral to the Legal Division Appeals Unit for an administrative disqualification hearing.

340:65-9-2. Overpayments by classification

(a) **Overpayments classified as inadvertent ~~client~~ household error (IHE).** An overpayment is classified as an ~~inadvertent client error~~ IHE if the overissuance is caused by a misunderstanding or unintended error on the part of the household. Instances of ~~inadvertent client error~~ IHE which may result in an overpayment include, but are not limited to, when the household unintentionally:

(1) fails to provide the Oklahoma Department of Human Services (OKDHS) with correct or complete information;

(2) fails to report changes in household circumstances; or

(3) receives benefits or more benefits than it was entitled to receive pending a fair hearing decision.

(b) **Overpayments classified as agency error (AE).** An overpayment is classified as an ~~agency error~~ AE if the overissuance is caused by OKDHS action or failure to take action. Instances of ~~agency error~~ AE which may result in an overpayment include, but are not limited to, when OKDHS staff:

(1) fails to take prompt action on a change reported by the household;

(2) incorrectly computes the household's income or deductions, or otherwise assigns an incorrect benefit amount;

(3) incorrectly issues benefits to a household, including errors caused by overall updates or other system problems; or

(4) incorrectly applies policy or procedures.

(c) **Overpayments classified as willful misrepresentation.** Overpayments classified as willful misrepresentation result from deliberate concealment of information which, had it been reported, would have initiated case closure or benefit reduction. Willful misrepresentation may be oral or written and may include under reporting of the amount of income or resources or other pertinent information. Debts classified as willful misrepresentation may change in the event they are referred for judicial prosecution or administrative disqualification hearing.

(1) When the human services center (HSC) receives ~~Form 08AD012E,~~ the Notification of Overpayment, on debts classified as willful misrepresentation, but not referred to the Office of Inspector General (OIG), the worker contacts the client and requests the client to voluntarily sign Form 08OP002E, Affidavit of Acknowledgment of Indebtedness. If the client refuses to sign Form 08OP002E, his or her eligibility is not affected.

(2) If the client voluntarily signs Form 08OP002E and owns real property other than the declared home property, the worker files the signed form with the county clerk of

the county in which the real property is located. Filing Form 08OP002E with the county clerk places a lien on the real property.

(d) **Overpayments classified as intentional program violation or ~~(fraud)~~.** An overpayment is classified as intentional program violation or fraud when it is determined that a client has intentionally given false information or withheld facts in order to receive benefits. This determination is made by the Office of the Inspector General (OIG) through an administrative disqualification hearing (ADH), signing Form 08OP016E, Administrative Disqualification Hearing Waiver or Form 19MP002E, Disqualification Consent Agreement, or by judicial court decision.

340:65-9-4. Fraud

(a) The term fraud is defined as an intentional false representation of a truth or matter of fact, whether by words or conduct, false or misleading allegations, or concealment of that which should have been disclosed, for the purpose of inducing another to part with something valuable or surrender a legal right. The penalty for fraud is provided in the Oklahoma Social Security Act, Section 185 of Title 56 of the Oklahoma Statutes. Under the statutes, only courts can determine guilt and impose a legal penalty.

(b) The Family Support Services Division (FSSD) Benefit Integrity and Recovery Section (BIRS) staff refers ~~client~~ household error overpayments of $500 or more to the Office of Inspector General (OIG) for a determination of fraud and whether judicial court action is feasible.

(c) Workers make a referral directly to OIG using Form 19MP001E, Referral Form, when there is not sufficient information to calculate an overpayment or it involves a state employee or his or her relatives. OIG staff submits their findings to FSSD ~~Benefit Integrity and Recovery Section~~ BIRS for final calculation and establishment of the overpayment.

(1) Overpayments classified as fraud are ~~intentional program violations~~ overpayments that have been referred for judicial prosecution or administrative disqualification hearing and, as a result, have been determined as fraudulent or when the client signs Form 08OP016E, Administrative Disqualification Hearing Waiver, or Form 19MP002E, Disqualification Consent Agreement. Clients with overpayments classified as fraud are subject to the actions described (A) through (C) of this paragraph.

(A) **Notification.** ~~Form 08AD019E,~~ Program Penalty/Disqualification Notice~~,~~ is sent to the penalized Temporary Assistance for Needy Families (TANF) client. ~~Form 08AD019E~~ The notice informs the TANF client of a 25% payment standard reduction penalty.

(B) **Penalty period.** A TANF client is penalized with a 25% payment standard reduction for 12 months for the first violation, 24 months for the second violation, and permanently for the third violation.

(C) **Penalty effective date.** The 25% payment standard reduction penalty begins the date shown on ~~Form 08AD019E~~ the notice. Once the payment standard reduction penalty begins, it runs continuously until the end of the period imposed.

(2) If the case is prosecuted, OIG notifies the human services center (HSC) and the FSSD ~~Benefit Integrity and Recovery Section~~ BIRS of the disposition of the case. If the court finds the client guilty, the court may order a fine, restitution, imprisonment, or any combination of the three. The Oklahoma Department of Human Services (OKDHS) abides by the court decision.

(3) Court-ordered restitution does not relieve the client of any overpayment amount in excess of that judgment.

(A) If the client defaults on court-ordered restitution, the sentence may be accelerated.

(B) If the sentence is accelerated and the client serves a prison term, serving the prison term does not satisfy repayment of the monetary portion of the debt. At that point the debt may be subject to civil prosecution.

(C) The fact that a client is making restitution payments does not relieve the client of the obligation to sign Form 08OP002E, Affidavit of Acknowledgment of Indebtedness. Home property and personal property are exempt from this process. A lien may also be filed on declared real property if Form 08OP002E indicates property is owned.

(4) If OIG releases the case without a court decision or Form 08OP016E~~, Administrative Hearing Disqualification Waiver,~~ signed by the client, the FSSD ~~Benefit Integrity and Recovery Section~~ BIRS staff proceeds to collect the debt. In some instances, OIG discovers additional information that ~~will affect~~ affects the overpayment. The OIG gives this information to the FSSD ~~Benefit Integrity and Recovery Section~~ BIRS so ~~they~~ staff can adjust the overpayment.

340:65-9-5. Right to appeal

If there is a disagreement with the overpayment decision and the client has not signed Form 08OP16E, Administrative Disqualification Hearing Waiver, the household may request a fair hearing within 30 calendar days of the date on ~~Form 08AD012E,~~ the Notification of Overpayment.

340:65-9-6. Development of repayment

(a) **Repayment of established overpayments.** Households must make repayment on all established overpayments regardless of the reason for the overpayment. Family Support Services Division (FSSD) Benefit Integrity and Recovery Section (BIRS) initiates collection efforts against all adult household members who were included in the benefit at the time the overpayment occurred except ~~those~~ members who have filed bankruptcy or are deceased. Collection may be received from two separate households for the same claim. The FSSD ~~Benefit Integrity and Recovery Section~~ BIRS staff sends the client ~~Form 08AD012E,~~ the Notification of Overpayment~~,~~ that explains the acceptable methods of repayment for the debt classification.

(b) **Repayment options.**

(1) **Payment in full.** The client may repay an overpayment in one lump sum by personal check, money order, or cashier's check.

(2) **Monthly payments.** The client may repay an overpayment in regular monthly installments by personal check, money order, or cashier's check.

(3) **Benefit reduction.**

(A) **Agency error (AE).** The FSSD ~~Benefit Integrity and Recovery Section~~ BIRS staff processes a 10% reduction in the client's monthly allotment.

(B) **Inadvertent ~~client~~ household error (IHE), willful misrepresentation.** The FSSD ~~Benefit Integrity and Recovery Section~~ (BIRS) staff processes a 10% reduction in the client's monthly allotment.

(C) **Fraud.** The FSSD ~~Benefit Integrity and Recovery Section~~ BIRS staff processes a 10% reduction in the client's monthly allotment as well as the 25% payment standard reduction penalty for Temporary Assistance for Needy Families (TANF) benefits.

(4) **Recoupment.**

(A) The recoupment rate cannot be changed unless the overpayment or the benefit received by the client is less than the recoupment amount. If the benefit amount is less than the recoupment amount specified, a benefit is not issued; however, the case remains active and a medical card is issued. The client may request recoupment not be initiated if a fair hearing regarding the overpayment is filed within 30 calendar days of the issuance date of the ~~Form 08AD012E~~ Notification of Overpayment.

(B) When recoupment is initiated or terminated, the client is notified by a computer-generated notice of the new ~~warrant~~ benefit amount and its effective date.

340:65-9-8. Termination of collection of debt

In the case of repayment in full, the household is notified that the debt has been satisfied by a monthly overpayment account statement showing a zero balance owed ~~or Form 08AD012E, Notification of Overpayment, that the debt has been satisfied~~.

[OAR Docket #11-554; filed 4-22-11]

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

[OAR Docket #11-566]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-2 [AMENDED]
340:75-1-6 [REVOKED]
340:75-1-7 [AMENDED]
340:75-1-9 [AMENDED]
340:75-1-12.2 [REVOKED]
340:75-1-12.7 through 340:75-1-12.8 [REVOKED]
340:75-1-13 through 340:75-1-14 [AMENDED]
340:75-1-18.3 [REVOKED]
340:75-1-25 [REVOKED]
340:75-1-26 [AMENDED]
340:75-1-26.2 [AMENDED]
340:75-1-27 [REVOKED]
340:75-1-28 [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-42 [AMENDED]
340:75-1-43 [REVOKED]
340:75-1-44 [AMENDED]
Part 10. Oklahoma Children's Services (OCS)
340:75-1-152.9 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-2 [AMENDED]
340:75-3-6.1 [AMENDED]
340:75-3-7.4 through 340:75-3-7.5 [AMENDED]
340:75-3-8 through 340:75-3-8.1 [AMENDED]
340:75-3-13 [AMENDED]
340:75-3-14 [REVOKED]
340:75-3-20 [NEW]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-31.1 [AMENDED]
340:75-6-31.3 through 340:75-6-31.4 [AMENDED]
Part 7. Family and Child Individualized Service Planning Components
340:75-6-40.3 through 340:75-6-40.4 [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-47 [REVOKED]
340:75-6-48 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85.4 [AMENDED]
340:75-6-86 [AMENDED]
340:75-6-88 [AMENDED]
340:75-6-91 [AMENDED]
Part 13. Independent Living
340:75-6-110 [AMENDED]
Subchapter 7. Foster Home Care
Part 2. Development of Resources
340:75-7-18 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 28. Foster Parent Hotline and Mediation [NEW]
340:75-7-290 through 340:75-7-291 [NEW]
Subchapter 10. Emergency Shelter Care
340:75-10-8 [AMENDED]
340:75-10-8.1 through 340:75-10-8.4 [NEW]
340:75-10-9 through 340:75-10-20 [REVOKED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-240 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children In Out-Of-Home Care
Part 7. Medical Services
340:75-13-63 through 340:75-13-64 [AMENDED]
340:75-13-65 [REVOKED]
340:75-13-75 [AMENDED]
340:75-13-80 through 340:75-13-81 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-9 [AMENDED]
Part 14. Post Adoption Services
340:75-15-128 [AMENDED]
340:75-15-128.2 [AMENDED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-30 [AMENDED]
340:75-16-37 [AMENDED]
340:75-16-38 [AMENDED]

(Reference APA WFs10-12 and 10-22)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; House Bill 1741 (HB 1741); HB 1964; HB 3292; Section 1-1-104 of Title 10A of the Oklahoma Statutes (10A O.S. § 1-1-104); 10A O.S. § 1-6-108; 22 O.S. § 60.14; 10A O.S. § 1-4-102; 10A O.S. § 1-4-203; 10A O.S. § 1-2-109; 10A O.S. § 1-2-105; 10A O.S. § 1-9-102; 10A O.S. § 1-2-106; 10A O.S. § 1-2-101; 10A O.S. § 1-2-102; 10A O.S. § 1-2-105; 10A O.S. § 1-4-101; 10A O.S. § 1-3-102; 10A O.S. § 1-4-902; 10A O.S. § 1-4-909; 10A O.S. § 1-4-710; 10A O.S. § 1-4-711; 10A O.S. § 1-4-804; 10A O.S. § 1-4-805; 10A O.S. § 1-4-806; 10A O.S. § 1-9-119; 10A O.S. § 1-9-111; 10 O.S. § 601.3; 10A O.S. § 1-6-103; 10A O.S. § 1-7-103; 10A O.S. § 1-7-105; 10A O.S. § 2-4-101; 10 O.S. § 7504-1.2; 43A O.S. § 5-511; and 22 O.S. § 20.

DATES:

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None requested

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SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:

Subchapter 1. General Provisions of Child Welfare Services
Part 1. Scope and Applicability
340:75-1-9 [AMENDED]
340:75-1-12 [AMENDED]
340:75-1-12.2 [AMENDED]
340:75-1-12.6 [AMENDED]
340:75-1-14 [AMENDED]
340:75-1-16 through 340:75-1-18.1 [AMENDED]
340:75-1-18.2 [REVOKED]
340:75-1-18.3 through 340:75-1-18.4 [AMENDED]
340:75-1-20 through 340:75-1-21 [AMENDED]
340:75-1-23 [AMENDED]
340:75-1-23.1 [NEW]
340:75-1-29 [AMENDED]
Part 3. Child Welfare Confidentiality
340:75-1-42 [AMENDED]
340:75-1-44 through 340:75-1-46 [AMENDED]
Part 10. Oklahoma Children's Services (OCS)
340:75-1-151 through 340:75-1-152 [AMENDED]
340:75-1-152.3 through 340:75-1-152.8 [AMENDED]
340:75-1-154 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-1 through 340:75-3-2 [AMENDED]
340:75-3-4 through 340:75-3-7.1 [AMENDED]
340:75-3-7.2 [REVOKED]
340:75-3-7.3 [AMENDED]
340:75-3-7.4 through 340:75-3-7.5 [NEW]
340:75-3-8 through 340:75-3-8.4 [AMENDED]
340:75-3.8.5 through 340:75-3-8.6 [REVOKED]
340:75-3-9.1 [AMENDED]
340:75-3-10.1 through 340:75-3-10.3 [AMENDED]
340:75-3-11 through 340:75-3-13 [AMENDED]
Subchapter 4. Family-Centered and Community Services
Part 1. Voluntary Family-Centered Services
340:75-4-9 [AMENDED]
340:75-4-12.1 [AMENDED]
340:75-4-12.2 [REVOKED]
340:75-4-13 through 340:75-4-14 [AMENDED]
Subchapter 6. Permanency Planning
Part 1. General Provisions
340:75-6-1 [AMENDED]
340:75-6-4 [AMENDED]
Part 5. Permanency Planning Services
340:75-6-30 through 340:75-6-31.5 [AMENDED]
Part 7.Family and Child Individualized Service Planning Components
340:75-6-40 through 340:75-6-40.6 [AMENDED]
340:75-6-40.7 [REVOKED]
340:75-6-44 through 340:75-6-46 [AMENDED]
Part 8. Role of the Child Welfare Worker
340:75-6-48 through 340:75-6-48.3 [AMENDED]
340:75-6-49 through 340:75-6-50 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-85 through 340:75-6-85.6 [AMENDED]
340:75-6-88 [AMENDED]
340:75-6-91 [AMENDED]
Part 13. Independent Living
340:75-6-110 [AMENDED]
340:75-6-114 through 75-6-115.1 [REVOKED]
340:75-6-115.3 through 340:75-6-115.10 [REVOKED]
Subchapter 7. Foster Home Care
Part 1. General Provisions
340:75-7-2 [AMENDED]
Part 2. Development of Resources
340:75-7-12 [AMENDED]
340:75-7-14 [AMENDED]
340:75-7-15 [AMENDED]
340:75-7-18 [AMENDED]
340:75-7-24 [AMENDED]
Part 4. Roles and Responsibilities
340:75-7-37 through 340:75-7-37.1 [AMENDED]
340:75-7-41 [AMENDED]
Part 5. Eligibility and Payments
340:75-7-52 [AMENDED]
Part 6. Foster Home Care Support Services
340:75-7-65 [AMENDED]
Part 8. Continuous Quality Assessment of a Resource Home
340:75-7-94 [AMENDED]
Subchapter 8. Therapeutic Foster Care and Developmental Disabilities Services
Part 1. Therapeutic Foster Care
340:75-8-1 [AMENDED]
340:75-8-6 through 340:75-8-7 [AMENDED]
340:75-8-9 through 340:75-8-10 [AMENDED]
340:75-8-13 through 340:75-8-14 [AMENDED]
Part 3. DDSD Services for Children in Custody
340:75-8-40 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-230 [AMENDED]
340:75-11-233 through 340:75-11-233.1 [AMENDED]
340:75-11-237 [AMENDED]
340:75-11-239 through 340:75-11-240 [AMENDED]
Part 19. Residential Diagnostic and Evaluation Services
340:75-11-250 [AMENDED]
Part 21. Residential Intensive Treatment Services
340:75-11-265 [AMENDED]
Part 23. Specialized Community Homes
340:75-11-287 [AMENDED]
Part 25. Non-funded and Funded Contracted Level B Placements
340:75-11-301 [AMENDED]
Part 29. Non-funded and Funded Level C Placements
340:75-11-330 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 7. Medical Services
340:75-13-65 [AMENDED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-6 [AMENDED]
340:75-15-8 [REVOKED]
Part 6. Adoption Process

340:75-15-41 [REVOKED]
340:75-15-41.1 [NEW]
340:75-15-43 [REVOKED]
Part 8. Adoptive Placement Process
340:75-15-59 [REVOKED]
340:75-15-61 through 340:75-15-62 [REVOKED]
Part 10. Integrated Family Assessment and Preparation Process
340:75-15-85 [REVOKED]
340:75-15-92 [REVOKED]
Part 12. Post Placement Services
340:75-15-103 [AMENDED]
340:75-15-106 through 340:75-15-108 [REVOKED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-28 through 340:75-16-30 [AMENDED]
340:75-16-34 [REVOKED]
340:75-16-37 through 340:75-16-38 [AMENDED]
(Reference APA WF 09-19)

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27 Ok Reg 1092

Docket number:
10-647

SUPERSEDED EMERGENCY ACTIONS:

Superseded rules:
Subchapter 1. General Provisions of Child Welfare Services
Part 3. Child Welfare Confidentiality
340:75-1-44 [AMENDED]
Subchapter 3. Child Protective Services
340:75-3-6.1 [AMENDED]
340:75-3-11 [AMENDED]
340:75-3-13 [AMENDED]
Subchapter 6. Permanency Planning
Part 5. Permanency Planning Services
340:75-6-31.3 [AMENDED]
Part 11. Permanency Planning and Placement Services
340:75-6-86 [AMENDED]
340:75-6-88 [AMENDED]
Subchapter 11. Child Welfare Community-Based Residential Care
Part 17. Contracted Community-Based Residential Care Providers
340:75-11-240 [AMENDED]
Subchapter 13. Other Child Welfare Services and Medical Services for Children in Out-of-Home Care
Part 7. Medical Services
340:75-13-65 [REVOKED]
Subchapter 15. Adoptions
Part 2. Legal Base and Scope of the Adoption Program
340:75-15-9 [AMENDED]
Subchapter 16. Mental Health Treatment Services
Part 1. Inpatient Mental Health Treatment
340:75-16-30 [AMENDED]
340:75-16-38 [AMENDED]
(Reference APA WF 10-12)

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28 Ok Reg 375

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10-1377

INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
The proposed revisions to Subchapter 1, 3, 6, 7, 10, 13, 15, and 16 of Chapter 75 amend the rules to: (1) bring the rules into conformity with current state law; and (2) clarify and update protocols and procedures that support the safety, permanency, and well-being of children alleged or adjudicated deprived.

CONTACT PERSON:
Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

340:75-1-2 is amended to update sentence structure related to the purposes of child welfare services.

340:75-1-6 is revoked as duplicative or unnecessary related to the Children and Family Services Division.

340:75-1-7 is amended to update sentence structure related to eligibility for child welfare services.

340:75-1-9 is amended to update section tagline related to OKDHS authority to administer a child welfare program.

340:75-1-12.2 is revoked and language related to appeal process repositioned as 340:75-3-20.

340:75-1-12.7 is revoked and language regarding foster parent hotline repositioned as 340:75-7-290.

340:75-1-12.8 is revoked and language related to foster care mediation repositioned as 340:75-7-291.

340:75-1-13 amended to delete obsolete procedures and update sentence structure regarding providing assistance to other states.

340:75-1-14 is amended to clarify enforcement authority, legal considerations, and deprived proceedings related to child welfare services.

340:75-1-18.3 is revoked and language related to permanent guardianship repositioned in 340:75-6-31.4.

340:75-1-26 is amended to cite the statutory requirement for the maintenance of child welfare records and delete instructive information repositioned in Instructions to Staff (ITS).

340:75-1-26.2 is amended to update sentence structure regarding death certificates.

340:75-1-27 is revoked as duplicative language.

340:75-1-28 is amended to delete instructive information regarding contingency funds for repositioning in ITS.

340:75-1-42 amended to update protocol for confidentiality of client information.

340:75-1-43 is revoked as duplicative of information contained in other sections.

340:75-1-44 is revised to conform to statutory language by updating: (1) protocol for disclosure of confidential information when a child is in need of services; and (2) statutory cites.

340:75-1-152.9 is amended to clarify procedure regarding Critical Incident Reports.

340:75-3-2 is amended to correct syntax and punctuation related to child protective services (CPS) definitions.

340:75-3-6.1 is amended to update statutory provisions and reposition information from ITS to rule regarding reports of child abuse or neglect with specialized protocols.

340:75-3-7.4 is amended to update general protocols for assessments and investigations.

340:75-3-7.5 is amended to delete information repositioned in another section of rule or ITS related to assessment protocol.

340:75-3-8 is amended to: (1) update investigation protocol; and (2) delete duplicative or repositioned information.

340:75-3-8.1 is amended to update sentence structure for investigation protocol for reports of abuse or neglect in a foster or trial adoptive home.

340:75-3-11 is revised to conform to statutory language by updating: (1) statutory change regarding venue for the submission of child abuse and neglect investigative reports; and (2) statutory cites.

340:75-3-13 is revised to reflect recent statutory change regarding protocol to determine if a family has accessed recommended safety-related services.

340:75-3-14 is revoked as duplicative or obsolete regarding the statewide hotline.

340:75-3-20 is issued to reposition the appeal process for substantiated findings of child abuse or neglect.

340:75-6-31.3 is revised to reflect the recently updated statutes and procedures relating to trial home reunification.

340:75-6-4 is amended to correct syntax regarding definitions related to permanency planning.

340:75-6-31.1 is amended to update sentence structure regarding the family team meeting process.

340:75-6-31.4 is amended to: (1) reposition information regarding permanent guardianships to this Section; and (2) clarify procedures related to supported permanency and Title IV-E subsidized guardianships.

340:75-6-40.3 is amended to update sentence structure related to the family functional assessment.

340:75-6-40.4 is amended to update sentence structure related to the Individualized Service Plan (ISP).

340:75-6-48 is amended to update the Section tagline regarding Child Welfare (CW) contacts with child, placement providers, parents, and service providers.

340:75-6-85.4 is amended to update sentence structure related to the permanency plan of adoption.

340:75-6-86 is amended to update requirements for, and notifications of, changes in a child's living arrangements.

340:75-6-88 is revised to reposition and update protocols and procedures related to medical services for children in Oklahoma Department of Human Services (OKDHS) custody and conform with statutory language.

340:75-6-91 is amended to update and clarify requirements for child care services for CW clients.

340:75-6-110 is amended to include a process for assisting a youth in executing a health care power of attorney, health care proxy, or other similar documents recognized under state or tribal law.

340:75-7-18 is amended to clarify the resource parent's obligation to report changes in household.

340:75-7-65 is amended to clarify processes and eligibility for childcare services for children in OKDHS and tribal custody.

340:75-7-290 is issued to reposition information regarding the foster parent hotline.

340:75-7-291 is issued to reposition information regarding foster care mediation.

340:75-10-8 is amended to update the purpose and authority for emergency shelters managed and operated by OKDHS.

340:75-10-8.1 is issued to reposition information regarding to general requirements including education and children's rights while in shelter care.

340:75-10-8.2 is issued to reposition information related to medical services in OKDHS managed and operated shelters.

340:75-10-8.3 is issued to reposition and update information regarding care and supervision of shelter residents.

340:75-10-8.4 is issued to reposition and update procedures regarding children who attempt to leave the shelter facility without permission.

340:75-10-9 through 340:75-10-20 are revoked as duplicative or obsolete related to shelter care.

340:75-11-240 is revised to reflect statutory changes regarding the provision of psychotropic medication.

340:75-13-63 is amended to update procedures for prior authorization for medical services and claims.

340:75-13-64 is amended to update the reimbursement process for child abuse examinations.

340:75-13-65 is revoked as language, updated to conform to statutory provisions, was repositioned in OAC 340:75-6-88.

340:75-13-75 is amended to clarify Title IV-E eligibility when the child is placed out-of-state through the Interstate Compact on the Placement of Children.

340:75-13-80 is amended to update the processes for determination of medical eligibility.

340:75-13-81 is amended to clarify the process for organ donation during the life of a child in OKDHS custody.

340:75-15-9 is revised to ensure adoption confidentiality provisions conform to current statutes.

340:75-15-128 is amended to update the agency name, sentence structure, and statutory cite.

340:75-15-128.2 is amended to clarify that kinship guardianship assistance payments are not considered when determining eligibility for adoption assistance.

340:75-16-30 is revised to update a statutory reference consistent with recent statutory change.

340:75-16-37 is amended to delete a paragraph tagline related to inpatient mental health treatment.

340:75-16-38 is revised to delete the reference to psychotropic medication as extraordinary care, conforming to recent statutory revisions.

[OAR Docket #11-566; filed 4-22-11]

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

[OAR Docket #11-570]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Administration
Part 1. General Administration
340:100-3-1 [AMENDED]
340:100-3-5 [AMENDED]
Part 3. Administration
340:100-3-38 through 340:100-3-38.5 [AMENDED]
340:100-3-38.7 through 340:100-3-38.8 [AMENDED]
340:100-3-38.10 [AMENDED
340:100-3-38.11 [REVOKED]
340:100-3-38.12 through 340:100-3-38.13 [AMENDED]
340:100-3-39 through 340:100-3-40 [AMENDED]
Subchapter 5. Client Services
Part 3. Service Provisions
340:100-5-22.1 [AMENDED]
340:100-5-22.6 [AMENDED]
340:100-5-26.1 [AMENDED]
340:100-5-32 [AMENDED]
340:100-5-34 through 340:100-5-35 [NEW]
Part 5. Individual Planning
340:100-5-52 [AMENDED]
Subchapter 6. Group Home Regulations
Part 3. Standards
340:100-6-12 [AMENDED]
Part 11. Program Standards
340:100-6-55 [AMENDED]
Subchapter 18. Licensing [NEW]
340:100-18-1 [NEW]
(Reference APA WFs 10-09 and 10-13)

AUTHORITY:

Commission for Human Services, Article XXV, Sections 2 and 4 of the Oklahoma Constitution; Section 1414 of Title 10 of the Oklahoma Statutes (10 O.S. § 1414); 10 O.S. § 1415; 10 O.S. § 1430.1 through 1430.41; 10 O.S. § 7102; 21 O.S. § 888; 21 O.S. § 1123; 21 O.S. § 1533.1; 22 O.S. § 1175.1; 22 O.S. § 1175.6b and 1175.6bA; 30 O.S. § 3-102 through 3-104; 30 O.S. § 119; 43A O.S. §10-103; 56 O.S. § 192; 56 O.S. § 1020; 56 O.S. § 1025.1; 56 O.S. § 1025.3; 75 O.S. § 318; 75 O.S. § 1928 and Section 1928 of Title 59 of the Oklahoma Statutes.

DATES:

Comment period:

January 18, 2011 through February 17, 2011

Public hearing:

None requested

Adoption:

February 22, 2011

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February 23, 2011

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Gubernatorial approval:

March 29, 2011

Legislative approval:

Failure of the Legislature to disapprove the rule(s) resulted in approval on April 20, 2011.

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April 20, 2011
Effective:
June 1, 2011
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 18. Licensing [NEW]
OAC 340:100-18-1 [NEW]
(Reference APA WF10-09)
Gubernatorial approval:
August 13, 2010
Register publication:
28 Ok Reg 51
Docket number:
10-1182
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions clarify practices, procedures, and service options provided by DDSD and contractors, in addition to providing a better-organized means of offering this information within the Oklahoma Administrative Code.
CONTACT PERSON:
Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE DEPARTMENT OF HUMAN SERVICES, SEQUOYAH BUILDING, OKLAHOMA CITY AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S., SECTION 255(B):

OAC 340:100-3-1 is amended to direct members of the Homeward Bound class to resolve financial eligibility issued within a 90-day period; or receive state-funded services available to other eligible persons.

OAC 340:100-3-5 is amended to remove the requirement for Form 06MP034E (Guardianship, Advocacy, and Capacity Annual Review) as the information will be required in the Individual Plan or Needs Assessment.

OAC 340:100-3-38 is amended to establish: online training expectations; supervised retraining as a course of action following training violations; and documentation and reporting requirements to substantiate training.

OAC 340:100-3-38.1 is amended to add an online option for foundation training; clarify the requirements for individual specific training, job specific training, specialized training, and ongoing training.

OAC 340:100-3-38.2 is amended to add an online option for foundation training, clarifies the requirements for individual specific training, job specific training, specialized training, and ongoing training.

OAC 340:100-3-38.3 is amended to add an online option for foundation training, clarify the requirements for individual specific training, job specific training, specialized training, and ongoing training.

OAC 340:100-3-38.4 is amended to add an online option for foundation training, clarify the requirements for individual specific training, job specific training, specialized training, and ongoing training.

OAC 340:100-3-38.5 is amended to add an online option for foundation training, clarify the requirements for individual specific training, job specific training, specialized training, and ongoing training.

OAC 340:100-3-38.7 is amended to add an online option for foundation training, and clarify the requirements for individual specific and specialized training.

OAC 340:100-3-38.8 is amended to add an online option for foundation training.

OAC 340:100-3-38.10 is amended to clarify that any nurse with a current unrestricted license is exempt from training requirements and can administer medications.

OAC 340:100-3-38.11 is revoked as training will be tracked via IMS and CDS.

OAC 340:100-3-38.12 is amended to add an online option for foundation training, clarifies the requirements for individual specific and ongoing training.

OAC 340:100-3-38.13 is amended to add an online option for foundation training, clarify the requirements for individual specific training, job specific training, specialized training, and ongoing training.

OAC 340:100-3-39 is amended to disallow a temporary employee from working alone or solely with other temporary employees pending the results of the OSBI criminal history records search.

OAC 340:100-3-40 is amended to remove the requirement of Form 06HM007E (Physical Status Review - PSR;) and require that contract provider agencies develop a form that certifies that persons accessing information within the home record has been informed and understands the penalties for the misuse of confidential and protected information within the home record, per HB 3323 "Kelley's Law."

OAC 340:100-5-22.1 is amended to allow contract provider agency administration staff to complete monitoring visits; allow unannounced visits to be reduced to one per month when certain criteria are met; allow full-time equivalent experience in a supervisory position for program coordinators; and increase the program coordinator case loads from 15 to 20 with a formula for calculating case loads.

OAC 340:100-5-22.6 is amended to reduce the awake staff requirement for alternative group homes, and add the requirement that the agency have additional staff available in the event of need.

OAC 340:100-5-26.1 is amended to remove the requirement that the DDSD area medical director or designee approve the use of p.r.n. medications; change the review of psychotropic medications from semi-annual to annual; and direct the Team to provide appropriate information to the prescribing physician when psychotropic medications are believed to be ineffective in treating a psychiatric illness.

OAC 340:100-5-32 is amended to remove the requirement for Form 06HM063E (Individual Medication Support Plan - IMSP); and remove the requirement that the DDSD area medical director or designee approve the use of p.r.n. medications; exempt hospice patients from p.r.n. medication requirements; and clarify the disposal requirement for discontinued and expired medications, and medications of a deceased service recipient.

OAC 340:100-5-34 is issued to establish the scope of HTS services in non-residential settings.

OAC 340:100-5-35 is issued to establish the scope of Prader Willi services.

OAC 340:100-5-52 is amended to change the summary of progress reporting requirement from monthly to quarterly.

OAC 340:100-6-12 is amended to remove the requirement for a state fire marshal inspection of group homes every three years, and add the requirement that the inspection be dictated by the local or state fire marshal; and remove the requirement for an annual plumbing and electrical inspection.

OAC 340:100-6-55 is amended to clarify that home visits are to monitor service recipients and to supervise staff; allow the monitoring visits to be completed by agency administration staff in addition to the program coordinator; allow for unannounced visits to be reduced to one per month when specific criteria are met; and allow for a group home administrator or program coordinator to substitute full-time experience in a supervisory position for a four year any combination college level course work or full-time equivalent experience.

OAC 340:100-18-1 is issued to provide licensing for board certified behavior Analysts and certification of board certified assistant behavior analysts.

[OAR Docket #11-570; filed 4-22-11]

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

[OAR Docket #11-568]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended
Part 3. State Agency
340:105-10-12 [AMENDED]
Part 7. Program Standards for Services Funded Under Title III
340:105-10-64 [AMENDED]

Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects
340:105-10-102 [AMENDED]
340:105-10-108 [AMENDED]
340:105-10-110.1 [AMENDED]
340:105-10-121 [AMENDED]
(Reference APA WF10-20)

AUTHORITY:
Commission for Human Services, Article XXV and Sections 2 and 4 of the Oklahoma Constitution.

DATES:
Comment period:
January 18, 2011 through February 17, 2011
Public hearing:
None requested
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February 22, 2011
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February 22, 2011
Submitted to House:
February 22, 2011
Submitted to Senate:
February 22, 2011
Gubernatorial approval:
March 29, 2011
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on April 19, 2011.
Final adoption:
April 19, 2011
Effective:
June 1, 2011
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed revisions to Subchapter 10 Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended of Chapter 105 amend the rules to: (1) change authority and add cross references for clarification purposes; (2) change State Council on Aging policy to match by-law changes; and (3) increase audit dollar amounts to match other agency fiscal policy

CONTACT PERSON:
Dena Thayer, Programs Administrator, Office of Intergovernmental Relations and Policy, OKDHS, P.O. Box 25352, Oklahoma City, OK 73125, 405-521-4326.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

PART 3. STATE AGENCY

340:105-10-12. State Council on Aging

(a) **Policy.** The State of Oklahoma has a State Council on Aging ~~that meets~~ meeting the requirements ~~of~~ for the Older Americans Act (OAA), and the Aging Services ~~Division's (ASD's)~~ Division (ASD) need for statewide representation from older Oklahomans and service providers.

(b) **Authority.** The authority for this Section is Section 305 of the OAA of 1965, as amended and the Oklahoma State Council on Aging Bylaws.

(c) **Procedures.** The State Council on Aging is composed of ~~31~~ 30 members, ~~who are~~ at least 18 of whom are 60 years of age or older, residents of the state, and ~~who~~ have demonstrated an interest in, knowledge of, and ~~accomplishments regarding~~ exhibited achievements with respect to the concerns of older persons. ~~At least 18 of the members are 60 years of age or older.~~

(1) Members of the State Council on Aging include:

(A) one member appointed by the Governor;

(B) one member appointed by the President Pro Tempore of the State Senate;

(C) one member appointed by the Speaker of the House of Representatives; and

(D) ~~26~~ 27 members appointed by the Oklahoma Department of Human Services (OKDHS) Director and include:

(i) five members who are 60 years of age or older ~~who~~ and are participating consumers or volunteers working regularly in aging programs ~~and are~~ chosen from Area Agency on Aging (AAA) advisory council nominees. Each ~~of the~~ AAA advisory ~~councils submit~~ council submits one nominee for consideration from their respective planning and service areas. The consumer or volunteer nominee members chosen include residents of rural counties and represent citizens from ~~all~~ varied economic levels~~:~~ whose duration and frequency of work, past and present, is considered.

(ii) one nominee member ~~from nominees~~ is submitted by entities ~~to include~~ (I) through (XIII):

(I) Oklahoma Association of Area Agencies on Aging;

(II) Oklahoma State Department of Health;

(III) Oklahoma State Department of Mental Health, gerontological representative;

(IV) Oklahoma Senior Corps Directors Association;

(V) Oklahoma State Nutrition Directors Association;

(VI) Urban League, alternating by term between Oklahoma City and Tulsa chapters;

(VII) Oklahoma Indian Council on Aging;

(VIII) Oklahoma AARP;

(IX) Oklahoma Federation of Chapters of the National Association of Retired Federal Employees;

~~(X) Adult Day Services Association of Oklahoma;~~

(~~XI~~X) Oklahoma Alliance on Aging;

(~~XII~~XI) Oklahoma Retired Educators Association;

(~~XIII~~XII) Silver Haired Legislature Alumni; and

(~~XIV~~XIII) Oklahoma Health Care Authority; and

(iii) nine at-large members nominated and appointed by the OKDHS Director to ensure ethnic, geographical, and demographical balance ~~in the State Council on Aging~~.

(2) Duties of the State Council on Aging include:

(A) ~~informing entities of~~ communicating the needs, conditions, and concerns of older Oklahomans ~~to include~~ with entities including the:

(i) Oklahoma Commission for Human Services;

(ii) OKDHS Director and the ~~Aging Services Division (~~ASD~~)~~ director;

(iii) State of Oklahoma Governor's Office;

(iv) Oklahoma State Legislature;

(v) United States Oklahoma Congressional Delegates;

(vi) state agencies;

(vii) federal agencies; and

(viii) general public;

(B) reviewing and commenting on all policies, budget appropriations, planning regulations, and legislation that ~~could~~ benefit or adversely impact older Oklahomans, and advocating for their concerns and issues ~~of older Oklahomans,~~ while maintaining high visibility and a strong voice;

(C) monitoring and evaluating the provision of services to older ~~persons within Oklahoma~~ Oklahomans;

(D) conducting public forums and seeking input on the needs, ~~or~~ conditions, ~~of older Oklahomans and seeking public input on~~ programs, or issues involving older ~~persons~~ Oklahomans; and

(E) advising the ASD director on all matters pertaining to:

(i) development and implementation of policies, budget appropriations, planning, regulations, and standards;

(ii) effective and efficient administration of division programs;

(iii) development of training and educational programs; and

(iv) administration of ~~other~~ ASD functions ~~of ASD~~.

PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III

340:105-10-64. Legal services

(a) **Policy.** Legal services include the provision of legal advice, counseling, and representation by attorneys, or by paralegals or interns ~~under the supervision of~~ supervised by an attorney. ~~Legal services also include counseling or representation by a non-lawyer, where permitted by law.~~ All legal service providers ~~of legal services~~ must comply with standards outlined in this Section and OAC 340:105-10-51, 340:105-10-65, and 340:105-10-66.

(b) **Authority.** The authority for this Section is Section 102~~(31)~~ (33) of the Older Americans Act of 1965, as amended.

(c) **Procedures.** This Section is implemented by the Area Agency on Aging:

(1) incorporating ~~the policy~~ this Section into its Title III ~~policy~~ policies and procedures manual;

(2) providing technical assistance to prospective service project applicants regarding ~~the~~ policy in ~~the~~ services development ~~of services~~; and

(3) utilizing ~~the~~ policy as an indicator in ~~the evaluation of~~ service project ~~proposals~~ proposal evaluations.

(d) **Cross references.** ~~See~~ Refer to OAC 340:105-10-50.1(a)(11), 340:105-10-51, 340:105-10-54(a)(6), 340:105-10-65, and 340:105-10-66.

PART 9. FISCAL AND ADMINISTRATIVE POLICIES FOR AREA AGENCIES ON AGING AND TITLE III PROJECTS

340:105-10-102. Appeal procedures for Title III service providers

(a) **Policy.** The Area Agency on Aging (AAA) grants an appeal opportunity ~~for appeal~~ to ~~any~~ existing or potential grantee or contractor when an application for Older Americans Act funds is denied or when a grant or contract is suspended or terminated prior to the ~~end of an~~ approved budget ~~year~~ year-end.

(b) **Authority.** The authority for this Section is Part 1321.11 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection.

(1) ~~The~~ Within 30 days of the complainant's receipt of notice of the adverse action, the complainant submits a written request for hearing to the AAA ~~and its~~ board of directors ~~within 30 days of the complainant's receipt of notice of the adverse action~~. The written request includes a detailed explanation of the complainant's grievance.

(2) The AAA:

(A) schedules ~~the~~ a hearing within 20 days of the AAA receipt of the request for the hearing and notifies the complainant of the date, time, and location of the hearing ~~within 20 days of the AAA receipt of the request for hearing~~; and

(B) prepares written testimony for the hearing outlining the appealed action ~~being appealed~~ and the data on which ~~the action was~~ it is based. ~~A~~ Eight calendar days prior to the hearing a copy of this written testimony is provided to the complainant ~~eight calendar days prior to the hearing~~ and submitted during the hearing as evidence ~~during the hearing~~.

(3) ~~The AAA~~ board of directors, or a committee appointed by the board of directors, conducts the hearing within 30 days of the AAA receipt of the complainant's request ~~for hearing~~. The hearing includes:

(A) an opportunity for the complainant to:

(i) review all pertinent evidence relating to the appealed action;

(ii) present written and verbal testimony;
(iii) be represented by counsel;
(iv) present witnesses and documentary evidence; and
(v) cross-examine witnesses;
(B) a presiding officer appointed by the board of directors who conducts the hearing and has had no part in the appealed action; and
(C) a record of the hearing proceedings, taken by the presiding officer appointed by the board of directors, and maintained on file for public viewing.

(4) ~~The AAA board of directors issues a written hearing decision to the complainant within~~ Within 60 days of the completion of the hearing the AAA board of directors issues a written hearing decision to the complainant. ~~The decision letter includes notice of the complainant's right to appeal the decision to the Aging Services Division (ASD).~~
(A) The decision letter includes:
(i) a notice of the complainant's right to appeal the decision to the Aging Services Division (ASD); and
(ii) instructions ~~to the complainant~~ on how to initiate the appeal.
(B) ~~The~~ Within 30 days after the complainant receives notice of an adverse AAA decision the complainant submits a written request for a hearing to ASD ~~within 30 days after the complainant receives notice of an adverse AAA decision~~.

(5) When the appeal process is not resolved prior to the start of the new project year, the AAA, through its board of directors, may enter into a temporary grant with a service provider ~~for~~ to avoid cessation of those services affected by the appeal~~, to avoid cessation of services~~.

(d) **Cross references.** ~~See~~ Refer to OAC 340:105-10-101(c)(3)(D)~~.~~ and OAC 340:2-5-44.

340:105-10-108. Audits of government entities and nonprofits receiving less than $~~25,000~~ 50,000 in federal and state funds from all sources

(a) **Policy.** Government entities and other nonprofits receiving less than $~~25,000~~ 50,000 in federal and state funds from all sources are monitored by the Area Agency on Aging (AAA) or pass through agency.

(b) **Authority.** The authority for this Section is the Office of Management and Budget Circular A-133.

(c) **Procedures.** Procedures to implement this Section are described in this subsection.
(1) Agencies subject to this Part receive a monitoring visit from the AAA or pass through agency to include, at a minimum:
(A) testing of a minimum of ten percent of all project expenditures for the period under review;
(B) testing of items listed in the current fiscal assessment tool;
(C) preparation of a report to include a narrative description of project operations;
(D) verification of the scope and ~~time frame of the~~ review period;
(E) a description of the findings regarding internal controls, accounting methods, and procedures;
(F) schedules of:
(i) balance sheet;
(ii) budget compared to actual revenue and costs; and
(iii) findings, questioned costs, and recommendations; and
(G) an account of the grantee's response to findings, questioned costs, and recommendations.
(2) Monitoring visits are conducted within 30 days after each project year.

(d) **Cross references.** ~~See~~ Refer to OAC 340:105-10-106 through 340:105-10-107, and 340:105-10-109 through 340:105-10-113.

340:105-10-110.1. Audits of government entities and nonprofit agencies receiving between $~~25,000~~ 50,000 and $500,000 in federal and state funds from all sources

(a) **Policy.** Government entities and nonprofit agencies receiving more than $~~25,000~~ 50,000 in federal and state funds and less than $500,000 in federal funds from all sources are required to obtain annual audits on such funds unless the grantee has a constitutional or statutory requirement for less frequent audits.

(b) **Authority.** The authority for this Section is Section 212A of Title 74 of the Oklahoma Statutes and the contract between the Area Agency on Aging and the subgrantee.

(c) **Procedures.**
(1) The audit:
(A) is a certified independent audit of the ~~agency's~~ grantee's entire operations conducted in accordance with generally accepted government auditing standards;
(B) includes financial statements prepared in accordance with generally accepted accounting principles;
(C) includes a Supplementary Schedule of State and Federal Awards listing all state and federal revenues and expenditures by contract;
(D) covers the period ~~for which~~ the contract was in effect;
(E) is performed by a certified public accountant or public accountant ~~who has~~ with a valid and current permit to practice accountancy in Oklahoma; and
(F) is not charged to federal funds or to meet match requirements.
(2) The Oklahoma Department of Human Services retains the right to examine and audit paperwork.

(d) **Cross references.** ~~See~~ Refer to OAC 340:105-10-106 through 340:105-10-113.

340:105-10-121. Area Agency on Aging and Title III project salaries

(a) **Policy.** Area Agencies on Aging (~~AAAs~~ AAA) and Title III projects develop ~~competent~~ staff to competently perform programmatic and financial duties based on local needs, available funding, and market value~~, provided persons~~. Persons with comparable job family descriptors (JFD~~s~~) ~~may~~ are not ~~be~~ paid more than the midpoint of the salary range of a JFD paid within the ~~State Agency~~ Oklahoma Department of Human Services (OKDHS) salary cap ~~set by the State Agency~~. The total administration costs charged to the Title III grant may not exceed the maximum provided in federal law.

(b) **Authority.** The authority for this Section is Part 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection.

(1) AAAs and Title III projects determine starting ~~salary~~ salaries for positions based on local needs, available funding, and market value, provided persons with comparable JFDs may not be paid more than the midpoint of the salary range paid by the ~~State Agency~~ OKDHS for the JFD most like the job in question ~~being done by the AAAs or Title III projects~~.

(2) Salary ~~advancements~~ increases are based on acceptable work performance~~, as evidenced by continued employment with the AAA or Title III project~~. The AAA may disapprove salary ~~advances of its grantees~~ increases due to uncertain funding allocations ~~or funding~~ and levels. ~~The State Agency~~ The Aging Services Division may disapprove salary advances of AAAs ~~that~~ if it ~~believes may cause~~ causes the AAA to exceed the federal maximum administrative cost allowed ~~in federal law~~.

(3) Longevity payments may be made to all AAA and Title III employees using a longevity schedule that is:

(A) fair and equitable to all employees;

(B) consistently applied to both federal and non-federal activities;

(~~B~~C) based on available funding;

(~~C~~D) included in AAA and Title III budgets; and

(~~D~~E) provided for in the AAA policies and procedures manual.

(d) **Cross references.** ~~See~~ Refer to OAC 340:105-10-117, 340:105-10-120, and 340:105-10-122.

[OAR Docket #11-568; filed 4-22-11]

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

[OAR Docket #11-395]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Contracts for Mental Health, Substance Abuse, and Residential Care Services
Part 3. Contracts and Contracting Processes
450:1-3-22. Contractor reimbursement rates [AMENDED]
AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-110, 3-306, 3-306.1, 3-314.1, 3-315, 3-317, 3-318, 3-319 and 3-415; 74 O.S. §85.9G.
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In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 1 are part of the Department's review of Title 450. The proposed rules clarify existing and are intended to comply with statutory changes.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3879.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 3. CONTRACTS FOR MENTAL HEALTH, SUBSTANCE ABUSE, AND RESIDENTIAL CARE SERVICES

PART 3. CONTRACTS AND CONTRACTING PROCESSES

450:1-3-22. Contractor reimbursement rates

Reimbursements to contractors for mental health, substance abuse, eating disorder services, gambling addiction services, narcotic treatment services, and residential care services shall be considered and set in the manner described as follows:

(1) Contractors shall annually, or as otherwise prescribed, submit to ODMHSAS a uniform cost report in the form and format determined by ODMHSAS, and within time-frames established by ODMHSAS.

(2) ODMHSAS staff shall review and analyze these cost reports, requesting where deemed necessary the submission of supporting clarifying information within fifteen (15) days of said request.

(3) ODMHSAS staff may recommend to the Board fixed uniform rates for services, taking into consideration variables such as average costs, appropriate inflationary factors, capitation methods, performance outcome measures, staff credentials and available funding.

(4) Prior to submitting to the Board the proposed rates or changes to existing rates, the following shall occur:

(A) The ODMHSAS shall provide written notice of an open hearing on the proposed fixed rates to each applicable contractor of record.

(B) The ODMHSAS shall conduct, and make a summary of, the scheduled open hearing.

(5) Consideration of the proposed fixed rate by the Board shall not occur until the Director of Department of Central Services has been provided with, pursuant to 74 O.S. § 85.7:

(A) Thirty (30) days written notice of the Board Meeting to consider the uniform rates of reimbursement;

(B) A copy of the Board Meeting agenda item(s) concerning the proposed rate(s); and

(C) All supporting documentation and materials regarding the reimbursement rates being proposed.

(6) The Board shall, at the meeting referenced in (5)(A) and (B) of this section, separately consider each proposed fixed and uniform rate of reimbursement. These rates, if adopted, shall then take effect on a date determined by the Board when the rates are considered for adoption; and remain in effect until subsequent Board action.

(7) All revisions shall be examined, proposed, considered and adopted pursuant to this section.

(8) Where a fixed rate is already authorized by the Department of Central Services according to the provisions of 74 O.S. § 85.7, ODMHSAS, through its Commissioner, may adopt and utilize said fixed rate without Board approval.

[OAR Docket #11-395; filed 4-14-11]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 15. CONSUMER RIGHTS

[OAR Docket #11-396]

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Subchapter 1. General Provisions
450:15-1-2. Definitions [AMENDED]
Subchapter 3. Consumer Rights
Part 1. Mental Health and Drug or Alcohol Abuse Services Consumer Bill of Rights
450:15-3-1. Applicability [AMENDED]
450:15-3-10. Right to use of money [AMENDED]
450:15-3-23.1. Right to assert grievances [AMENDED]
450:15-3-27. *Synopsis* of the bill of rights [AMENDED]
450:15-3-29. Access to services for consumers with disabilities [NEW]
Part 3. Consumer Grievance Procedure
450:15-3-45. Consumer grievance policy and procedures [AMENDED]
Part 11. Resident Rights, Mental Health Residential Care Facilities
450:15-3-81. Resident rights [AMENDED]
Subchapter 7. Office of Consumer Advocacy and Department Investigations
Part 1. Office of Consumer Advocacy
450:15-7-4. Office of Consumer Advocacy powers and duties [AMENDED]
Part 2. Investigations
450:15-7-6. Reporting suspected maltreatment [AMENDED]
450:15-7-9. Investigation procedures [AMENDED]
450:15-7-14. Investigative interviews [AMENDED]
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CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3879.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

450:15-1-2. Definitions

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

"Abuse" means the causing or permitting of harm or threatened harm to the health, safety, or welfare of a consumer by staff responsible for the consumer's health, safety, or welfare, including but not limited to:

(A) non-accidental physical injury or mental anguish;

(B) sexual abuse;

(C) sexual exploitation;

(D) use of mechanical restraints without proper authority;

(E) the intentional use of excessive or unauthorized force aimed at hurting or injuring the consumer; or

(F) deprivation of food, clothing, shelter, or healthcare by staff responsible for providing these services to a consumer.

"Advocate" means an employee of the Office of Consumer Advocacy, who provides assistance to consumers in exercising their rights, listens to their concerns, encourages them to speak for themselves, seeks to resolve problems, helps protect their rights, and seeks to improve the quality of the consumer's life and care.

"Advocate General" means the chief administrative officer of the ODMHSAS Office of Consumer Advocacy.

"Board" means Board of Mental Health and Substance Abuse Services.

"Community mental health center" or **"CMHC"** means a facility offering a comprehensive array of community-based mental health services, including but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education; and, certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and aftercare, training programs, and research and evaluation.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contacts.

"Consumer committee" or **"Consumer government"** means any established group within the facility comprised of consumers, led by consumers and which meets regularly to address consumer concerns to support the overall operations of the facility.

"Correctional institution" means any penal or correctional facility, jail, reformatory, detention center, work farm, halfway house or residential community program operated by, or under contract to, the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, for the confinement or rehabilitation of persons charged with or convicted of a criminal offense, or other persons held in lawful custody. Other persons held in lawful custody includes juvenile offenders adjudicated delinquent, aliens detained awaiting deportation, persons committed to mental institutions through the criminal justice system, witnesses, or others awaiting charges or trial.

"Crisis stabilization" means emergency, psychiatric, and substance abuse services for the resolution of crisis situations and may include placement of an individual in a protective environment, basic supportive care, and medical assessment, and, if needed, referral to an ODMHSAS certified facility having nursing and medical support available.

"Comprehensive Basis of Accounting" means a system of accounting other than GAAP, including but not limited to statutory basis, cash basis, or tax basis.

"Department" or **"ODMHSAS"** means the Oklahoma Department of Mental Health and Substance Abuse services.

"Designated record set" means health information, in any medium including paper, oral, video, electronic, film, audio and digital, maintained by or for facilities operated by ODMHSAS for the purpose, in whole or in part, for making decisions about a consumer, that is:

(A) The medical records about a consumer including but not limited to the intake, screenings, assessments, history and physical examination, psychosocial evaluation, consultation report(s), treatment and continuing care plan, medication record(s), progress notes, psychometric/psychological testing results, discharge assessment, discharge plan, discharge summary, physician orders, immunization record(s), laboratory reports, ancillary therapy notes and reports, and case management records; or

(B) The eligibility, billing and payment information and minimum data sets maintained by or for the facility.

(C) Records that are sometimes filed with the medical records but are not part of the designated record set include:

(i) Administrative records including court commitment paperwork, critical incident reports or peer review documents; and

(ii) Information compiled in anticipation of litigation.

"Emergency detention" means the detention of a person who appears to be a person requiring treatment in a facility approved by the Commissioner of Mental Health and Substance Abuse Services as appropriate for such detention after the completion of an emergency examination and a determination that emergency detention is warranted for a period not to exceed ~~seventy-two (72)~~ one hundred twenty (120) hours, excluding weekends and holidays, except upon a court order authorizing detention beyond a ~~seventy-two-hour~~ one hundred twenty-hour period or pending the hearing on a petition requesting involuntary commitment or treatment as provided by 43A of the Oklahoma Statutes.

"Emergency examination" means the examination of a person who appears to be a mentally ill person, an alcohol-dependent person, or drug-dependent person and a person requiring treatment, and whose condition is such that it appears that emergency detention may be warranted, by a licensed mental health professional to determine if emergency detention of the person is warranted.

"Exploitation" or **"exploit"** means an unjust or improper use of the resources of a consumer for the profit or advantage, pecuniary or otherwise, of a person other than the consumer through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

"Facility" means a public or private agency, corporation, partnership, or other entity operated or certified by ODMHSAS or with which ODMHSAS contracts to provide the physical custody, detention or treatment of consumers.

"Generally Acceptable Accounting Principles" or **"GAAP"** means the authoritative set of accounting principles, standards, and procedures.

"Guardian" means a person appointed by a court to ensure the essential requirements for the health and safety of an incapacitated or partially incapacitated person. As used in this subchapter, guardian includes a general or limited guardian of the person, a general or limited guardian of the estate, a special guardian, and a temporary guardian.

"Licensed mental health professional" or "LMHP" as defined in Title 43A §1-103 (11).

"Maltreatment" is used collectively in this Subchapter to refer to abuse, neglect, exploitation, mistreatment, sexual abuse or exploitation, and rights violation.

"Minor" means any person under the age of 18 years except any person convicted of a crime specified in Section 7306-1.1 of Title 10 of the Oklahoma Statutes or any person who has been certified as an adult pursuant to Section 7303-4.3 of Title 10 and convicted of a felony.

"Mistreatment" means an act or omission that results in or creates an unreasonable risk of harm to a consumer and that also:

(A) violates a statute, regulation, written rule, procedure, directive, or accepted professional standards and practices; or

(B) unintentional excessive or unauthorized use of force.

"Money" means any legal tender, note, draft, certificate of deposit, stock, bond, check or credit card.

"Neglect" means:

(A) the failure of staff to provide adequate food, clothing, shelter, medical care or supervision which includes, but is not limited to, lack of appropriate supervision that results in harm to a consumer;

(B) the failure of staff to provide special care made necessary by the physical or mental condition of the consumer;

(C) the knowing failure of staff to provide protection for a consumer who is unable to protect his or her own interest; or

(D) staff knowingly causing or permitting harm or threatened harm through action or inaction that has resulted or may result in physical or mental injury.

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

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

"Program of Assertive Community Treatment" or **"PACT"** is a clinical program that provides continuous treatment, rehabilitation, and support services to persons with mental illness in settings that are natural to the consumer.

"Privacy Officer" means the employee of ODMHSAS designated to provide guidance on state and federal privacy laws.

"Program" means a structured set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Resident" means a person residing in a residential care facility certified by ODMHSAS.

"Resident committee" or **"Resident government"** means any established group within the facility comprised of residents, led by residents and which meets regularly to address resident concerns to support the overall operations of the facility.

"Residential care facility" or **"RCF"** means any house, home, establishment or institution licensed pursuant to the provisions of the Oklahoma Residential Care Home Act 63 O.S., §§1-819 through 1-840, other than a hotel, fraternity or sorority house, or college or university dormitory, which is certified pursuant to 43 O.S. §3-315 as a Community Residential Mental Health Facility and offers or provides residential accommodations, food service and supportive assistance to its residents or houses any resident requiring supportive assistance that are ambulatory, essentially capable of managing their own affairs and not routinely requiring nursing care or intermediate care.

"Restraint" refers to manual, mechanical and chemical methods that are intended to restrict the movement or normal functioning of a portion of an individual's body.

"Seclusion" means the placement of an individual or individuals alone in a room or other area from which egress is prevented by a physical barrier.

"Sexual abuse" includes:

(A) rape, incest, or lewd and indecent acts or proposals, as defined by state law, by staff;

(B) oral, anal or vaginal penetration of a consumer by staff;

(C) the anal or vaginal penetration of a consumer by staff with any other object; or

(D) for the purpose of sexual gratification, the touch, feeling or observation of the body or private parts of a consumer by staff; or

(E) indecent exposure by staff providing services to the consumer.

"Sexual exploitation" by staff with regard to a consumer includes:

(A) staff allowing, permitting or encouraging a consumer to engage in sexual acts with others or prostitution, as defined by state law, which results in harm to a consumer; or

(B) staff allowing, permitting, encouraging, or engaging in the lewd, obscene or pornographic photographing, filming or depicting of a consumer in those acts as defined by state law.

"Staff" means an agent or employee of a public or private institution or facility responsible for the care of a client or consumer and providing services to the client or consumer.

"Treatment Advocate" is a family member or other concerned individual designated by a consumer to participate in treatment and discharge planning, and acts in the best interest of and serves as an advocate for the consumer.

"Verbal Abuse" means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors by staff that are likely to cause a reasonable person to experience humiliation, intimidation, fear, shame or degradation.

SUBCHAPTER 3. CONSUMER RIGHTS

PART 1. MENTAL HEALTH AND DRUG OR ALCOHOL ABUSE SERVICES CONSUMER BILL OF RIGHTS

450:15-3-1. Applicability

This Part is applicable to all facilities and programs providing mental health and drug or alcohol abuse services either operated by, certified by, or under contract with, ODMHSAS or subcontracting through a facility which is under contract with ODMHSAS. Any violations of the provisions contained in this Chapter may be used for possible action on certification status, in accordance with Chapter 1 of this title.

450:15-3-10. Right to use of money

(a) A consumer has the right of access to his or her money that is deposited in the consumer's personal account at the facility. This access includes, but is not limited to funds the facility or employees of a facility manage on behalf of a consumer as a representative payee, but does not include money that is already encumbered on the consumer's behalf in accordance with payee rules and regulations.

(b) The Department, each consumer, or others advocating on behalf of the consumer must be provided upon request, evidence that the facility or facility personnel designated or acting as representative payees comply with this rule, and policies and reporting requirements stipulated by the payer of those funds. Payer requirements include, but are not limited to the stipulations mandated by the Social Security Administration, on behalf of consumers who are beneficiaries of Social Security and related benefits.

(~~b~~c) The facility may require either all, or part, of the money which is on the person of a consumer, or which comes to a consumer, or which the facility receives on behalf of the consumer under a benefit arrangement, or otherwise, be deposited with the facility for safekeeping in a personal account in the consumer's name. The money, and transactions affecting it, shall be accounted for in the name of the consumer and recorded in the consumer's account records. Account records should be sufficiently detailed to identify each item deposited (e.g., date, source, description), each disbursement (e.g., date, payee, purpose), and include copies of documents reasonably necessary for a complete understanding of the financial transactions. The consumer, his or her attorney, or his or her legal guardian shall be provided a copy of the account and transactions at the consumer's or legal guardian's request.

(~~c~~d) A consumer's easy access to his or her money and ability to spend money in his or her account may be denied or limited by the facility only after a determination is made by the treatment team, supported by facts, that the limitation is necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets. Any such denial shall be fully documented in the consumer's record. Even where denial is made, the consumer shall continue to be allowed to spend or use the money in ways which would not constitute unreasonable and significant dissipation of his or her assets or engaging in illegal activities including but not limited to exploitation of other consumers.

(~~d~~e) The facility is prohibited from withdrawing funds from a consumer's personal account to pay for services rendered by the facility, except with the written consent of the consumer, if he or she is legally competent, or his or her legal guardian.

(~~e~~f) Money in a consumer's personal account at the facility may be deposited with an outside financial institution at the request of the consumer if he or she is legally competent, or so deposited on the request of a legal guardian.

(~~f~~g) All money, including earnings, in a consumer's personal account shall be delivered to the individual upon his or her release from the facility, or to his or her legal guardian if the individual is under a legal guardianship and the guardian requests the money be delivered to the guardian rather than directly to the individual.

(h) Facilities are required to keep, and the Department may regularly review, records of accounts at facilities to which (a) through (g) apply.

(1) Verification that consumers have been provided on-going access to documentation of the management of their own funds.

(2) Verification of compliance with Generally Acceptable Accounting Principles (GAAP) or with another comprehensive basis of accounting, and with specific requirements of payers of the funds, including but limited to the Social Security Administration.

(A) Account(s) for consumer(s) must be maintained separate from an organization's operating account.

(i) Accounts shall be properly titled to clarify the account is on behalf of the beneficiary (payee) or a group of beneficiaries (payees). Account titles shall not conflict with confidentiality laws.

(ii) If a group account is utilized, records shall clearly show the amount of each beneficiary's share within the account.

(iii) For beneficiaries with more than $500 aggregate funds, the funds shall be in an interest bearing account and each beneficiary shall be credited with his/her share of the interest.

(B) Accounting records must verify that the representative payee sets aside and makes readily available to the beneficiary, at least the amount stipulated by

payer of the funds, including the Social Security Administration, per person per month to assist the beneficiary with personal needs.

(C) Documentation shall validate that funds belonging to a beneficiary have been used only for his/her needs.

(D) Consumers and facility representatives shall sign off on any monies spent on behalf of consumers as proof of agreement with the financial transaction. If approval of the transaction is not required for purchase, signatures shall still be required as an acknowledgement of the transaction.

(3) Any consumer complaints or finding of potential irregularity related to the management of consumer personal funds shall be referred for review or potential investigation to the appropriate authority, including but not limited to the Department, the Social Security Administration, and the Oklahoma State Auditor and Inspector.

450:15-3-23.1. Right to assert grievances

(a) A consumer shall have a right to assert grievances with respect to an alleged infringement of his or her rights and shall have the right to have such grievances considered through a fair, timely and impartial grievance procedure.

(b) No consumer shall be retaliated against, coerced, or treatment altered either solely or partially because of his or her having asserted, a grievance regarding his or her rights.

(c) Copies of all grievances shall be forwarded to the Department's Office of Consumer Advocacy within 24 hours of the filing. Copies of all grievance documentation and written resolution of the grievance shall be forwarded to the Department's Office of Consumer Advocacy within 24 hours of the written notice being delivered to the consumer.

450:15-3-27. *Synopsis* of the bill of rights

(a) The synopsis in (b) of this Section shall be used when an abbreviated format of OAC 450:15-3-6 through 450:15-3-25 is used to supply a consumer or others with an overview of the bill of rights. A copy of the synopsis shall be prominently posted in each consumer treatment unit and in consumer admissions, visiting and public areas.

(b) Facilities with physical custody of a consumer or where consumers remain for round-the-clock support or care, or where the facility has immediate control over the setting where a consumer resides, shall support and protect the fundamental human, civil, and constitutional rights of the individual consumer. Each consumer has the right to be treated with respect and dignity and will be provided the synopsis of the Bill of Rights as listed below.

(1) Each consumer shall retain all rights, benefits, and privileges guaranteed by law except those lost through due process of law.

(2) Each consumer has the right to receive services suited to his or her condition in a safe, sanitary and humane treatment environment regardless of race, religion, gender, ethnicity, age, degree of disability, handicapping condition, or sexual orientation.

(3) Each consumer, on admission, shall have the absolute right to private uncensored communication with a relative, friend, clergy, or attorney by phone or mail, at the facility's expense if the consumer is indigent.

(4) Each consumer retains the right of confidential communication with their attorney, personal physician, or clergy.

(5) Each consumer is entitled to uncensored private communication (letter, telephone, personal visits); such letters or copies of letters shall not be kept in consumer treatment records.

(6) No consumer shall be neglected or sexually, physically, verbally, or otherwise abused.

(7) Each consumer shall receive treatment in the least restrictive environment and have the maximum freedom of movement consistent with his or her clinical condition and legal status.

(8) Each consumer shall have easy access to his or her personal funds deposited with the finance office, and shall be entitled to an accounting. A limitation on access to funds may be made when it is determined by the facility's director to be necessary and essential to prevent the consumer from unreasonably and significantly dissipating his or her assets.

(9) Each consumer may have his or her own clothing and other personal possessions. This right can be forfeited if the property is potentially dangerous to the consumer, others, or if the property is functionally unsafe.

(10) Each consumer shall have the right to practice his or her religious belief and be accorded the opportunity for religious worship. No consumer shall be coerced into engaging in or refraining from any religious activity, practice, or belief.

(11) Each consumer legally entitled to vote shall be assisted to register and vote when they so request.

(12) Each consumer shall be provided with prompt, competent, and appropriate treatment; and an individualized treatment plan. A consumer shall participate in his or her treatment programs and may consent or refuse to consent to the proposed treatment. The right to consent or refuse to consent may be abridged for those consumers adjudged incompetent by a court of competent jurisdiction and in emergency situations as defined by law. If the consumer permits, family shall be involved.

(13) Every consumer's record shall be treated in a confidential manner.

(14) No consumer shall be required to participate in any research project or medical experiment without his or her informed consent as defined by law. Refusal to participate shall not affect the services available to the consumer.

(15) A consumer may voluntarily participate in work therapy and must be paid fair compensation. However, each consumer is responsible for personal housekeeping tasks without compensation.

(16) A consumer shall have the right to assert grievances with respect to an alleged infringement on his or her rights.

(17) Consumer shall be permitted to establish and participate in a consumer committee or consumer government by unit or facility wide.

(18) A consumer being discharged shall have plans for outpatient treatment, sufficient medication, suitable clothing for the season, housing information and referral, and if consumer permits, family involvement in the plan.

(19) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense or a right to an internal consultation upon request at no expense.

(20) No consumer shall be retaliated against or subjected to any adverse change of conditions or treatment because the consumer asserted his or her rights.

(c) Programs providing treatment or services without the physical custody or where consumers do not remain for round-the-clock support or care, or where the facility does not have immediate control over the setting where a consumer resides, ~~detention of consumers~~ shall support and protect the fundamental human, civil, and constitutional rights of the individual consumer. Each consumer has the right to be treated with respect and dignity and will be provided the synopsis of the Bill of Rights as listed below.

(1) Each consumer shall retain all rights, benefits, and privileges guaranteed by law except those lost through due process of law.

(2) Each consumer has the right to receive services suited to his or her condition in a safe, sanitary and humane treatment environment regardless of race, religion, gender, ethnicity, age, degree of disability, handicapping condition or sexual orientation.

(3) No consumer shall be neglected or sexually, physically, verbally, or otherwise abused.

(4) Each consumer shall be provided with prompt, competent, and appropriate treatment; and an individualized treatment plan. A consumer shall participate in his or her treatment programs and may consent or refuse to consent to the proposed treatment. The right to consent or refuse to consent may be abridged for those consumers adjudged incompetent by a court of competent jurisdiction and in emergency situations as defined by law. If the consumer permits, family shall be involved.

(5) Every consumer's record shall be treated in a confidential manner.

(6) No consumer shall be required to participate in any research project or medical experiment without his or her informed consent as defined by law. Refusal to participate shall not affect the services available to the consumer.

(7) A consumer shall have the right to assert grievances with respect to an alleged infringement on his or her rights.

(8) Each consumer has the right to request the opinion of an outside medical or psychiatric consultant at his or her own expense or a right to an internal consultation upon request at no expense.

(9) No consumer shall be retaliated against or subjected to any adverse change of conditions or treatment because the consumer asserted his or her rights.

(d) Each affected facility and program shall have written policy and implementing procedures, and shall provide documented staff training to insure the implementation of each and every consumer right stated in this section.

(e) Each affected facility and program shall have written policy and implementing procedures to insure each consumer enjoys, and has explained to him or her, these rights, and these rights are visibly posted in both consumer and public areas of the facility.

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

(g) All facilities that are certified by, operated by, or contracted with the Department shall post the contact information for the ODMHSAS Office of Inspector General and ODMHSAS Office of Consumer Advocacy prominently in each consumer treatment unit and in consumer admissions, visiting and public areas.

450:15-3-29. Access to services for consumers with disabilities

(a) Facilities and organizations providing mental health or substance abuse services who are certified by, operated by, or under contract with the Department shall not discriminate against consumers with disabilities and shall provide consumers with disabilities access to services in accordance with state and federal law, including but not limited to the American's with Disabilities Act and amendments thereto.

(b) Facilities and organizations providing mental health or substance abuse services who are certified by, operated by, or under contract with the Department shall provide information on a consumer's disability in any referral or transfer so that accommodations by the receiving facility or organization can be made prior to a consumer's arrival for the continuation of continuity of care.

(c) Facilities and organizations providing mental health or substance abuse services who are certified by, operated by, or under contract with the Department shall develop policies and procedures on how consumers with disabilities will have access to the services they provide.

PART 3. CONSUMER GRIEVANCE PROCEDURE

450:15-3-45. Consumer grievance policy and procedures

Facilities shall have a written grievance policy that includes:

(1) A written notice of the grievance procedure is provided to each consumer or guardian and, to an individual of the consumer's choice;

(2) Time frames for the grievance procedures which allow for an expedient resolution of consumer grievance(s);

(A) Inpatient and residential programs shall be a seven (7) day timeframe;

(B) Outpatient, intensive outpatient and day treatment programs shall be a fourteen (14) day timeframe;

(C) Crisis stabilization, medical detoxification and social detoxification programs shall have a three (3) day timeframe;

(3) A procedure for advising the consumer he or she has the right to make a complaint to the ODMHSAS Consumer Advocacy Division and the mechanism for contacting the Consumer Advocacy Division;

(4) The procedure by which consumers are notified of the specific name(s) ~~Name(s~~) of the individual(s) responsible for coordinating the program's grievance procedure and the individual responsible for or authorized to make decisions for resolution of the grievance. In the instance where the decision making is the subject of a grievance, decision making authority shall be delegated;

(5) The provision of written notification to the consumer of the grievance outcome and mechanism by which an individual may appeal the outcome;

(6) ODMHSAS operated facility procedures shall include a process by which the consumer may appeal the grievance outcome to the Commissioner or designee;

(7) A mechanism to monitor the grievance process and improve performance based on outcomes;

(8) An annual review of the grievance policy and procedure including providing copies of updated grievance policy and procedure information to the Office of Consumer Advocacy when requested; and

(9) The ongoing monitoring of the grievance process and, based on outcomes, adjust and improve processes.

PART 11. RESIDENT RIGHTS, MENTAL HEALTH RESIDENTIAL CARE FACILITIES

450:15-3-81. Resident rights

(a) Each resident shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged by due process of law by a court of competent jurisdiction. Each facility shall insure each resident has the rights specified as follows.

(1) Each resident has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) Each resident has the right to a safe, sanitary, and humane living environment.

(3) Each resident has the right to a humane psychological environment protecting them from harm, abuse, and neglect.

(4) Each resident has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve his or her functioning.

(5) Each resident has the right to receive services suited to his or her condition and needs for treatment without regard to his or her race, religion, gender, ethnic origin, age, degree of disability, handicapping condition, legal status, sexual orientation.

(6) Each resident, on admission, has the absolute right to communicate his or her change of address with a relative, friend, clergy, or attorney, by telephone or mail.

(7) Each resident shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.

(8) Each resident has the right to uncensored, private communications including, but not limited to, letters, telephone calls, and personal visits. Copies of any personal letter, sent or received, by a resident shall not be kept in his or her clinical record.

(9) No resident shall ever be neglected or sexually, physically, verbally, or otherwise abused.

(10) Each resident has the right to easy access to his or her personal funds on deposit with the facility, and shall be entitled to an accounting for said funds. A limitation on access to such funds may be made when it is determined, and documented, as essential to prevent the resident from unreasonably and significantly dissipating their assets. Access to these funds and management, accounting, and protection of these funds shall comply with stipulations outlined in OAC 450:15-3-10 and other related state and federal requirements.

(11) Each resident has the right to have his or her own clothing and personal possessions. This right may be forfeited, or limited, only if the personal property is determined to be potentially dangerous to the client, or others, or if the property is determined to be functionally unsafe.

(12) Each resident shall have the right to practice his or her own religious beliefs, and afforded the opportunity for religious worship. No client shall ever be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(13) The records of each resident shall be treated in a confidential manner.

(14) Each resident has the right to refuse to participate in any research project or medical experiment without informed consent of the resident, as defined by law. A refusal to participate shall not affect the services available to the resident.

(15) A resident may voluntarily participate in work therapy, and shall be paid just compensation for such participation. However, each resident is responsible for personal care and housekeeping tasks without compensation.

(16) The community residential mental health facility shall provide residents who are leaving at the request of the community residential mental health facility all funds and property belonging to him or her at the time of his or her departure.

(17) Each resident shall have the right to establish and to participate in a resident committee or resident government.

(18) Each resident has the right to assert grievances with respect to any alleged infringement of these stated rights of residents, or any other subsequently statutorily granted rights.

(19) No resident shall ever be retaliated against, or subject to, any adverse conditions because of having asserted his or her rights as aforestated in this section.

(b) Each affected facility shall have written policy and implementing procedures, and shall provide documented staff training to insure the implementation of each and every resident right stated in this section.

(c) Each affected facility shall have written policy and implementing procedures to insure each resident enjoys, and has explained to him or her, these rights; and these rights are visibly posted in both resident and public areas of the facility.

(d) The Department, in any investigation or monitoring shall have access to residents, RCF records and RCF staff as set forth in OAC 450:15-7-3.

SUBCHAPTER 7. OFFICE OF CONSUMER ADVOCACY AND DEPARTMENT INVESTIGATIONS

PART 1. OFFICE OF CONSUMER ADVOCACY

450:15-7-4. Office of Consumer Advocacy powers and duties

The Advocate General shall assign an Advocate to monitor the care and treatment of individuals receiving services at each facility operated by, certified by or under contract with the ODMHSAS; and to carry out the purpose and duties of the Office of Consumer Advocacy. The Office of Consumer Advocacy shall have the following powers and duties:

(1) To serve as an advocate for consumers and to ensure the highest quality of care to all consumers at facilities operated by, subject to certification by, or under contract with the Department.

(2) If a consumer needs legal counsel, the Advocate shall advise the consumer of his or her right to seek counsel and refer the individual to counsel, if necessary.

(3) To monitor his or her assigned facilities to ensure the facilities have made adequate provisions for the medical care, supervision and safekeeping of all DMHSAS consumers, and to provide a monthly status report, either verbally or in writing, to the facility's executive director regarding these issues.

(4) To access facilities operated by, subject to certification by or under contract with the Department. Reasonable access shall be granted for the purposes of performing activities as necessary to monitor care and treatment provided by such facilities. These ~~investigations~~ visits may be unannounced and or unscheduled as determined by the Department. Reasonable access shall include, but is not limited to, observations, discussions, and face to face meetings with staff and consumers, copies of policies and procedures related to grievances, complaints, consumer care, access to services and safety; and forms and documentation related to Critical Incidents and Sentinel Events.

(5) To access and copy necessary records of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department. Records that are confidential under state and federal law shall be maintained as confidential and not be redisclosed by the Office of Consumer Advocacy.

(6) To be proactive in the enforcement of the provisions of the Mental Health and Substance Abuse Consumer Bill of Rights,

(7) To timely report any issue(s) of which the Office of Consumer Advocacy becomes aware that may adversely affect consumer care through the proper chain of command, beginning at the lowest level, in order to timely resolve such issue(s).

(8) To assist consumers in filing grievances,

(9) To assist in transitioning consumers who are committed to the Oklahoma Forensic Center pursuant to 22 O.S. §§1175.1 et seq. to appropriate alternative placements in accordance with 22 O.S. §§1175..1. et seq.

(10) To file habeas corpus or writ of mandamus actions on behalf of individuals receiving services from facilities operated by, subject to certification by or under contract with the Department, and appear on their behalf in civil commitment and criminal post-commitment proceedings, and appear on behalf of Department consumers in proceedings for writs of habeas corpus or mandamus.

(11) To monitor and review grievance procedures in facilities operated by, subject to certification by or under contract with the Department.

(12) To assist consumers in filing grievances and to review and take appropriate action to resolve unresolved grievances and allegations of improper treatment of individuals receiving services from facilities operated by the Department.

(13) To be proactive and assist in the overall improvement of behavioral system and service delivery related to consumers.

(~~13~~14) To perform other duties as assigned by the Board or Commissioner.

PART 2. INVESTIGATIONS

450:15-7-6. Reporting suspected maltreatment

(a) **Reporting Requirements.** ODMHSAS employees who have reason to believe that maltreatment of a consumer has occurred shall report such information to the ODMHSAS Inspector General. This reporting requirement also extends to employees of facilities which contract with or are certified by ODMHSAS. Persons unsure of what to report are directed call the Inspector General at 1-405-522-~~4058~~ 8418 or 1-877-426-4058. Questions regarding this reporting requirement may also be made by e-mailing: InspectorGeneral@odmhsas.org.

(b) **Method of Reporting.** Any person obligated to report an allegation of maltreatment of consumers, including but not limited to suspected abuse, neglect, mistreatment, or exploitation of consumers shall contact the Inspector General

in Oklahoma City, Oklahoma by telephone (1-405-522-~~4058~~ 8418 or 1-877-426-4058) twenty-four (24) hours a day, seven (7) days a week. Reports may also be made by e-mailing: InspectorGeneral@odmhsas.org or by faxing a critical incident report to 1-405-522-6851.

(c) All facilities that are certified by, operated by, or contracted with the Department shall post the contact information for the ODMHSAS Office of Inspector General and ODMHSAS Office of Consumer Advocacy prominently in each consumer treatment unit and in consumers admissions, visiting and public areas.

450:15-7-9. Investigation procedures

(a) The Department shall conduct a prompt investigation of the maltreatment allegation and shall be subject to the ODMHSAS Investigations policy. The investigator shall contact the applicable facility executive director, or designee, to arrange for document production, site visits and interviews.

(b) The Department shall have the authority to access facilities operated by, subject to certification by or under contract with the Department. Reasonable access shall be granted for the purposes of conducting investigations of maltreatment of a consumer including, but not limited to abuse, neglect and improper treatment. These investigations may be unannounced and or unscheduled as determined by the Department.

(c) The applicable facility executive director, or designee, shall arrange for the investigator to have immediate and direct access to the alleged victim(s) in the report who is still a consumer of the facility. During an investigation, the facility shall provide the investigator access to all employees, consumers or clients, facilities, files and records of any nature that may pertain to the investigation. Denial of access may be grounds for termination of a contract between ODMHSAS and a contractor or revocation, non-renewal or suspension of certification or both.

(d) Interference includes, but is not limited to:

(1) Intimidating, harassing or threatening a party to the investigation;

(2) Retaliation against a consumer or employee for reporting an allegations; or

(3) Denial of investigator access to clients, employees, facilities, witnesses, records or other relevant information as requested by the investigator.

450:15-7-14. Investigative interviews

The investigator shall interview or attempt to interview persons known or identified to have information about the maltreatment allegation. If an injury is alleged, the investigator or other appropriate person shall observe and note apparent injuries, and obtain pertinent medical documentation, including photographs. An attorney or other representative of the person being interviewed may attend an interview only as a silent observer with prior permission of the Department.

(1) The Department shall conduct a separate private interview with each alleged victim, available witnesses to the alleged maltreatment, and persons who allegedly were directly or indirectly involved in the allegation, persons with knowledge of relevant information, and each individual accused of the maltreatment. When possible, all other witnesses shall be interviewed prior to interviewing the accused individual(s).

(2) The investigator shall tape record interviews. Tape recordings of interviews remain with the Department's investigative file. Investigative files and tape recordings are not public documents due to the confidential and privileged information contained in the interviews.

(3) The investigator shall inform persons interviewed of the investigative process.

(4) The investigator shall verbally inform each accused individual of the allegation(s). The name of the person making the report of the allegation shall not be disclosed.

(5) During the interview with an individual accused of maltreatment of a consumer, the investigator shall provide the individual an opportunity to respond to the allegation(s). Following the initial interview, if the investigator obtains information to which the accused individual did not have an opportunity to respond, the investigator shall conduct another interview with the individual. The investigator shall advise the accused individual of the substance of the new information and provide an opportunity to present a response.

(6) If there is a need to interview a person who is deaf, hard of hearing, or is non-English speaking, the investigator, with the assistance of the Office of Consumer Advocacy, shall arrange oral or sign language interpreter services by an independent and qualified interpreter.

(7) To schedule an interview with an accused individual, the investigator shall contact the executive director of the facility, or designee, or provider that employs the accused individual. If a reasonable time has passed without being able to schedule an interview, the investigator shall contact the executive director of the facility, or designee, or provider to request the employee be required to participate. If the accused individual refuses to participate in the investigation, the report shall be completed without the accused individual's statement and a finding shall be made based on available information. For other persons needing to be interviewed, the investigator shall follow the same.

(8) If a person fails to appear for a scheduled interview without good cause, the investigator shall complete the investigative report without interviewing that person. The investigative report shall include an explanation of why the interview was not conducted, including documentation of efforts to interview the person.

450:15-7-15. Investigative report and findings

(a) After completing the information-gathering portion of the investigative process, the investigator shall prepare a written investigative report minimally containing:

(1) The allegation(s) made to the Department, the location of the alleged incident(s), and the assigned case number;

(2) A statement of any injuries sustained by the alleged victim(s);

(3) The applicable definition(s) of the type of maltreatment at issue such as abuse, neglect, exploitation, or mistreatment;

(4) The finding(s) in accordance with subsection (b) of this Section;

(5) A list of the involved parties, their titles and role in the matter, if they were interviewed and, if so, when and if interviewed face to face or by telephone;

(6) The name, address, and telephone numbers of any interpreter used during the investigation;

(7) An explanation of the basis for the finding(s);

(8) Any areas of concern relating to the referral identified during the investigation regarding that facility, that provider, or practices or procedures which have implications for the safety, health, or welfare of clients;

(9) A list of relevant documents and records reviewed during the investigation; and

(10) A list of attachments to the report.

(b) The investigative finding options are:

(1) **"Supported"** which means the available information establishes that it is more likely than not that the alleged abuse, neglect, or mistreatment occurred;

(2) **"Unsupported"** which means the available information established that it is unlikely that the alleged abuse, neglect, or mistreatment occurred; or

(3) **"Inconclusive"** which means the available information was not sufficient to establish whether or not the alleged abuse, neglect, or mistreatment occurred.

(c) Except as otherwise specifically provided in this section and as otherwise provided by state or federal laws, the information, records, materials and reports related to investigations by the Department are confidential and contain privileged information. Accordingly, such records, materials and reports shall not be open to public inspection nor their contents disclosed nor shall a subpoena or subpoena duces tecum purporting to compel disclosure of such information be valid pursuant to 43A O.S. §1-109(C).

(d) An order of the court authorizing the inspection, release or disclosure of information, records, material and reports related to investigations by the Department shall be entered by a court only after a review of the records and a determination, with due regard for confidentiality of the information and records and the privilege of the persons identified in the records that a compelling reason exists, any applicable privilege has been waived and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

(e) The Department shall provide results of investigations as follows:

(1) A copy of the final investigative report shall be sent to the Commissioner, designated Deputy Commissioner, the Chief Operating Officer, the General Counsel and the executive director of the appropriate ODMHSAS operated facility.

(2) When an executive director of a facility that is operated by the Department is named as an individual accused of maltreatment of a consumer in the allegation, the final report will not be forwarded to that individual.

(3) A summary of the allegation and finding shall be sent to the executive director of a facility that is subject to certification by or under contract with the Department.

(4) When an executive director of a facility that is subject to certification by or under contract with the Department is named as an individual accused of maltreatment of a consumer in the allegation, a summary of the investigative report shall not be forwarded to that individual, and the investigator shall forward a summary of the investigative report to the chair of the board of directors of the facility.

(5) A summary of the allegations and finding shall be provided to the Board and a copy of the report shall be provided upon request of the Board.

(6) The Department shall notify individuals ~~the person suspected of the abuse, neglect or improper treatment and the person subject to the alleged abuse, neglect, or improper treatment~~ of the Department's findings as laid out in the Department's Investigations Policy.

(7) Upon request, the Department may summarize the outcome of an investigation, stating the allegation and the finding. The summary may be provided to the person suspected of the abuse, neglect or improper treatment, the person subject to alleged abuse, neglect or improper treatment, the person who reported an allegation and the executive director of a facility certified by or under contract with the Department at which the alleged abuse, neglect, or improper treatment occurred.

(f) The Department shall maintain the original report, supporting documents, and pertinent recorded tapes in locked file cabinets in accordance with the applicable ODMHSAS records management and disposition plan.

~~(g) The Department shall submit a report of the results of investigations of abuse to the appropriate district attorney and, if the individual is a juvenile in the custody of a state agency, submit a report to that state agency.~~

[OAR Docket #11-396; filed 4-14-11]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 50. STANDARDS AND CRITERIA FOR CERTIFIED BEHAVIORAL HEALTH CASE MANAGERS

[OAR Docket #11-397]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
450:50-1-2. Definitions [AMENDED]
Subchapter 3. Behavioral Health Case Manager Certification Application
450:50-3-1. Qualifications for certification [AMENDED]
450:50-3-2. Applications for certification [AMENDED]
450:50-3-7. Classifications of Certified Behavioral Health Case Managers [AMENDED]
Subchapter 5. Behavioral Health Case Manager Certification Training and Web-based Competency Exam

450:50-5-1. Case management certification training [AMENDED]
450:50-5-5. Web-based competency exam [AMENDED]
Subchapter 7. Rules of Professional Conduct
450:50-7-5. Failure to comply [AMENDED]

AUTHORITY:
Oklahoma Department of Mental Health and Substance Abuse Services Board; 43A O.S. §§ 2-101, 3-306 and 3-318.

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SUPERSEDED EMERGENCY ACTIONS:
N/A

INCORPORATIONS BY REFERENCE:
N/A

ANALYSIS:
In accordance with the Administrative Procedures Act the proposed rule revisions to Chapter 50 are part of the Department's review of Title 450. The proposed rules clarify existing rules and are intended to comply with statutory changes.

CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3879.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

450:50-1-2. Definitions

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

"Board" means the State Board of Mental Health and Substance Abuse Services.

"Case management" means the application of principles and practices of linking, advocacy and referral in partnership with a consumer to support the consumer in self-sufficiency and community tenure.

"Certified Behavioral Health Case Manager or CB-HCM" means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health case management services as one of the three (3) classifications of case manager within the confines of a mental health facility or drug or alcohol treatment facility that is operated or certified by the Department or contracts with the State to provide behavioral health services.

"Commissioner" means the Commissioner of Mental Health and Substance Abuse Services.

"Consumer" means an individual who is receiving or has received services

(evaluation or treatment) from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts and includes all persons referred to in Title 450, Chapters 16, 17, 18, 19 and 23 of the Oklahoma Administrative Code as client(s) or patient(s) or resident(s) or a combination thereof.

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

"Licensed Behavioral Health Professional" or "LBHP" means: 1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry. 2) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the following licensing boards: (A) Psychology; (B) Social Work (clinical specialty only); (C) Professional Counselor; (D) Marriage and Family Therapist; (E) Behavioral Practitioner; or (F) Alcohol and Drug Counselor. 3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided. 4) A Physician Assistant who is licensed in good standing in the state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.

"Licensed mental health professional" or **"LMHP"** as defined in Title 43A §1-103 (11).

"Provisionally Certified Behavioral Health Case Manager" means a person who has met the requirements of the Department's web-based competency exam in behavioral health case management.

"Web-Based Competency Exam" as prescribed by the Department is a compeency exam individuals must pass to become provisionally or fully certified.

"36-Months Experience" means twenty (20) or more hours work or volunteer experience per week over the course of time indicated with persons living with mental illness and/or substance abuse.

SUBCHAPTER 3. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION APPLICATION

450:50-3-1. Qualifications for certification

(a) Each applicant for certification as a behavioral health case manager shall:

(1) Be currently employed at a mental health facility, or a drug or alcohol treatment facility that is operated ~~or certified~~ by the Department or contracts with the State to provide behavioral health services;

(2) Possess good moral turpitude;

(3) Be at least 21 years of age; and

(4) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-318.

(b) In addition to the qualifications specified by subsection (a) of this rule, an applicant for a certification as a Certified Behavioral Health Case Managers shall possess one of the following:

(1) Licensed Behavioral ~~Mental~~ Health Professional ~~or Licensed Alcohol and Drug Counselor~~;

(2) ~~bachelor's or master's degree in a behavioral health related field which includes but is not limited to psychology, social work, occupational therapy, family studies, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency studies, school guidance and counseling, rehabilitative services, sociology, or criminal justice,~~ Any bachelors or masters degree earned from a regionally accredited college or university recognized by the United States Department of Education; ~~,~~

(3) a current license as a registered nurse in Oklahoma with experience in behavioral health care; ~~, or~~

(4) a current certification as an alcohol and drug counselor in Oklahoma; or

(~~3~~5) Have one of the following qualifications:

(A) Have completed 60 college credit hours; or

(B) High school diploma, or equivalent, with 36 total months of direct, documented experience working with persons who live with a mental illness and/or substance abuse issues.

450:50-3-2. Applications for certification

(a) Applications for certification as a Certified Behavioral Health Case Manager shall be submitted electronically to the Department on a form and in a manner prescribed by the Commissioner or designee.

(b) An application shall include the following items.

(1) Application form completed in full according to its instructions;

(2) Official college or university transcript(s); not required if submitting documentation of current status as a Licensed Behavioral Health Professional in the state of Oklahoma or current licensure as a registered nurse in the state of Oklahoma, or documentation of current certification as an alcohol and drug counselor in Oklahoma ;

(3) Documentation of current status as a ~~licensed mental~~ Licensed Behavioral Health Professional ~~health professional~~ in the state of Oklahoma ~~or documentation of current license as an alcohol and drug counselor in the state of Oklahoma~~, or current licensure as a registered nurse in the state of Oklahoma ~~to evidence completion of a completed bachelor's degree~~;

(4) Fees

(5) Verification of work experience or volunteer experience (if applicable) shall be submitted on a Department approved form only

(A) The verification form(s) from the employer or volunteer agency must be sent to ODMHSAS by the employer or volunteer agency.

(B) Volunteer work must be time spent directly with persons who have a mental illness, co-occurring or substance abuse disorder.

(c) A complete application must be submitted at least fourteen (14) days prior to attending Certified Behavioral Health Case Manager certification training.

(d) Applications shall be submitted and approved by the Department prior to eligibility of taking the case management exam.

(e) Applications shall only be valid for a period up to six (6) months.

(f) Applicants shall have no violations of moral turpitude or misconduct as set forth in these rules during time of application process.

(g) An applicant, who meets the requirements for certification and otherwise complied with this Chapter, shall be eligible for certification.

450:50-3-7. Classifications of Certified Behavioral Health Case Managers

(a) Certified Behavioral Health Case Manager III: Licensed ~~Mental~~ Behavioral Health Professional ~~or Licensed Alcohol and Drug Counselor~~;

(b) Certified Behavioral Health Case Manager II: any bachelor's or master's degree ~~in a behavioral health related field which includes but is not limited to psychology, social work, occupational therapy, family studies, human resources/services counseling, human developmental psychology, gerontology, early childhood development, chemical dependency studies, school guidance and counseling, rehabilitative services, sociology, or criminal justice,~~ earned from a regionally accredited college or university recognized by the United States Department of Education, or a current license as a registered nurse in Oklahoma, or a current certification as an alcohol and drug counselor in Oklahoma; or

(c) Certified Behavioral Health Case Manager I: have completed 60 college credit hours; or High school diploma (or equivalent) with 36 total months of experience working with persons who have a mental illness and/or substance abuse issues.

SUBCHAPTER 5. BEHAVIORAL HEALTH CASE MANAGER CERTIFICATION TRAINING AND WEB-BASED COMPETENCY EXAM

450:50-5-1. Case management certification training

(a) The purpose of this section is to delineate the training requirements for each of the three classifications of Certified Behavioral Health Case Managers (CBHCM).

(b) The Department shall have the authority and responsibility for providing case management training classes on a regular basis but no less than six times during the year.
(c) Certified Behavioral Health Case Manager I Training requirements - Meet the requirements for successful completion of the web-based competency exam and complete fourteen (14) hours of case management training as specified by the department.
(d) Certified Behavioral Health Case Manager II Training requirements - Meet the requirements for successful completion of the web-based competency exam and complete seven (7) hours of case management training as specified by the department.
(e) Certified Behavioral Health Case Manager III Training Requirements - Meet the requirements for successful completion of the web-based competency exam.
(f) Case management certification training must be completed within six (6) months of passing the exam ~~during the provisional certification period~~. Once the ~~provisional certification~~ six (6) month period has ended, an applicant ~~the provisionally certified case manger~~ that has not completed the training must wait a period of sixty (60) days before reapplying, and shall submit a new application.
(g) Enrollment to the certification training is not permitted without the successful completion of the web-based competency exam.

450:50-5-5. Web-based competency exam

(a) ~~Applicants passing the web-based competency exam will be provisionally certified as a Certified Behavioral Health Case Manager I or II for six months.~~ CBHCM III applicants passing the web-based competency exam will become fully certified. Those applicants who meet criteria for CBHCM I or II will have six (6) months after passing the web-based competency exam to complete the case management certification training.
(b) The web-based competency exam shall not be administered until approval from ODMHSAS has been received.
(c) Applicants shall comply with the rules of the examination process as outlined by the contracted testing site.
(d) Applicants who fail to complete and pass the web-based competency exam within six (6) months of application must reapply.

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

450:50-7-5. Failure to comply

~~A provisionally certified~~ An approved case management applicant or Certified Behavioral Health Case Manager who does not comply with the Rules of Professional Conduct (450:50-7-1) or consumer welfare (450:50-7-2) shall be guilty of unprofessional conduct and subject to disciplinary action.

[OAR Docket #11-397; filed 4-14-11]

TITLE 450. DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
CHAPTER 53. STANDARDS AND CRITERIA FOR CERTIFIED PEER RECOVERY SUPPORT SPECIALISTS

[OAR Docket #11-398]

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PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
450:53-1-1. Purpose [NEW]
450:53-1-2. Definitions [NEW]
450:53-1-3. Authority of the Commissioner and Department [NEW]
Subchapter 3. Peer Recovery Support Specialists Certification Application [NEW]
450:53-3-1. Qualifications for certification [NEW]
450:53-3-2. Applications for certification [NEW]
450:53-3-3. Duration of certification [NEW]
450:53-3-4. Fees [NEW]
450:53-3-5. Fitness of applicants [NEW]
Subchapter 5. Peer Recovery Support Specialists Certification, Training, Exam and CEU's [NEW]
450:53-5-1. Peer Recovery Support Specialists minimum education requirements [NEW]
450:53-5-2. Peer Recovery Support Specialists certification examination [NEW]
450:53-5-3. Continuing education requirements [NEW]
Subchapter 7. Rules of Professional Conduct [NEW]
450:53-7-1. Responsibility [NEW]
450:53-7-2. Competence and scope of practice [NEW]
450:53-7-3. Proficiency [NEW]
450:53-7-4. Wellbeing of the people served [NEW]
450:53-7-5. Professional standards [NEW]
450:53-7-6. Reimbursement for services rendered [NEW]
450:53-7-7. Failure to comply [NEW]
450:53-7-8. Personal Problems and Conflicts [NEW]
Subchapter 9. Enforcement [NEW]
450:53-9-1. Enforcement [NEW]
450:53-9-2. Reasons to deny, revoke or suspend certification [NEW]
Subchapter 11. Grandfathering [NEW]
450:53-11-1. Grandfathering [NEW]
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N/A
ANALYSIS:
In accordance with the Administrative Procedures Act, the proposed rules implement 43A O.S. §3-326, which authorizes the Board of ODMHSAS, or the Commissioner upon delegation by the Board, to certify peer recovery support specialists. Section 3-326 became effective on November 1, 2010, and requires the Board to promulgate rules and standards for certification of peer recovery support specialists.
CONTACT PERSON:
Gretchen Geis, Administrative Rules Liaison, Department of Mental Health and Substance Abuse Services, Post Office Box 53277, Oklahoma City, Oklahoma 73152-3277, (405) 522-3879.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

450:53-1-1. Purpose

This Chapter implements 43A O.S. § 3-326, which authorizes the Board of Mental Health and Substance Abuse Services, or the Commissioner upon delegation by the Board, to certify Peer Recovery Support Specialists. Section 3-326 requires the Board to promulgate rules and standards for certification of Peer Recovery Support Specialists addressing criteria and fees for certification and renewal, including minimum education requirements, examination and supervision requirement, continuing education requirements, professional standards, and rules of professional conduct.

450:53-1-2. Definitions

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

"Board" means the State Board of Mental Health and Substance Abuse Services.

"Certified Recovery Support Specialists, C-RSS or C-PRSS" means any person who is certified by the Department of Mental Health and Substance Abuse Services to offer behavioral health services as provided in this Chapter.

"Commissioner" means the Commissioner of Mental Health and Substance Abuse Services.

"Employed" means, for purposes of this chapter only, a person that is either working as a paid employee or as a volunteer for the state, a behavioral service provider or an advocacy agency contracting with the state to provide behavioral health services.

"Exam" as prescribed by the Department, is an exam individuals must pass to become certified.

"Consumer" means an individual, adult or child, who has applied for, is receiving or has received mental health or substance abuse evaluation or treatment services from a facility operated or certified by ODMHSAS or with which ODMHSAS contracts.

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

"Dual relationship" means a familial, financial, business, professional, close personal, sexual or other non-therapeutic relationship with a consumer, or engaging in any activity with another person that interferes or conflicts with the Certified Peer Recovery Support Specialists' professional obligation to a consumer.

"Recovery" for purposes of this chapter only refers to a journey of healing and transformation enabling a person a mental health and/or substance abuse diagnosis to live a meaningful life in the community of his or her choice while striving to achieve his or her full potential. The process of recovery leads individuals toward the highest level of autonomy of which they are capable. Key characteristics of recovery include:

(A) Recovery is self directed, personal and individualized (not defined by treatment providers or agencies);

(B) Recovery is holistic. Recovery is a process through which one gradually achieves greater balance of mind, body and spirit in relation to other aspects of one's life that can include family, work and community;

(C) Recovery moves beyond symptom reduction and relief (i.e. meaningful connections in the community, overcoming specific skill deficits, establishing a sense of quality and well-being);

(D) Recovery is both a process of healing (regaining) and a process of discovery (moving beyond);

(E) Recovery encompasses the possibility for individuals to test, make mistakes and try again; and

(F) Recovery can occur within or outside the context of professionally directed treatment.

450:53-1-3. Authority of the Commissioner and Department

(a) The Commissioner or designee shall have the authority and duty to issue, renew, revoke, deny, suspend and/or place on probation certifications to offer peer recovery support services.

(b) The Department shall have authority to:

(1) Receive and deposit fees as required by 43A O.S. § 3-326(C);

(2) Examine all qualified applicants for Certified Peer Recovery Support Specialists training and certification;

(3) Investigate complaints and possible violation of the rules and standards of Peer Recovery Support Specialists;

(4) Make recommendations regarding the outcome of formal complaints;

(5) Enforce the recommendations of the formal complaint process.

SUBCHAPTER 3. PEER RECOVERY SUPPORT SPECIALISTS CERTIFICATION APPLICATION

450:53-3-1. Qualifications for certification

Each applicant for certification as a Peer Recovery Support Specialists shall:

(1) Possess a High School Diploma or General Equivalency Diploma (GED);

(2) Have demonstrated recovery from a mental illness, substance abuse disorder or both;

(3) Be at least 18 years of age;

(4) Be willing to self disclose about their own recovery;

(5) Be employed by or volunteer with the state, a behavioral service provider or an advocacy agency contracting with the state to provide behavioral health services.

(6) Possess good moral character;

(7) Pass an examination based on standards promulgated by ODMHSAS pursuant to 43A O.S. § 3-326;

(8) Not be engaged in any practice or conduct which would be grounds for denying, revoking or suspending a certification pursuant to this title; and

(9) Otherwise comply with rules promulgated by the Board implementing 43A O. S. § 3-326.

450:53-3-2. Applications for certification

(a) Applications for certification as a Peer Recovery Support Specialist shall be submitted to the Department on a form and in a manner prescribed by the Commissioner or designee.

(b) An application shall include the following items:

(1) Application form completed in full according to its instructions;

(2) Application fee shall be submitted in an amount up to $50.00;

(3) Documentation of current status as being employed by the state of Oklahoma, by a behavioral service provider, or advocacy agency contracting with the state to provide behavioral health services;

(4) The employment status verification form(s) from the employer must be sent to ODMHSAS by the employer;

(5) Official high school transcript or General Equivalency Diploma (GED);

(6) Documentation of age; and

(7) Detailed information, as requested on the application, demonstrating recovery from a mental illness, substance abuse disorder or both.

(c) An applicant, who meets the requirements for certification and otherwise complied with the Chapter, shall be eligible for certification.

(d) A complete application must be submitted at least fourteen (14) days prior to attending Peer Recovery Support Specialists training.

(e) Applications shall be submitted and approved by the Department prior to eligibility of taking the C-PRSS training.

(f) Applications shall only be valid for a period up to six (6) months.

450:53-3-3. Duration of certification

(a) Certification issued pursuant to this Chapter shall require renewal annually unless revoked. Certified Peer Recovery Support Specialists must renew their certification prior to December 31st of the renewal year.

(b) Renewal shall be accomplished by submitting the annual report of continuing education units (CEU's) with accompanying documentation and the renewal fee.

(c) A certification not renewed by the December 31st deadline will be suspended. Submitting required documentation of continuing education units along with required fees within six (6) months of the expiration date shall renew a suspended certification. Certificates not renewed within six (6) months will not be reinstated and shall result in forfeiture of the rights and privileges granted by the certification.

(d) A certification that was not renewed within the period provided and was not reinstated must wait a period of sixty (60) days before reapplying and shall submit a new application.

450:53-3-4. Fees

(a) **Application Fee. The application fee** shall be submitted with the application form. The application fee shall not exceed fifty dollars ($50.00).

(b) **Renewal Fee. The renewal fee** shall be submitted with the renewal form and required continuing education documentation. The renewal fee shall not exceed twenty-five dollars ($25.00).

450:53-3-5. Fitness of applicants

(a) The purpose of this section is to establish the fitness of the applicant as one of the criteria for approval of certification as a Certified Peer Recovery Support Specialists and to set forth the criteria by which the Commissioner or designee shall determine the fitness of the applicants.

(b) The substantiation of any of the following items related to the applicant shall be, as the Commissioner or designee determines, the basis for the denial of or delay of certification of the applicant:

(1) Lack of necessary skills and abilities to provide adequate services;

(2) Misrepresentation on the application or other materials submitted to the Department; or

(3) Any action that would otherwise be considered a violation of the rules of professional conduct set forth in this Chapter.

(4) The Department shall obtain document(s) necessary to determine the fitness of an applicant.

(5) The Department may require explanation of negative references prior to issuance of certification.

SUBCHAPTER 5. PEER RECOVERY SUPPORT SPECIALISTS CERTIFICATION, TRAINING, EXAM AND CEU'S

450:53-5-1. Peer Recovery Support Specialists minimum education requirements

The purpose of this section is to delineate the training requirements for the Certified Peer Recovery Support Specialists.

(1) The Department shall have the authority and responsibility for providing Peer Recovery Support Specialists training classes a minimum of three times during the year.

(2) Request for attending the certification training must be made to the Department fourteen (14) days prior to the beginning of scheduled classes.

(3) In order to fulfill the certification training requirements, an applicant must attend and complete a forty (40) hour PRSS training block covering various aspects of recovery, ethics and/or boundaries, mental health and substance abuse as specified by the Department.

(4) Applicants must attend the entire forty (40) hour training block. Absences are excused only for emergencies. An absence lasting over one day shall cause the trainee to be subject to retaking the entire forty (40) hour training block at the next scheduled training course.

(5) Applicants are responsible for completing homework during the forty (40) hour training block.

450:53-5-2. Peer Recovery Support Specialists certification examination

Examinations shall be held at such times, at such places and in such manner as the Commissioner or designee directs. The examination shall cover such technical, professional and practical subjects as relate to the practice of a Certified Peer Recovery Support Specialist.

(1) Certification exams are scheduled approximately one (1) week following the forty (40) hour training block.

(2) Certification exams consist of a written exam covering all aspects of the training block.

(3) An applicant must score at least a seventy-five percent (75%) to pass the exam and be certified. A score of seventy-four percent (74%) or less will result in an applicant being required to test again at the next scheduled test date.

(4) Applicants who fail to complete and pass the certification exam within six (6) months of application must reapply.

450:53-5-3. Continuing education requirements

(a) Certified Peer Recovery Support Specialists must complete twelve (12) hours of continuing education per year and submit documentation of attendance for the continuing education to the Department annually.

(b) The Department will use the following criteria to determine approval of acceptable CEU courses:

(1) Provides information to enhance delivery of Peer Recovery Support Services; or

(2) Meets the requirements for LPC, LMFT, LBP, LCSW, CADC, LADC, or CME continuing education; or

(3) Is a required undergraduate or graduate course in a behavioral health related field and pertains to direct interaction with consumers (three (3) hours of course work is equal to twelve (12) hours of CEUs); and

(4) At least three (3) of the continuing education hours must be in ethics.

(c) Certified Peer Recovery Support Specialists shall retain documents verifying attendance for all continuing education units claimed for the reporting period. Acceptable verification documents include:

(1) An official continuing education validation form or certificate furnished by the presenter indicating number of CEUs given for the course; and/or

(2) A copy of the agenda showing the content and presenter for the course.

(d) Failure to complete the continuing education requirements and submit the required documentation by the renewal date renders the certification in suspension, and results in the loss of all rights and privileges of a Certified Peer Recovery Support Specialists. The Certified Peer Recovery Support Specialists certification may be reinstated during a period of no longer than six (6) months following the suspension date. If not reinstated the certification shall become null and void.

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

450:53-7-1. Responsibility

It shall be the responsibility of Certified Peer Recovery Support Specialists, in their commitment to assist consumers in regaining control of their lives and recovery processes, to value objectivity and integrity, and in providing services, to strive to maintain the highest standards of their profession. Certified Peer Recovery Support Specialists shall accept responsibility for the consequences of their work and make every effort to ensure that their services are used appropriately. Certified Peer Recovery Support Specialists shall not participate in, condone, or be associated with dishonestly, fraud, deceit or misrepresentation. Certified Peer Recovery Support Specialists shall not exploit their relationships with consumers for personal advantage, profit, satisfaction, or interests.

450:53-7-2. Competence and scope of practice

(a) Peer Recovery Support services are an EBP model of care which consists of a qualified peer recovery support provider (PRSS) who assists individuals with their recovery from behavioral health disorders.

(b) A C-PRSS must possess knowledge about various mental health settings and ancillary services (i.e., Social Security, housing services, and advocacy organizations). Certified Peer Recovery Support Specialist (C-PRSS) provides peer support services; serves as an advocate; provides information and peer support. The C-PRSS performs a wide range of tasks to assist consumers in regaining control of their lives and recovery processes. The C-PRSS will possess the skills to maintain a high

level of professionalism and ethics in all professional interactions. Examples of a PRSS' scope of practice would including the following:

(1) Utilizing their knowledge, skills and abilities the PRSS will:

(A) Teach and mentor the value of every individual's recovery experience;

(B) Model effective coping techniques and self-help strategies;

(C) Assist service recipients in articulating personal goals for recovery;

(D) Assist service recipients in determining the objectives needed to reach his/her recovery goals;

(2) Utilizing ongoing training the PRSS may:

(A) Proactively engage consumers and possess communication skills / ability to transfer new concepts, ideas, and insight to others;

(B) Facilitate peer support groups;

(C) Assist in setting up and sustaining self-help (mutual support) groups;

(D) Support consumers in using a WRAP - Wellness Recovery Action Plan;

(E) Assist in creating a crisis plan/ Psychiatric Advanced Directive as instructed in the PRSS Training;

(F) Utilize and teach problem solving techniques with consumers.

(G) Teach consumers how to identify and combat negative self-talk and fears;

(H) Support the vocational choices of consumers and assist him/her in overcoming job-related anxiety;

(I) Assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;

(J) Assist other staff in identifying program and service environments that are conducive to recovery;

(K) Attend treatment team and program development meetings to ensure the presence of the consumer voice and to promote the use of self-directed recovery tools.

(3) Possess knowledge about various behavioral health settings and ancillary services (i.e. Social Security, housing services, advocacy organizations);

(4) Maintain a working knowledge of current trends and developments in the behavioral health field;

(A) Attend continuing education assemblies when offered by/approved by the Office of Wellness and Advocacy;

(B) Develop and share recovery-oriented material with other PRSS's at consumer-specific continuing education trainings.

(5) Serve as a PRSS by:

(A) Providing and advocating for effective recovery oriented services;

(B) Assist consumers in obtaining services that suit that individual's recovery needs;

(C) Inform consumers about community and natural supports and how to utilize these in the recovery process; and

(D) Assist consumers in developing empowerment skills through self-advocacy.

450:53-7-3. Proficiency

(a) Peer Support: C-PRSS shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state credentials, and appropriate professional and personal experience.

(b) Specialty: C-PRSS shall not represent themselves as specialists in any aspect unless so designated.

(c) Impairment: C-PRSS shall not offer or render professional services when such services may be impaired by a personal physical, mental or emotional condition(s). C-PRSS should seek assistance for any such personal problem(s) with their physical, mental or emotional condition, and, if necessary, limit, suspend, or terminate their professional activities. If a C-PRSS possesses a bias, disposition, attitude, moral persuasion or other similar condition that limits his or her ability to provide peer recovery support services in that event the C-PRSS shall not undertake to provide services and will terminate the relationship in accordance with these rules.

450:53-7-4. Wellbeing of the people served

(a) **Discrimination.** C-PRSS shall not, in the rendering of their professional services, participate in, condone, or promote discrimination on the basis of race, color, age, gender, religion or national origin.

(b) **Confidentiality.** C-PRSS shall maintain the confidentiality of any information received from any person or source about a client, unless authorized in writing by the client or otherwise authorized or required by law or court order.

C-PRSS shall be responsible for complying with the applicable state and federal regulations in regard to the security, safety and confidentiality of any counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.

(c) **Dual relationships.** C-PRSS shall not knowingly enter into a dual relationship(s) and shall take any necessary precautions to prevent a dual relationship from occurring. When the C-PRSS reasonably suspects that he or she has inadvertently entered into a dual relationship the C-PRSS shall record that fact in the records of the affected person(s) and take reasonable steps to eliminate the source or agent creating or causing the dual relationship. If the dual relationship cannot be prevented or eliminated and the C-PRSS cannot readily refer the person to another C-PRSS, the C-PRSS shall complete the following measures as necessary to prevent the exploitation of the person and/or the impairment of the C-PRSS's professional judgment:

(1) Consult with the C-PRSS supervisor to understand the potential impairment to the C-PRSS's professional judgment and the risk of harm to the person of continuing the dual relationship.

(2) Fully disclose the circumstances of the dual relationship to the consumer and secure the consumer's written consent to continue providing services.

(d) **Providing services to persons of prior association.** C-PRSS' shall not undertake to provide services to any person

with whom the C-PRSS' has had any prior sexual contact or close personal relationship.

(e) **Interaction with former people with whom a C-PRSS has provided services.** C-PRSS shall not knowingly enter into a close personal relationship, or engage in any business or financial dealings with a former recipient of service. C-PRSS shall not engage in any activity that is or may be sexual in nature with a former recipient of service after the termination of the professional relationship. C-PRSS shall not exploit or obtain an advantage over a former recipient of services by the use of information or trust gained during the peer recovery support professional relationship.

(f) **Invasion of privacy.** C-PRSS shall not make inquiry into persons or matters that are not reasonably calculated to assist or benefit the peer recovery support process.

(g) **Referral.**

(1) If C-PRSS determine that they are unable to be of professional assistance to a client, the C-PRSS shall not enter a professional relationship. C-PRSS shall refer people to appropriate sources when indicated. If the person declines the suggested referral, the C-PRSS shall terminate the relationship.

(2) C-PRSS shall not abandon or neglect current recipients of service in treatment without making reasonable arrangements for the continuation of such treatment.

(3) When an C-PRSS becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the C-PRSS's duty of responsibility to the current client, including a suspension of the C-PRSS's certification or any other situation or condition described in these rules, the C-PRSS shall promptly notify the recipient of service and the facility in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the relationship.

450:53-7-5. Professional standards

(a) It shall be the responsibility of Certified Peer Recovery Support Specialists (C-PRSS), in their commitment to peer support, to value self-determination, and in providing peer services, and to strive to maintain the highest standards of their profession.

(b) C-PRSS shall accept responsibility for the consequences of their work and make every effort to ensure that their services are used appropriately.

(c) It shall be unprofessional conduct for a C-PRSS to violate a state or federal statute, if the violation directly relates to the duties and responsibilities of the C-PRSS or if the violation involves moral turpitude.

(d) C-PRSS shall not render peer recovery support services while under the influence of alcohol or illegal drugs.

450:53-7-6. Reimbursement for services rendered

Certified Peer Recovery Support Specialists shall practice Recovery Support Services only if employed by the State, by behavioral health services providers or an advocacy agency contracting with the state to provide behavioral health services. Reimbursement for services rendered will not be collected outside of the agency's system of service reimbursement.

450:53-7-7. Failure to comply

A Certified Peer Recovery Support Specialists who does not comply with the Rules of Professional Conduct shall be guilty of unprofessional conduct and subject to disciplinary action.

450:53-7-8. Personal Problems and Conflicts

(a) Certified Peer Recovery Support Specialists shall refrain from initiating an activity when they know or should know that there is a substantial likelihood that their personal problems will prevent them from performing their work-related activities in a competent manner.

(b) When Certified Peer Recovery Support Specialists become aware of personal problems that may interfere with their performing work-related duties adequately, they should take appropriate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties.

SUBCHAPTER 9. ENFORCEMENT

450:53-9-1. Enforcement

(a) ODMHSAS may deny the certification of any person to be a Certified Peer Recovery Support Specialists who fails to qualify for, or comply with, the provisions of this Chapter.

(b) ODMHSAS may reprimand, suspend, revoke or deny renewal of the certification of a person who fails to qualify for or comply with the provisions of this Chapter.

(c) In the event ODMHSAS determines action should be taken against any person certified under this Chapter, the proceeding shall be initiated pursuant to the rules of ODMHSAS as set forth in Oklahoma Administrative Code, Title 450, Chapter 1, Subchapter 5 and the Administrative Procedures Act.

450:53-9-2. Reasons to deny, revoke or suspend certification

(a) The Department may deny, revoke, suspend or place on probation any certification issued pursuant to the provisions of 43A O.S. § 3-326 to a Peer Recovery Support Specialist, if the person has:

(1) Engaged in fraud or deceit in connection with services rendered or in establishing needed qualifications to the provisions of the law;

(2) Engaged in unprofessional conduct as defined by the rules established by ODMHSAS;

(3) Engaging in negligence or wrongful actions in the performance of his/her duties; or

(4) Misrepresented any information required in obtaining a certification.

(b) No certification shall be suspended or revoked, nor a Peer Recovery Support Specialist placed on probation until notice is

served upon the Peer Recovery Support Specialist and a hearing is held in conformity with 450:1-1-1, et. seq.

SUBCHAPTER 11. GRANDFATHERING

450:53-11-1. Grandfathering

(a) Upon request, individuals Credentialed as Peer Recovery Support Specialists by the Oklahoma Department of Mental Health and Substance Abuse Services as of June 1, 2009 through the effective date of this Chapter shall be issued Certification as a Certified Peer Recovery Support Specialist as provided in this Chapter.

(b) Upon request, individuals Credentialed as Peer Recovery Support Specialists by the Oklahoma Department of Mental Health and Substance Abuse Services from December 1, 2004 through May 31, 2009 that have demonstrated providing peer support in their employment, volunteerism or advocacy to others as peers shall be issued Certification as a Certified Peer Recovery Support Specialist as provided in this Chapter.

[OAR Docket #11-398; filed 4-14-11]

TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 30. APPRAISAL MANAGEMENT COMPANY REGISTRATION

[OAR Docket #11-480]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
600:30-1-1. Purpose [NEW]
600:30-1-2. Definitions [NEW]
600:30-1-3. Certificate of Registration [NEW]
600:30-1-4. Application process [NEW]
600:30-1-5. Renewal process [NEW]
600:30-1-6. Fee schedule [NEW]
600:30-1-7. Change of information [NEW]
600:30-1-8. Background investigations [NEW]
600:30-1-9. Business entities [NEW]
600:30-1-10. Recordkeeping [NEW]
600:30-1-11. Severability provision [NEW]
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600:30-1-1. Purpose [NEW]
600:30-1-2. Definitions [NEW]
600:30-1-3. Certificate of Registration [NEW]
600:30-1-4. Application process [NEW]
600:30-1-5. Renewal process [NEW]
600:30-1-6. Fee schedule [NEW]
600:30-1-7. Change of information [NEW]
600:30-1-8. Background investigations [NEW]
600:30-1-9. Business entities [NEW]
600:30-1-10. Recordkeeping [NEW]
600:30-1-11. Severability provision [NEW]
Gubernatorial approval:
November 15, 2010
Register publication:
28 Ok Reg 308
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10-1354
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The purpose of this regulatory language is to provide Appraisal Management Companies the means of registering with the Oklahoma Real Estate Appraiser Board and the Oklahoma Real Estate Appraiser Board with the means to register Appraisal Management Companies. Registration of appraisal management companies with state appraiser boards is a requirement imposed by the FIRREA Act of 1989 (12 U.S.C. § 3331 et seq.) as it was recently amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107 (405) 521-6636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2011:

600:30-1-1. Purpose

The purpose of this chapter is to define the prerequisites necessary to obtain an Appraisal Management Company registration and requirements to maintain the license or certification.

600:30-1-2. Definitions

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

"Applicant" means an entity or controlling person who has applied for a Certificate of Registration as an appraisal management company.

"Appraisal Management Company" or "AMC" means an entity that is required by the Oklahoma Appraisal Management Company Regulation Act, 59 O.S. § 858-801 et seq., to register with the Oklahoma Real Estate Appraiser Board.

"Appraisal management services" means, directly or indirectly, to perform or attempt to perform any one or more of

the following functions on behalf of a lender, financial institution, client or any other person:

(A) administer an appraiser panel;

(B) recruit,, qualify, verify licensing or certification, and negotiate fees and service level expectations with persons who are part of an appraiser panel;

(C) receive an order for an appraisal from one entity, and deliver the order for appraisal services for the appraisal services to an appraiser for completion;

(D) track and determine the status of orders for appraisers;

(E) conduct quality control of a completed appraisal prior to the delivery of the appraisal to the person who ordered the appraisal; or

(F) provide a completed appraisal performed by an appraiser to one or more clients.

"Appraisal Subcommittee" or **"ASC"** means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

"Appraiser" means an individual person who holds a credential as a Trainee Appraiser, State Licensed Real Estate Appraiser, State Certified Residential Real Estate Appraiser, or State Certified General Real Estate Appraiser; or a valid temporary practice permit issued by the Board entitling that individual person to perform an appraisal of real property in the State of Oklahoma consistent with the scope of practice identified in the Real Property Appraiser Qualification Criteria promulgated by the Appraiser Qualifications Board of The Appraisal Foundation.

"Board" or **"OK REAB"** means the Oklahoma Real Estate Appraiser Board.

"Certificate of Registration" means a certificate issued by the Board verifying the registration of a person or entity as being approved to conduct business in the State of Oklahoma as an AMC.

"Controlling Person" means one or more of the following:

(A) an owner, officer, manager, or director of a corporation, partnership, firm, association, limited liability company, or other business entity seeking to offer appraisal management services in this state,

(B) an individual employed, appointed, or authorized by an AMC that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals, or

(C) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an AMC.

"Department" means the Oklahoma Insurance Department.

"Designated Officer" means a Controlling Person authorized by the governing structure of the AMC in the manner contemplated by 59 O.S. § 858-810 (A) to act on its behalf in the manner contemplated by 59 O.S. § 858-810 (A) for purposes of application for, and compliance with, a Certificate of Registration to operate as an Appraisal Management Company pursuant to Oklahoma law. The Designated Officer shall be responsible for supervision and control of activities conducted on behalf of the AMC by its officers and employees as necessary to secure full compliance with the provisions of 59 O.S. § 858-801 et seq., including contract services provided to the AMC for the performance of appraisal activities for which an Oklahoma Real Estate Appraiser Board credential is required.

"Director" means the Director of the Oklahoma Real Estate Appraiser Board or his or her designee.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, and any amendments thereto.

"Registrant" means a person or entity authorized to conduct business as an AMC in Oklahoma memorialized by issuance of a Certificate of Registration by the Board.

"Registration" means the procedures and requirements with which a person or entity shall comply in order to qualify to conduct business as an AMC in the State of Oklahoma.

"TILA" means the Truth in Lending Act of 1968 (15 USC 1631 et seq.) and any amendments thereto.

600:30-1-3. Certificate of Registration

(a) Each Certificate of Registration shall show on its face in clear and concise language the following information:

(1) The name of the holder;

(2) The Certificate of Registration number;

(3) The dates of issuance and registration of the document; and

(4) Shall bear the signatures or facsimile signatures of the members of the Board.

(b) Each Certificate of Registration shall be valid for the term set forth on the face of the Certificate unless otherwise ordered by the Board.

Each Certificate of Registration shall remain the property of the OK REAB and shall be surrendered to the Director upon order of the Board.

(c) Every Certificate of Registration shall be valid for a period of one (1) year unless otherwise ordered by the Board.

(d) An AMC shall not be registered, nor may it be placed on the national registry if such entity, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser credential refused, denied, cancelled, surrendered in lieu of revocation, or revoked by any appraiser credentialing jurisdiction.

600:30-1-4. Application process

(a) Applications for Certificates of Registration for an AMC and for Controlling Persons and Designated Officers shall be submitted to the Board on forms approved by the Board and shall be subject to approval by the Board.

(b) Applicants for a Certificate of Registration shall apply by submitting an Appraisal Management Company Certificate of Registration Application form, REA-AMC-01.

(c) Applications for Certificates of Registration for AMCs shall be supported by a separate application for each Controlling Person and Designated Officer which shall be submitted on Controlling Person Application Form, REA-AMC-02.

(d) Appraisal Management Company Certificate of Registration forms and Controlling Person Application forms shall be supported by an irrevocable Uniform Consent to Service of Process.

600:30-1-5. Renewal process

(a) Certificates of Registration may be renewed for a period of one (1) year.

(b) Applications for renewal of a Certificate of Registration shall be submitted to the Board on forms which shall be prescribed by the Board.

(c) Registrants applying for renewal of a Certificate of Registration shall apply by submitting a Certificate of Registration Renewal Form, REA-AMC-03.

(d) Registrants may renew expired Certificates of Registration up to ninety (90) calendar days following expiration of the Certificate by submitting a Certificate of Registration Renewal Form, remitting all required fees plus a late fee.

(e) After a Certificate of Registration has been expired for a period of time in excess of ninety (90) calendar days, the Certificates of Registration may not be renewed. In order to acquire a Certificate of Registration, an AMC shall reapply as set forth in OAC 600:30-1-4.

600:30-1-6. Fee schedule

(a) It is the finding of the Board that the sum of the fees paid by all AMCs registering or renewing a registration under the Oklahoma Appraisal Management Company Regulation Act that would be sufficient for the administration of the Act requires that an annual fee of one thousand dollars ($1,000.00) be imposed.

(b) The Department shall charge and collect fees as follows:

(1) Certificate of Registration (original and renewal) $1,000.00

(2) Late Fee $100.00

(3) Dishonored Check Fee Costs of collection plus $25.00

(c) In addition, the Department shall charge and collect a National Registry Fee in such amount as may be assessed by the Appraisal Subcommittee for all AMCs holding a Certificate of Registration. Said fees shall be transmitted by the Department to the Appraisal Subcommittee.

(d) Notwithstanding any other provision, a Certificate of Registration shall be suspended instanter should payment of any fees be dishonored by the issuing institution for any reason. In such case, the Director shall take immediate steps to provide notification to the Appraisal Subcommittee for inclusion on the National Registry, and to notify the registrant that the Certificate of Registration has been suspended by certified mail, return receipt requested.

600:30-1-7. Change of information

(a) All applicants for and holders of a Certificate of Registration or approval as a Controlling Person or Designated Officer for an AMC shall submit written notice to the Board of any change to any of the following within ten (10) days following the change:

(1) Name,

(2) Residence telephone number,

(3) Residence address,

(4) Business name,

(5) Business address,

(6) Business telephone number, or

(7) Mailing address.

(b) Registrants shall report any changes of a Designated Officer or Controlling Person, including any changes to percentage of ownership within ten (10) days of the effective date of any such change.

(c) The business name, address and telephone number shall be considered the applicant's or registrant's address and telephone number of record for all purposes unless otherwise requested in writing by the applicant or registrant and shall be considered a matter of public record. If no business address is provided, the mailing address shall be the address of record.

600:30-1-8. Background investigations

(a) In order to comply with the provisions of FIRREA and qualify each registrant for inclusion on the national registry, each person who owns more than ten percent of an AMC, and each Designated Officer of an AMC shall be of good moral character, as determined by the Board, and shall submit to a background investigation carried out by the Board.

(b) Background investigations shall be accomplished by use of a form approved by the Board.

(c) Background investigations shall be conducted by a vendor selected by the applicant from the list of vendors set forth by the National Association of Insurance Commissioners, shall be conducted at the applicant's expense, and shall be transmitted directly from such vendor to the Board.

600:30-1-9. Business entities

If the registrant is other than a natural person, it shall provide supporting documents to the Board as part of both the registration and renewal process, proof that the entity is formed under the laws of this state or another state, district, territory, or possession of the United States by submitting the following:

(1) Articles of Incorporation, Articles of Organization, or Articles of Partnership as appropriate to the registrant, certified by the Secretary of State of Oklahoma.

(2) Certificate from the Secretary of State of Oklahoma certifying registrant's authority to conduct business within the State of Oklahoma

600:30-1-10. Recordkeeping

(a) Each registrant shall maintain records as follows:

(1) a detailed record of each service request that it receives for appraisal of real property located in Oklahoma, which shall include, but is not limited to, the following:

(A) a copy of the letter of engagement between the registrant and the appraiser,

(B) a copy of each appraisal report received from an appraiser, including the original report, any revised reports, and any addenda or other materials furnished subsequent to the delivery of the original report,

(C) copies of all correspondence between the appraiser and the registrant and any other entity involved in the transaction,

(D) a copy of the letter of engagement engaging another appraiser for the purpose of reviewing the appraisal,

(E) a copy of any review of the appraisal performed, including the original review report, subsequent correspondence between the reviewer and registrant, and each subsequent revised review report.

(F) a copy of the request received from the registrant's client, all documentation supplied to that client, all correspondence between client and registrant, and

(G) a record of fees disbursed to contracted appraisers and the fee received by the registrant from the registrant's client.

(2) copies of all appraiser fee schedules maintained and used by the registrant for the purpose of compliance with the provisions of TILA relating to reasonable and customary fees, which shall include evidence for such fees required by TILA. Such fee schedules shall include the beginning and ending effective dates for the document.

(3) copies of rosters of appraiser fee panels used for assignments in Oklahoma including the name of the appraiser, each appraiser's Oklahoma credential number, the date the appraiser was placed on the panel and the date and reason an appraiser was removed from the panel.

(b) Registrants shall maintain the records set forth above for a period of five (5) years. This five (5) year period shall commence on the date of final action for each individual transaction, or if the registrant is notified that the transaction in involved in litigation or is the subject of administrative action by the Board, or on the date of final disposition of such action.

(c) Registrants shall produce for inspection and copying by the Board, any record herein required to be maintained on receipt of reasonable notice by registrant. Reasonable notice shall be taken to mean not later than seven (7) calendar days following receipt of any such request by a Designated Officer.

600:30-1-11. Severability provision

If any provision of this chapter, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[OAR Docket #11-480; filed 4-20-11]

TITLE 600. REAL ESTATE APPRAISER BOARD
CHAPTER 35. APPRAISAL MANAGEMENT COMPANY ENFORCEMENT

[OAR Docket #11-479]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
600:35-1-1. Purpose [NEW]
600:35-1-2. Definitions [NEW]
600:35-1-3. Conduct [NEW]
600:35-1-4. Complaints [NEW]
600:35-1-5. Complaint procedures [NEW]
600:35-1-6. Formal complaint [NEW]
600:35-1-7. Notice of disciplinary proceedings [NEW]
600:35-1-8. Pre-hearing matters [NEW]
600:35-1-9. Subpoenas and subpoenas duces tecum [NEW]
600:35-1-10. Disciplinary proceedings [NEW]
600:35-1-11. Burden of proof, standard of proof [NEW]
600:35-1-12. Right to counsel [NEW]
600:35-1-13. Rules of evidence [NEW]
600:35-1-14. Failure to appear [NEW]
600:35-1-15. Oral argument before the Board [NEW]
600:35-1-16. Rehearing, reopening or reconsideration of Board decision [NEW]
600:35-1-17. Record of hearing [NEW]
600:35-1-18. Request for declaratory ruling [NEW]
600:35-1-19. Request for rule adoption, amendment or repeal [NEW]
600:35-1-20. Severability provision [NEW]

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Oklahoma Real Estate Appraiser Board; 59 O.S. § 858-829

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600:35-1-1. Purpose [NEW]
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600:35-1-4. Complaints [NEW]
600:35-1-5. Complaint procedures [NEW]
600:35-1-6. Formal complaint [NEW]
600:35-1-7. Notice of disciplinary proceedings [NEW]
600:35-1-8. Pre-hearing matters [NEW]
600:35-1-9. Subpoenas and subpoenas duces tecum [NEW]
600:35-1-10. Disciplinary proceedings [NEW]
600:35-1-11. Burden of proof, standard of proof [NEW]
600:35-1-12. Right to counsel [NEW]
600:35-1-13. Rules of evidence [NEW]
600:35-1-14. Failure to appear [NEW]
600:35-1-15. Oral argument before the Board [NEW]
600:35-1-16. Rehearing, reopening or reconsideration of Board decision [NEW]
600:35-1-17. Record of hearing [NEW]
600:35-1-18. Request for declaratory ruling [NEW]
600:35-1-19. Request for rule adoption, amendment or repeal [NEW]
600:35-1-20. Severability provision [NEW]

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ANALYSIS:
The purpose of this regulatory language is to provide the Oklahoma Real Estate Appraiser Board the means of enforcing the provisions of the Oklahoma Appraisal Management Companies Act, 59 O.S. § 858-801 et seq. Regulation of appraisal management companies by state appraiser boards is a requirement imposed by the FIRREA Act of 1989 (12 U.S.C. § 3331 et seq.) as recently amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203.
CONTACT PERSON:
George R. Stirman III, Director, Real Estate Appraiser Board, Oklahoma Insurance Department, 2401 NW 23rd St, Ste 28, Oklahoma City, OK 73107 (405) 521-6636

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2011:

600:35-1-1. Purpose

The purpose of this chapter is to set forth the administrative procedures for disciplinary proceedings conducted pursuant to the Oklahoma Appraisal Management Regulation Act and the Oklahoma Administrative Procedures Act, 75 O.S. § 250 et seq.

600:35-1-2. Definitions

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

"Appraisal Management Company" or "AMC" means an entity that is required by the Oklahoma Appraisal Management Company Regulation Act, 59 O.S. § 858-801 et seq., to register with the Oklahoma Real Estate Appraiser Board.

"Appraisal Subcommittee" or **"ASC"** means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

"Appraiser" means an individual person who holds a credential as a Trainee Appraiser, State Licensed Appraiser, State Certified Residential Appraiser, or State Certified General Appraiser; or a valid temporary practice permit issued by the Board entitling that individual person to perform an appraisal of real property in the State of Oklahoma consistent with the scope of practice identified in the Real Property Appraiser Qualification Criteria promulgated by the Appraiser Qualification Criteria promulgated by the Appraiser Qualification Board of The Appraisal Foundation.

"Board" or **"OK REAB"** means the Oklahoma Real Estate Appraiser Board.

"Controlling Person" means one or more of the following:

(A) an owner, officer, manager, or director of a corporation, partnership, firm, association, limited liability company, or other business entity seeking to offer appraisal management services in this state,

(B) an individual employed, appointed, or authorized by an AMC that has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals, or

(C) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an AMC.

"Designated Officer" means a Controlling Person authorized by the governing structure of the AMC in the manner contemplated by 59 O.S. § 858-810 (A) to act on its behalf in the manner contemplated by 59 O.S. § 858-810 for purposes of application for, and compliance with, a Certificate of Registration to operate as an Appraisal Management Company pursuant to Oklahoma law. The Designated Officer shall be responsible for supervision and control of activities conducted on behalf of the AMC by its officers and employees as necessary to secure full compliance with the provisions of the Oklahoma AMC Regulation Act (59 O.S. § 858-801 et seq.), including contract services provided to the AMC for the performance of appraisal activities for which an Oklahoma Real Estate Appraiser Board credential is required.

"Director" means the Director of the Oklahoma Real Estate Appraiser Board or his or her designee.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101-73, and any amendments thereto.

"Hearing Examiner" means an individual appointed as such by a Board order. Hearing examiners shall be individuals who are duly licensed to practice law by the Supreme Court of Oklahoma.

"Probable Cause Committee" means the Probable Cause Committee set forth by 600:15-1-2.

"Registrant" means a person or entity authorized to conduct business as an AMC in Oklahoma memorialized by issuance of a Certificate of Registration by the Board.

"RESPA" means the federal Real Estate Settlement Procedures Act codified in 12 U.S.C and any amendments thereto.

"Respondent" means a Registrant, Controlling Person, or Designated Officer against whom a complaint has been received or a complaint filed and not finally resolved.

"TILA" means the Truth in Lending Act of 1968 (15 USC 1631 et seq.) and any amendments thereto.

600:35-1-3. Conduct

(a) It is the finding and declaration of the Oklahoma Real Estate Appraiser Board that registered Appraisal Management Companies are vested with a relationship of trust and confidence with respect to their relationships with their clients, lending institutions, both public and private guarantors or insurers of funds in real estate related transactions, and to the public interest; and that accordingly, the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensible to the conduct of their business operations.

(b) Every holder of an Appraisal Management Company registration, every Controlling Person, and every Designated

Officer shall demonstrate by his or her conduct that he or she possesses the qualifications of honesty, candor, integrity, and trustworthiness.

(c) Every registered Appraisal Management Company, its Controlling Persons, and Designated Officer shall comply fully with the Oklahoma Appraisal Management Company Regulation Act, the rules promulgated thereunder, and with all other applicable federal and state statutes including but not limited to FIRREA, TILA and RESPA.

600:35-1-4. Complaints

A complaint may be filed with the Board against an Appraisal Management Company, a Controlling Person, or a Designated Officer on a form approved by the Board or by other means of transmitting such allegations and supporting documents by any aggrieved person. Such complaints must be in writing and must be signed by the complainant. In addition, where reasonable cause exists, a complaint may be brought directly by the Board.

600:35-1-5. Complaint procedure

(a) Upon receipt of a complaint against an AMC, a Designated Officer, or a Controlling Person, the Director shall cause a complete copy of such complaint to be forwarded to the applicable Designated Officer by Certified Mail, Return Receipt Requested. The copy of the complaint shall be transmitted by a letter giving the Respondent ten (10) calendar days following receipt of the complaint to respond to the allegations contained therein.

(b) The Probable Cause Committee shall meet as required by the volume of complaints received and shall prepare and present a recommendation to the Board summarizing each complaint received and making a recommendation to the Board as to disposition of the complaint.

(c) The Probable Cause Committee may cause such investigation to be conducted as it may require in the preparation of its recommendation.

(d) The Director shall cause records of meeting attendance and summaries of complaints including individual votes to be prepared and furnished to the Board for consideration and action at the next subsequent Board meeting.

600:35-1-6. Formal complaint

(a) If, in the determination of the Board, the complaint set forth in the summary and recommendation of the Probable Cause Committee appears to warrant such action, the Board shall adopt a formal complaint and the Director shall transmit the complaint to a Prosecuting Attorney.

(b) The Prosecuting Attorney may select one or more members of the Board's Standards and Disciplinary Procedures Committee or a person designated by the Director to assist in preparation of a Notice of Disciplinary Proceedings and presentation of the matter at any such proceeding or in any negotiations for an agreed settlement.

600:35-1-7. Notice of Disciplinary Proceedings

(a) The Prosecuting Attorney shall prepare a Notice of Disciplinary Proceedings and transmit said notice to the Director. The Director shall set the date, time, and place for the proceedings and shall cause such notice to be served on the Respondent's Designated Officer at the last address reported to the Board by certified mail, return receipt requested.

(b) The Notice of Disciplinary Hearing shall include, but is not limited to, the following:

(1) a statement of the time, place and nature of the hearing,

(2) a statement of the legal authority and jurisdiction under which the hearing is to be conducted,

(3) a statement of the allegations,

(4) a reference to the particular sections of statutes or rules involved, and

(5) the identity of the Hearing Examiner appointed to hear the complaint.

(c) Service of the Notice of Disciplinary Proceedings shall be made by not less than thirty (30) days prior to the date and time of the proceedings.

(d) The hearing may be rescheduled by the Director at a different time, date or location with proper written notice of such change given to all parties. Motions for continuance must be filed in the administrative office of the Board by not less than ten (10) days prior to the date and time of the proceeding.

600:35-1-8. Pre-hearing matters

The Board may utilize counsel to the Board as a hearing officer to hear prehearing matters specified by the Board.

(1) The duties assigned to Board counsel may include, but are not limited to, any of the following:

(A) to hear and rule on pretrial discovery disputes;

(B) to hear and rule on Motions in Limine;

(C) to review Motions to Dismiss in order to advise the Board on questions of law arising therein;

(D) to hear and rule on Motions for Continuance of a hearing;

(E) to hear and rule on other preliminary motions;

(F) to hear and rule on motions to have a Hearing Examiner recused from a hearing;

(G) to mark, identify, and admit or deny exhibits; and

(H) to rule upon objections made during the hearing.

(2) Any pretrial motions, including discovery motions, motions to dismiss, and motions for continuance, shall be filed at the administrative office of the Board no less than ten (10) days before the date that any hearing in the proceeding is scheduled.

600:35-1-9. Subpoenas and subpoenas duces tecum

(a) In all cases where a party desires to have subpoenas or subpoenas duces tecum issued to compel the attendance of witnesses, or production of documents, a written request shall be filed with the administrative office of the Board by such party

or his attorney, and directed to the Director or the Director's designee. The request shall specify the witness by name and address; and shall identify any documents to be subpoenaed. The request shall acknowledge that any expense associated with the subpoena process shall be paid by the party requesting the subpoena, including travel expense and daily attendance fees, in the amount as set by statute for other civil matters, at the time of the service of such subpoena.

(b) The Director shall cause such subpoenas to be issued and mailed in conformity with said written requests; provided, that in said subpoena the witnesses named therein shall be advised that they may demand their travel fees and daily attendance fees from the party, or his representative; and that neither the Board nor the State of Oklahoma shall be responsible for any traveling fees, daily attendance fees, or other expenses incurred by such witness in attending any proceeding.

(c) All requests for subpoenas and subpoenas duces tecum shall be filed with the Director or the Director's designee, by mail or otherwise, no later than ten (10) days prior to the date of the proceeding at which the presence of any such witness or documents would be required.

(d) A party requesting issuance of subpoenas and subpoenas duces tecum shall be responsible for obtaining service and for the cost of that service.

600:35-1-10. Disciplinary proceedings

(a) Disciplinary proceedings shall be conducted by a Hearing Examiner who shall be appointed by Board order and assigned to an individual matter by the Director.

(b) When the record is closed and submitted for a proposed decision, the Hearing Examiner shall issue proposed Findings of Fact, Conclusions of Law and Disciplinary Recommendations to the Board for its consideration and final order. Interested parties shall receive copies of the Hearing Examiner's proposed decision by certified mail. The Findings of Fact, Conclusions of Law and Disciplinary Recommendations shall include a statement of facts, the issues and contentions, conclusions based on the findings of fact and applicable law, and recommendation to the Board for issuance of the final order.

(c) Upon request of the parties, the Hearing Examiner may permit the parties to submit proposed Findings of Fact, Conclusions of Law and Disciplinary Recommendations which may be adopted by the Examiner.

(d) Disciplinary proceedings shall be open to the public. Witnesses may be excluded upon proper invocation of the witness exclusion rule by any party or the Hearing Examiner.

600:35-1-11. Burden of proof, standard of proof

(a) The burden of proof shall be upon the Board in all disciplinary proceedings.

(b) The standard of proof shall be by clear and convincing evidence.

600:35-1-12. Right to counsel

(a) At all times during a disciplinary proceeding any party shall have the right to counsel provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents.

(b) In order to be recognized as counsel for respondent, such counsel shall file a written entry of appearance with the Director.

600:35-1-13. Rules of evidence

(a) The Hearing Examiner shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs.

(1) The Hearing Examiner shall give effect to the rules of privilege recognized by law in respect to:

(A) self-incrimination;

(B) confidential communications between husband and wife during the subsistence of the marriage relation;

(C) communication between attorney and client, made in that relation;

(D) confessions made to a clergyman or priest in his professional capacity in the course of discipline enjoined by the church to which he belongs;

(E) communications made by a patient to a licensed practitioner of one of the healing arts with reference to any physical or supposed physical disease or of knowledge gained by such practitioner through a physical examination of a patient in a professional capacity;

(F) records and files of any official or agency of any state or of the United States which, by any statute of such state or of the United States are made confidential and privileged.

(2) No greater exclusionary effect shall be given any such rule or privilege than would obtain in action in court. The Hearing Examiner may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(b) Documentary evidence may be received in the form of copies, if the original is not readily available, or excerpts if such originals contain voluminous, irrelevant or extraneous material. Upon request, parties shall be given an opportunity to compare the copy with the original.

(c) A party may conduct cross-examinations required for a full and true disclosure of the facts.

(d) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Hearing Examiner's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Hearing Examiner's experience, technical

competence, and specialized knowledge may be utilized in the evaluation of the evidence.

600:35-1-14. Failure to appear

If either the Respondent or the Board fails or refuses to appear without good cause, the Hearing Examiner may, if no continuance is granted, either enter a default decision or proceed with the formal hearing and determine the matter in the absence of the party.

(1) Default decision.

(A) Any party may move for default against a party who has failed to appear after proper service.

(B) As a consequence of the default, the allegations against a non-appearing Respondent may be deemed admitted and an appropriate sanction recommended, within the Hearing Examiner's discretion. If the non-appearing Party is the Board, the Hearing Examiner may recommend that the complaint be dismissed with prejudice.

(C) A motion to vacate a default decision may be filed with the Board along with or in lieu of a request for oral argument before the Board within the time period specified for requests for oral argument in Board Rule 600:35-1-15.

(D) Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof shall be on the moving party.

(E) "Good cause" for the purpose of this rule means lack of notice in accordance with the Administrative Procedures Act, the Oklahoma Appraisal Management Company Regulation Act, or the rules promulgated pursuant thereto, excusable neglect or unavoidable casualty.

(F) A decision by the Board denying a motion to vacate and the Board's ground(s) therefore shall be included with its final order on the merits issued in accordance with 600:15-1-17 and is subject to review in accordance with the Administrative Procedures Act and Oklahoma Certified Real Estate Appraisers Act and the rules promulgated pursuant thereto.

(2) If the Hearing Examiner decides to proceed with the formal hearing in the absence of any party, the Hearing Examiner shall render a recommendation based upon presentation and consideration of evidence and argument on all issues involved, and any such recommendation shall not be considered a default decision.

(3) In lieu of personally appearing, a Respondent, unless issued a subpoena to appear at the hearing, may submit a written statement, subject to the following requirements:

(A) The statement shall be filed in the administrative office of the Board at least (7) days prior to the hearing date;

(B) The statement shall be notarized;

(C) The Respondent shall acknowledge in the statement that Respondent received notice of the hearing and, that by not personally appearing, the Respondent is waiving the right to cross-examine witnesses, rehabilitate his or her statement, or present further evidence on his or her own behalf.

600:35-1-15. Oral argument before the Board

(a) Within fifteen (15) days following mailing of the Proposed Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner, the aggrieved party may file an application for oral argument before the Board. Oral argument shall be limited to the Recommended Discipline of the Hearing Examiner.

(b) If such application for oral argument is received, the Director shall set a date, time and place for the hearing and notice shall be given to each side by certified mail no less than thirty (30) days prior to the hearing. Respondent's typewritten brief shall be submitted to the Board no less than twenty (20) days prior to such hearing. Petitioner's typewritten brief shall be submitted to the Board no less than ten (10) days prior to the hearing. Deadlines may be extended by the Director upon good cause shown. If the respondent fails to apply for oral argument or file a brief in a timely manner, the Board may consider respondent to have waived the opportunity for oral argument. Time limits for oral arguments will be set by the Board at the time of the hearing.

(c) The Board shall issue the final order in each case whether or not application for oral argument is made. The Board may, in its discretion, vacate, modify, or affirm, in part or whole, the proposed decision of the Hearing Examiner.

(d) In the event no request for oral argument is made by the Respondent within the fifteen (15) day period, a final order consistent with the Hearing Examiner's findings, conclusions and recommendations shall be presented to the Board for approval, or in its discretion, vacation or modification; and following approval, copies will be mailed to the Respondent. The Board may, on its own motion, require oral argument before the Board.

600:35-1-16. Rehearing, reopening or reconsideration of Board decision

(a) An order issued by the Board shall be subject to rehearing, reopening or reconsideration by the Board within ten (10) days of the date of its entry. The grounds for such action shall be either:

(1) newly discovered or newly available evidence, relevant to the issues;

(2) need for additional evidence adequately to develop the facts essential for a proper decision;

(3) probable error committed by the Hearing Examiner or the Board in the proceeding or in its decision that would be grounds for reversal on judicial review of the order;

(4) need for further consideration of the issues and the evidence in the public interest; or

(5) a showing that issues not previously considered should be examined in order to properly dispose of the matter.

(b) The order of the Board granting rehearing, reconsideration or review, or the petition of a party therefore, shall set forth the grounds which justify such action. Nothing in the chapter

shall prevent rehearing, reopening or reconsideration of a matter by the Board in accordance with other statutory provisions applicable to the Board, or, at any time, on the grounds of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening or rehearing, the matter may be heard by the Board, or it may be remanded to the Hearing Examiner. Any such hearing shall be confined to those grounds upon which the reconsideration, reopening or rehearing was ordered. If an application for rehearing is timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

600:35-1-17. Record of hearing

(a) A record by means of electronic recording of the hearing shall be made of all disciplinary hearings.

(b) A person affected by the hearing may cause, at such person's expense, a transcript of the proceedings to be prepared or a full stenographic record of the proceedings to be made by a competent court reporter.

(c) If transcribed, such transcript shall be part of the record of the hearing and a copy shall be furnished to any third party having a direct interest therein at the request and expense of such party.

(d) The record of the hearing and the file containing the pleadings shall be maintained in a place designated by the Board. The electronic recording of the proceedings shall be maintained until the time for appealing the final Board order has run.

(e) The record of an individual proceeding shall include:

(1) all pleadings, motions and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings thereon;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the Hearing Examiner presiding at the hearing;

(7) all disciplinary procedures, memoranda or data submitted to the Hearing Examiner or members of the Board in connection with their consideration of the case.

600:35-1-18. Request for declaratory ruling

Any person who may be affected by the existence of any of these public rules set forth by this chapter may request in writing an interpretation or ruling regarding the application of such rule to the facts furnished with the inquiry. Any such request shall state fully the facts concerning the rule which may apply, and the particular rules about which the question exists. The request or inquiry will be assigned to the Board for review. Thereafter, the Board shall make a final determination of the interpretation or ruling. The Board's interpretation of the rule shall be furnished in writing to the person making the request, within a reasonable time.

600:35-1-19. Request for rule adoption, amendment or repeal

All interested persons may ask the Board to promulgate, amend or repeal a rule; such requests will be in writing and filed with the Department. The request shall specify reasons for its submission, the alleged need or necessity for the change, whether or not the proposed change will conflict with any existing rule, and what, if any, statutory provisions are involved. If the Board approves the proposed change, notice shall be given that such proposal will be formally considered for adoption. If, however, the Board determines that the proposal or request is not appropriate, the change shall be denied and the decision reflected in the records of the Board. A copy will be sent to the interested person who submitted the request.

600:35-1-20. Severability provision

If any provision of this chapter, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the chapter, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[OAR Docket #11-479; filed 4-20-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-441]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Practice and Procedure
Part 5. Administrative Proceedings Related to Tax Protests
710:1-5-40. Options available to parties after action by Administrative Law Judge [AMENDED]
Subchapter 13. Consumer Compliance Initiative [NEW]
710:1-13-1. Purpose [NEW]
710:1-13-2. [RESERVED]
710:1-13-3. Consumer Compliance Initiative [NEW]
AUTHORITY:
68 O.S. §§ 203 and 1407.4; Oklahoma Tax Commission
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:1-5-40 has been amended to clarify policy and procedure regarding motions for rehearing and motions for reconsideration in an administrative proceeding.

New Subchapter 13, "*Consumer Compliance Initiative*" and the new sections contained therein have been added to implement the provisions of Section 5 of House Bill 2359 [2010] which authorizes the Tax Commission to establish a Consumer Compliance Initiative in order to encourage the voluntary disclosure and payment of consumer use taxes owed to the State of Oklahoma.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 5. ADMINISTRATIVE PROCEEDINGS RELATED TO TAX PROTESTS

710:1-5-40. Options available to parties after action by Administrative Law Judge

The following options are available to parties to an administrative proceeding related to a tax protest after issuance of an unfavorable recommendation:

(1) **Motion for rehearing or motion for reconsideration; content; replies; time limitations.** Within fifteen (15) days following mailing of the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge, any party to the proceedings may file a motion for rehearing or a motion for reconsideration with the Administrative Law Judge ~~Such motion must specify each ground upon which the party alleges the findings to be erroneous~~. The opposing party may reply to a motion for rehearing or a motion for reconsideration within fifteen (15) days after mailing of the motion for rehearing or motion for reconsideration. A party's request shall be reviewed on the basis of the content presented therein and not solely on the style of the party's motion.

(2) **Rehearing procedure.** If a party elects to file a motion for rehearing ~~or reconsideration~~, that party will be precluded upon rehearing, should the motion be granted, from raising as error any issue not set forth in the motion.~~, and~~ If a motion for rehearing is granted, the proposed ~~decision is~~ Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge are vacated pending ~~a subsequent decision or~~ rehearing. If the motion is overruled ~~in whole or in part~~, the original proposed ~~decision stands~~ Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge shall be deemed issued on the date the motion is overruled. If a rehearing is granted, notice will be issued to the parties setting out the date, time and place of the hearing.

(3) **Reconsideration procedure.** A motion for reconsideration must specify each ground upon which the party alleges the findings to be erroneous. If a motion for reconsideration is granted, the original proposed Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge are vacated. If the motion is overruled, the original proposed Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge shall be deemed issued on the date the motion is overruled.

(4) **Grounds for granting motion for rehearing.** A motion for rehearing may be granted on any of the following, although such list is illustrative and not exclusive:

(A) Newly-discovered evidence which could not, with reasonable diligence, have been discovered and produced at the hearing on the matter.

(B) Need for additional evidence to develop the facts essential to proper decision.

(C) Additional evidence necessary to address conclusions of law not contemplated prior to the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge being issued.

(5) **Grounds for granting motion for reconsideration.** A motion for reconsideration may be granted on any of the following, although such list is illustrative and not exclusive:

(A) Need for further consideration of the issues and the evidence.

(B) A showing that issues not previously considered ought to be examined in order to properly dispose of the matter.

(C) Need for application of statute, rule or caselaw to the facts.

(6) **Application for en banc hearing before Commission.** If a motion for rehearing or reconsideration is denied, the aggrieved party may, within fifteen (15) days following mailing of such denial, file an application for oral argument before the Tax Commission en banc. If a motion for hearing en banc is granted, the case will be heard by the Commissioners sitting together as a decision making body.

(~~4~~7) **En banc hearing procedure.** Any party may apply for a hearing en banc before the Commissioners whether or not he/she moved for rehearing or reconsideration before the Administrative Law Judge. If a motion for rehearing or reconsideration before the Administrative Law Judge is not filed, any party requesting a direct appeal to the Commission en banc, must file said motion for a hearing en banc within fifteen (15) days of the mailing of the Administrative Law Judge's findings. The application must specify each ground upon which the party alleges the Findings, Conclusions and Recommendations to be

erroneous. The opposing party may reply to a motion for hearing en banc within fifteen (15) days after mailing of the motion for hearing en banc. Should the application be granted, the moving party will be precluded from raising as error any issue not set forth in the application for a hearing en banc.

(~~5~~8) **Granting of hearing en banc; filing of briefs; time limitations.** If such application for oral argument is granted, the Commissioners will set a date, time and place for the hearing and notice will be given to each side by mail at least twenty (20) days in advance of the hearing. Typewritten briefs must be submitted to the Commissioners at least fourteen (14) days prior to such hearing, or as otherwise directed by the Commission. Time limits for oral arguments will be set by the Commissioners at the time of the hearing.

(~~6~~9) **Exhaustion of administrative remedies.** Although taxpayers must exhaust all administrative remedies before appealing to the Oklahoma Supreme Court, or if appropriate to a Federal court, it is not necessary to move for reconsideration or rehearing or to apply for a hearing en banc to exhaust administrative remedies. All that is necessary for exhaustion is to pursue a protest until the Commissioners issue a final decision in the form of an order.

(~~7~~10) **Commission decision commences appeal time.** Neither a motion for rehearing or reconsideration nor an application for a hearing en banc will be granted after a final decision has been made and an order issued. Therefore, a motion for rehearing or reconsideration or an application for a hearing en banc will not serve to stay the time to appeal to the Supreme Court.

SUBCHAPTER 13. CONSUMER COMPLIANCE INITIATIVE

710:1-13-1. Purpose

In order to encourage the voluntary disclosure and payment of use taxes owed to the State, the Legislature has authorized the Tax Commission to establish a Consumer Compliance Initiative.

710:1-13-2. [RESERVED]

710:1-13-3. Consumer Compliance Initiative

Taxpayers who qualify under the Initiative will be granted a waiver of penalty, interest and other collection fees and the Tax Commission will refrain from assessing use tax for more than one year prior to the date the taxpayer registers to pay consumer use tax.

(1) **Eligibility.** Only businesses that make regular purchases of tangible personal property outside the State of Oklahoma for their own use, storage or consumption in this State are eligible for the relief granted under the Initiative.

(2) **Qualification.** To qualify for the relief granted under the Initiative the taxpayer must:

(A) Voluntarily file delinquent use tax returns and pay the delinquent consumer use taxes reflected thereon; and

(B) Apply with the Oklahoma Tax Commission for an Oklahoma consumer use tax account to report and remit use tax on a monthly basis.

(i) Application is made by submitting to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N Lincoln Blvd., Oklahoma City, OK 73194, a completed Business Registration, Packet A available telephonically at (405) 521-3160 or online at www.tax.ok.gov.

(ii) No fee is required to obtain the account.

(iii) Upon receipt of the completed Packet A and review by the Tax Commission, a consumer use tax account will be assigned.

(3) **Exceptions.** The relief provided under the Initiative is not available to a taxpayer with respect to:

(A) Any matter or matters for which the consumer received notice of the commencement of an audit and which the audit is not yet finally resolved including any related administrative and judicial processes; and

(B) Use taxes already paid or remitted to the state.

(4) **Applicability.** The relief provided pursuant to the Initiative applies only to use taxes due from a taxpayer in its capacity as a buyer not to use taxes due from a taxpayer in its capacity as a seller.

[OAR Docket #11-441; filed 4-19-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM

[OAR Docket #11-442]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Manufacturing Facilities
710:10-7-4. Qualifying manufacturing concerns exempt; forms [AMENDED]
710:10-7-5. Date of qualification; application for exemption [AMENDED]
710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection [AMENDED]
Subchapter 14. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-4. Qualified owner [AMENDED]
AUTHORITY:
68 O.S. §§ 203 and 2902(H); Oklahoma Tax Commission
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ANALYSIS:
Proposed amendments to **Subchapter 7**, *"Manufacturing Facilities"*, have been made to provide for the requirement that county assessors retain a copy of all applications for the five-year ad valorem exemption and that representatives of entities applying for the five-year exemption must file an Oklahoma Power of Attorney [Form BT-129] with the Ad Valorem Division of the Tax Commission.
Proposed amendments to **Subchapter 14**, *"Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate"* have been made to clarify surviving spouse exemption qualification.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-4. Qualifying manufacturing concerns exempt; forms

Qualifying manufacturing concerns as defined by law shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities for a period of five (5) years. Exemptions will be allowed only upon approved application filed with the county assessor on forms prescribed by the Oklahoma Tax Commission. The application shall be fully completed, sworn to and signed by the applicant, if an individual, or by a duly authorized officer or general partner or authorized agent of entities applying for the exemption. Authorized agents must file a Power of Attorney, OTC Form BT 129, with the initial and each annual application. Form BT 129 is available telephonically at (405) 521-3160 or online at www.tax.ok.gov. Any additional information requested in writing by the county assessor, the County Board of Equalization, or the Oklahoma Tax Commission shall be furnished in a sworn and signed statement.

710:10-7-5. Date of qualification; application for exemption

(a) The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use. Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use.
(b) When completion of a facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If the facility is found to be qualified, the exemption shall be available for the entire year and shall apply to the ad valorem valuation as of January 1st of that given year.
(c) Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption on or before March 15, or as otherwise provided by law. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later that June 15 of the **TAX YEAR** in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission. [**See:** 68 O.S. § 2902(F); Article 10 § 22A Okla. Const.]

710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection

(a) The county assessor shall examine each application for the manufacturing exemption from ad valorem taxation and shall determine whether the facility is exempt under the law. In determining whether the exemption application is to be approved, the assessor shall, if necessary, make inspections, make a written request for additional information, or examine any person under oath as provided by law.
(b) The assessor shall complete the assessor's portion of each application, whether approved or rejected, and shall consecutively number each completed application received, whether approved or rejected, retain a copy of each application, and shall ~~immediately forward~~ deliver the original application, whether approved or rejected, to the ~~Oklahoma Tax Commission Ad Valorem Division. The original of each application, whether approved or rejected, shall be delivered to the~~ County Board of Equalization, on or before the fourth Monday in April each year for its review. After the County Board of Equalization has approved or rejected the application, the original application shall be forwarded to the Oklahoma Tax Commission Ad Valorem Division by June 15th of the current year.
(c) If the manufacturer's first year application is approved, the assessor shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**APPROVED**". It shall then be the duty of the Oklahoma Tax Commission to make a physical inspection of each facility approved for the exemption, determine the fair cash value of the real property, if necessary, and the personal property separately, and to determine the assessed

value of each by applying the assessor's assessment percentage to that value. The Tax Commission shall then notify the county assessor of the evaluation.

(d) If the county assessor finds that the exemption should not be allowed by reason of not being in conformity to the law, he shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**DISAPPROVED**", stating the reason for the disapproval, and shall notify the applicant at the address shown in the application. The notice shall be mailed on or before the fourth Monday in April. The assessor shall then immediately proceed to value and assess the property, as provided bylaw.

SUBCHAPTER 14. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-4. Qualified owner

Applicants must be heads of households who have been honorably discharged from active service in a branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to have one hundred percent (100%) permanent disability sustained through military action or accident, or resulting from a disease contracted while in active service. The exemption extends to the surviving spouses of ~~deceased~~ such veterans who ~~qualified~~ are certified by the United States Department of Veterans Affairs to receive benefits under the terms of this Subchapter. Each applicant must provide to the county assessor, a current United States Department of Veterans Affairs benefits award letter that certifies the one hundred percent service-related disability, or that the individual is in receipt of compensation at the one-hundred percent rate.

[OAR Docket #11-442; filed 4-19-11]

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

[OAR Docket #11-443]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Procedures for Registration
710:22-5-11. Registration renewal notification [NEW]
AUTHORITY:
68 O.S. § 203; 63 O.S. § 4004; Oklahoma Tax Commission
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
New Section 710:22-5-11 has been added to reflect the provisions of Senate Bill 1398, Second Regular Session of the 52nd Legislature (2010), which relates to annual motor vessel and motor registration renewal notices. Taxpayers who choose to continue receiving the renewal notification via a mailed postcard will be charged an annual fee of $0.50. Taxpayers who wish to be notified by an electronic mail type renewal notice will receive such notifications with no corresponding fee charges. Taxpayers also have the option of opting out of the notification system.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 5. PROCEDURES FOR REGISTRATION

710:22-5-11. Registration renewal notification

(a) **Notification options.** Boat and outboard motor registrants may choose from the following three (3) registration expiration notification methods.

(1) **Mail notification.** Registrants may choose to receive mailed renewal notices, for an additional fee set by statute, by advising the registering tag agency of their choice and paying the applicable fee. If renewing by mail, the registrant may indicate their choice on the renewal form and remit the applicable fee. If the mail notification fee is not remitted by the registrant, no notice will be mailed. Failure to receive the mailed notification shall not relieve the taxpayer from their responsibility to timely renew their registration(s).

(2) **Email notification.** Registrants may choose to receive an email renewal notification, at no charge, by either signing up for email notification via the Commission's online renewal website; or by advising the registering tag agency of their choice and providing to the agent an email address to which the notification is to be sent; or by indicating the email option and providing an email address to which the notification is to be sent on the mail-in renewal registration postcard. Email notification will supersede any other type of registration expiration notification.

Failure to receive the email notification shall not preclude the taxpayer from their responsibility to timely renew their registration(s).

(3) **No notification.** Registrants may choose to receive no notification by advising the registering tag agency of their choice, or by indicating their choice on the mail-in registration renewal postcard.

(b) **Motor license agent responsibility.** It shall be the duty of motor license agents to advise all in-person registrants of their renewal notification options and process the chosen options per Commission guidelines. When the taxpayer chooses the email reminder notification option, the agent shall obtain the taxpayer's email address to which the notification is to be sent and enter that email address to the Commission's registration system in the manner prescribed by the Commission.

[OAR Docket #11-443; filed 4-19-11]

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

[OAR Docket #11-444]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
710:25-1-5. Decals for general use [AMENDED]
AUTHORITY:
68 O.S. §§ 203 and 1504, Oklahoma Tax Commission
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ANALYSIS:
Section 710:25-1-5 has been amended to implement Section 17 of House Bill 2359, enacted into law by the 52nd Legislature 2nd Regular Session, effective July 1, 2010, which modified Section 1503 of Title 68 of the Oklahoma Statutes, increasing the annual fee for each coin operated music device, coin operated amusement device and any coin operated vending device requiring a coin or thing valued at more than $.25 cents or more from $50.00 to $150.00.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

710:25-1-5. Decals for general use

A music/amusement device requires a ~~Fifty Dollar ($50.00)~~ One Hundred Fifty Dollar ($150.00) annual decal. Coin-operated vending devices which require a coin or thing of value of Twenty-five Cents (25¢) or more must display a ~~Fifty Dollar ($50.00)~~ One Hundred Fifty Dollar ($150.00) annual decal. If the device requires a coin or thing of value less than Twenty-five Cents (25¢), then an annual decal of Ten Dollars ($10.00) will be required. [**See:** 68 O.S. §1503(1)-(3)]

[OAR Docket #11-444; filed 4-19-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 35. ESTATES

[OAR Docket #11-445]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:35-1-3. Annual Report Available To Public [AMENDED]
Subchapter 3. Returns; Remittance; Releases
Part 3. Releases
710:35-3-21. Release upon full payment; order releasing taxable estates [AMENDED]
710:35-3-23. Order releasing property subject to Oklahoma Estate Tax liability and lien; partial release of specific property subject to the determination of tax [AMENDED]
AUTHORITY:
68 O.S. § 203, Oklahoma Tax Commission
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:35-1-3 has been amended to update statutory citations.
Sections 710:35-3-21 and 710:35-3-23 have been amended to implement the provisions of Senate Bill 1895, Second Regular Session of the 52nd Legislature (2010), which provides that for deaths occurring on or after January 1, 2010, no release of estate tax liability is required. **[58:635, 912, 1104]**
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

710:35-1-3. Annual report available to public

(a) After July 1, 1988, an annual listing of years for which an index is available will be displayed for public inspection at the offices of the Estate Tax Section of the Oklahoma Tax Commission during normal working hours.
(b) The Annual Report will contain the following information:
(1) Name of Decedent
(2) Date of Death
(3) Address of Decedent
(4) Probate County
(5) Probate Number
(c) Any reproduction costs will be based on the current rates prescribed by the Commission. [**See:** 68 O.S. ~~Supp. 1988,~~ §116]

SUBCHAPTER 3. RETURNS; REMITTANCE; RELEASES

PART 3. RELEASES

710:35-3-21. Release upon full payment; order releasing taxable estates

(a) Upon payment of all Estate Tax and interest, an Order Releasing Taxable Estates will be issued as to both real and personal property of the estate either:
(1) Listed upon the Oklahoma Estate Tax Return which reports Oklahoma Estate Tax to be due and payable; or
(2) Listed in an audit performed by the Estate Tax Section. The Order Releasing Taxable Estate shall include a recitation of the name of the decedent, the amount of tax paid, the account number, receipt number and date of payment and that the reported estate of said decedent, consisting of real property or personal property or both, is released from Oklahoma Estate Tax liability and lien therefor. Recitation of legal description of real property or of the personal property of the estate shall not be set out in the Order Releasing Taxable Estates.
(b) For deaths occurring on or after January 1, 2010, no release of estate tax liability is required.

710:35-3-23. Order releasing property subject to Oklahoma Estate Tax liability and lien; partial release of specific property subject to the determination of tax

(a) In matters where the Oklahoma Estate Tax Return has been filed with the Commission, or arrangements for filing the return have been made with the Estate Tax Section, the Division Administrator may issue an Order Releasing Property Subject to Estate Tax Liability and Lien, upon therefor and a showing that payment of any Estate Tax liability has been otherwise provided for.
(b) The Order Releasing Specific Property Subject to Estate Tax Liability and Lien shall recite the legal description of the real property or the full description of the personal property for which the partial release is requested.
(c) For deaths occurring on or after January 1, 2010, no release of estate tax liability is required.

[OAR Docket #11-445; filed 4-19-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #11-446]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Returns and Reports
Part 5. Filing Status; Elections; Accounting Periods and Methods
710:50-3-45. Verification of signatures on electronically-filed returns [AMENDED]
Subchapter 9. Refunds
710:50-9-3. Interest on refunds [AMENDED]
Subchapter 11. Intercept of Refunds
710:50-11-6. Tax Commission shall have priority over all other agencies, municipal courts, or district courts [AMENDED]
710:50-11-7. Notice to taxpayer [AMENDED]
710:50-11-8. Post intercept notice [REVOKED]
710:50-11-9. Joint returns intercept [AMENDED]
710:50-11-10. Nondebtor spouse protest [AMENDED]
710:50-11-11. Notification after final determination at hearing [AMENDED]
Subchapter 13. Estimated Tax
710:50-13-9. Estimated tax using annualized income method [AMENDED]
Subchapter 15. Oklahoma Taxable Income
Part 5. Other Adjustments to Income
710:50-15-51. Military pay of ~~non-residents~~nonresidents and income earned by spouse of nonresident servicemember [AMENDED]
Part 7. Credits against Tax
710:50-15-74. Credit for investment/new jobs [AMENDED]
710:50-15-75. Recycling, reuse and source reduction incentives [AMENDED]

710:50-15-76. Oklahoma coal credits [AMENDED]
710:50-15-81. Credit for qualified clean-burning motor vehicle fuel property and qualified electric vehicle property [AMENDED]
710:50-15-82. Amendment and repeal of certain tax credit provisions; preservation of certain claims under repealed law [AMENDED]
710:50-15-84. Recycling facility credit [AMENDED]
710:50-15-85. Credit for investment in Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association [AMENDED]
710:50-15-86. Small Business Capital Company / Oklahoma Small Business Venture credits [AMENDED]
710:50-15-87. Oklahoma Rural Small Business Capital Company / Rural Small Business Venture credits [AMENDED]
710:50-15-91. Credit for employers incurring expenses for the provision of child care services [AMENDED]
710:50-15-92. Credit for manufacturers of advanced small wind turbines [AMENDED]
710:50-15-95. Poultry litter credit [AMENDED]
710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines [AMENDED]
710:50-15-98. Credits for biodiesel production [AMENDED]
710:50-15-99. Dry fire hydrant credit [AMENDED]
710:50-15-101. Twenty-five percent (25%) Film and Music Profit Reinvestment Credit [AMENDED]
710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures [AMENDED]
710:50-15-104. Credit for construction of energy efficient residential property [AMENDED]
710:50-15-105. Credit for research and development [AMENDED]
710:50-15-106. Credits for ethanol production [AMENDED]
710:50-15-107. Eligible wage and modification expenses credits [AMENDED]
710:50-15-108. Credit for qualified rehabilitation expenditures [AMENDED]
710:50-15-109. Credit for qualified employers and employees of the aerospace sector [AMENDED]
710:50-15-110. Income tax credit moratorium [NEW]
710:50-15-111. Wire transfer fee credit [NEW]
710:50-15-112. Credit for electric motor vehicle manufacturers [NEW]
710:50-15-113. Qualified independent biomedical research institute or qualified cancer research center credit [NEW]
Subchapter 20. Limited Liability Companies
710:50-20-1. Limited liability companies [AMENDED]

AUTHORITY:
68 O.S. §§ 203; 205.2(G); 2357.11(H): 2357.22(I); 2357.30; 2357.32A; 2357.32B; 2357.41; 2357.46; 2357.47; 2357.59; 2357.63D; 2357.66; 2357.67; 2357.74D; 2357.102; 2357.104; 2357.402; 2358; Oklahoma Tax Commission

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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]
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710:50-15-110 [NEW]
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n/a

ANALYSIS:
Section 710:50-3-45 has been amended to provide authorization for electronically captured signatures.

Section 710:50-9-3 has been amended to conform to current Oklahoma statutory law regarding the calculation of interest on refunds for income tax returns filed after January 1, 2010.

Sections 710:50-11-6 through 710:50-11-11 have been amended to implement the provisions of House Bill 1800, First Regular Session of the 52nd Legislature (2009) and House Bill 3166, Second Regular Session of the 52nd Legislature (2010) to include unpaid fines and cost due to a municipal court in the claims that may be made against a state income tax refund.

Section 710:50-13-9 has been amended to correct a scrivener's error.

Section 710:50-15-51 has been amended to reflect the provisions of the Military Spouses Residency Relief Act which provides for the income from services performed in Oklahoma by a nonresident spouse of a nonresident servicemember may be exempt from Oklahoma income tax under certain conditions.

Sections 710:50-15-75, 710:50-15-82 and 710:50-20-1 have been amended to update statutory citations.

Section 710:50-15-76, Oklahoma coal credits, has been amended to implement the provisions of Senate Bill 1267 which provides for an income tax credit moratorium and extends the sunset date to 2014.

New Section 710:50-15-111 has been added to implement the provisions of House Bill 2250, First Regular Session of the 52nd Legislature (2009), which provides for an income tax credit in the amount of all electronic funds transfers fees paid by an individual or entity.

New Section 710:50-15-112 has been added to implement the provisions of House Bill 3024 which provides an income tax credit to electric vehicle manufacturers for electric vehicles manufactured after June 30, 2010

New Section 710:50-15-113 has been added to implement the provisions of Senate Bill 1919 which provides for an income tax credit for donations to a qualifying cancer research institute.

Sections 710:50-15-74, 710:50-15-81, 710:50-15-84, 710:50-15-85, 710:50-15-86, 710:50-15-87, 710:50-15-91, 710:50-15-92, 710:50-15-95, 710:50-15-97, 710:50-15-98, 710:50-15-99, 710:50-15-101, 710:50-15-103, 710:50-15-104, 710:50-15-105, 710:50-15-106. 710:50-15-107, 710:50-15-108 and 710:50-15-109 have been amended and new Section 710:50-15-110 has been added to implement the provisions of Senate Bill 1267, Senate Bill 1590 and House Bill 3024 (52nd Legislature, 2nd Regular Session), which provide for an income tax credit moratorium.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 3. RETURNS AND REPORTS

PART 5. FILING STATUS; ELECTIONS; ACCOUNTING PERIODS AND METHODS

710:50-3-45. Verification of signatures on electronically-filed returns

(a) **General provisions.** Section 2368(H) of the Oklahoma Statutes requires that any return must be verified by a written declaration that it is made under penalties of perjury and further, authorizes the Tax Commission to promulgate rules to provide procedures for verification of signatures on returns which are filed electronically.

(b) **Authentication.** For purposes of authenticating a signature for electronic filing, entry of the Taxpayer's Personal Identification Number (PIN) or use of an electronic signature pad (as authorized by the Internal Revenue Service) in the electronic filing process operated by the Internal Revenue Service shall serve as an "electronic signature" to sufficiently identify and link the taxpayer to a particular return, pursuant to the Oklahoma Income Tax Code. Entry of the taxpayer's PIN or use of an electronic signature pad as signature will only be allowed on a joint federal/state return or a linked electronically-filed return. Use of a PIN will not be allowed on a state-only or unlinked return.

(c) **Verification.** For purposes of verifying the information provided by a taxpayer filing electronically, as required by Section 2368(H) of the Oklahoma Income Tax Code, completion of the electronic filing process operated by the Internal Revenue Service, including entry of the Taxpayer's PIN or use of an electronic signature pad shall serve as verification of the information provided by the taxpayer during the transmission.

SUBCHAPTER 9. REFUNDS

710:50-9-3. Interest on refunds

(a) **Returns filed prior to January 1, 2004.** For returns filed on or after January 1, 1987, and before January 1, 2004, interest will be paid on income tax refunds that are not processed within ninety (90) days from the date a processible return is filed or due, whichever is later, at the same rate of interest specified for delinquent tax payments.

(b) **Returns filed on or after January 1, 2004 and before January 2, 2010.** In the case of returns filed on or after January 1, 2004 and before January 2, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, thirty (30) days from the date a processible return is filed or due, whichever is later; and,

(2) For all other returns, one hundred fifty (150) days from the date a processible return is filed or due, whichever is later.

(c) **Returns filed after January 1, 2010.** For returns filed after January 1, 2010, a taxpayer will be entitled to interest paid at the same rate specified for delinquent tax payments if the refund is not paid to the taxpayer within the following time periods:

(1) For electronically-filed returns, twenty (20) days from the date a processible return is filed, and

(2) For all other returns, ninety (90) days from the date a processible return is filed.

(d) ~~**Definitions.** For purposes of this Section, time periods shall be determined from the date a processible return is filed or due, whichever is later~~. **Processible return.** To be **"processible"**, all information on the return, including the computations, must be correct and all documents required by the Tax Commission must be included. In the case of an Amended Oklahoma Income Tax Return with a federal adjusted gross income change, the return must be accompanied by documentation to substantiate that the I.R.S. accepted the requested change. [**See:** 68 O.S. § 217(H)]

(e) **Exceptions.** Alternative statutory provisions apply in the following instances:

(1) Interest will not be paid on refunds that are intercepted for state or federal agencies. See provisions of Subchapter 11 of this Chapter. [**See:** 68 O.S. § 217(H)]

(2) In the event of litigation, interest will be paid in accordance with 68 O.S. §2374.

(3) In the case of refunds made to recover taxes illegally collected on bonus payments from oil and gas leases located on tax exempt Indian lands interest at 6 percent (6%) per annum will be calculated from the date of payment by the taxpayer, until the date the refund is issued. [**See:** 68 O.S.§ 2373]

SUBCHAPTER 11. INTERCEPT OF REFUNDS

710:50-11-6. Tax Commission shall have priority over all other agencies, municipal courts, or district courts

(a) The Tax Commission shall have first priority over all other agencies, municipal courts or district courts when the Tax Commission is collecting a debt, municipal fines and cost, or final judgment. Priority in multiple claims by other agencies, municipal courts, or district courts pursuant to the provisions of this Section shall be in the order in which the Tax Commission receives the claim from the agencies, municipal courts, and district courts required by (b) of this Section. **[See: 68 O.S. § 205.2(F)]**

(b) A state agency, municipal court, or a district court seeking to collect a debt, unpaid fines and cost, or final judgment of at least Fifty Dollars ($50.00) from an individual who has filed a state income tax return may file a claim with the Tax

Commission, requesting that the amount owed to the agency, municipal court, or district court be deducted from any state income tax refund due to that individual. The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security Number of the debtor. **[See: 68 O.S. § 205.2(A)]**

(c) Upon receiving a claim from a state agency, municipal court, or a district court, the Tax Commission shall ~~notify the agency or district court whether there are funds available to pay the claims~~ deduct the claim amount, plus collection expenses as provided in *OAC* 710:50-11-11, from the tax refund due the debtor and transfer the amount to the municipal court, the district court or the agency. Provided, the Tax Commission need not report available funds of less than Fifty Dollars ($50.00).

(d) The Tax Commission has established a central computerized record keeping system to implement the identification of such debtors and may, upon the proper establishment of a claim by a referring agency, intercept a taxpayer's Oklahoma Income Tax Refund and deliver over the proceeds to the referring agency to satisfy the debtor's or municipal court defendant's obligations.

710:50-11-7. Notice to taxpayer

(a) The referring agency, municipal court, or district court to whom a debt is owed must notify the taxpayer/debtor of an income tax refund intercept.

(b) The state agency, municipal court, or a district court shall send notice to the debtor by regular mail at the last-known address of the debtor as shown by the records of the Tax Commission when seeking to collect a debt not reduced to final judgment. The Tax Commission, state agency, municipal court, or the district court shall send notice to the judgment debtor or municipal court defendant by first class mail at the last-known address of the judgment debtor or municipal court defendant as shown by the records of the Tax Commission when seeking to collect a final judgment or unpaid municipal fines and cost. The notice shall state:

(1) That a claim has been filed with the Tax Commission for any portion of the tax refund due to the debtor or municipal court defendant which would satisfy the debt, unpaid municipal fines and cost, or final judgment in full or in part;

(2) The basis for the claim;

(3) That ~~such state agency or district court has applied to the Tax Commission for any portion of the tax refund due to the debtor which would satisfy the debt or final judgment in full or part~~ the Tax Commission has deducted an amount from the refund and remitted it to such state agency, municipal court, or district court;

(4) That the debtor or municipal court defendant has the right to contest the claim by sending a written request to the Tax Commission, state agency, municipal court, or the district court for a hearing to protest the claim and if the debtor or municipal court defendant fails to apply for a hearing within sixty (60) days ~~after the receipt~~ of the date of mailing of the notice, the debtor or municipal court defendant shall be deemed to have waived the opportunity to contest the claim. If the claim was filed by the Department of Human Services, the notice shall state that the debtor must contest the claim by sending a written request to the Department within thirty (30) days after the date of mailing of the notice; and,

(5) That a collection expense of five percent (5%) of the gross proceeds owed to the state agency, municipal court, or district court ~~shall be~~ has been charged to the debtor or municipal court defendant and withheld from the refund ~~upon final determination of the debt or final judgment at the hearing or upon failure of the debtor to request a hearing~~.

(c) ~~If the taxpayer settles the outstanding debt or final judgment with the agency or district court before the sixty (60) days expire, the agency or the district court shall notify the Tax Commission in writing or by electronic media that the claim has been released. [**See:** 68 O.S. § 205.2(A)(2)]~~ If the state agency, municipal court, or district court determines that a refund is due the taxpayer, the state agency, municipal court or district court shall reimburse the amount claimed plus the five percent (5%) collection expense to the taxpayer. The state agency, municipal court or district court may request reimbursement of the two percent (2%) collection expense retained by the Tax Commission. The request shall be made within ninety (90) days of the reimbursement to the taxpayer. If timely requested, the Tax Commission will make reimbursement to the state agency, municipal court, or district court within ninety (90) days of the request.

710:50-11-8. Post intercept notice [REVOKED]

~~The referring agency must notify the Tax Commission of the status of a debtor's account within ninety (90) days of the initial notice of refund intercept by the Tax Commission, whether or not any protest proceeding has been completed. Intercepts not updated due to the referring agency's failure to provide status reports will be purged from the Warrant Intercept System and funds will be released to the taxpayer.~~

710:50-11-9. Joint returns intercept

(a) The Tax Commission will intercept a refund from a Joint Income Tax Return to offset a past due obligation if either spouse is legally responsible for the past due obligation.

(b) In the case of a joint return, the notice shall state:

(1) The name of the taxpayer named in the return, against whom no debt, no unpaid fines and cost, or final judgment is claimed;

(2) The fact that a debt, unpaid municipal fines and cost, or final judgment is not claimed against the taxpayer;

(3) The fact that the taxpayer is entitled to receive a refund if it is due, regardless of the debt, municipal fines and cost, or final judgment asserted against debtor or municipal court defendant; and,

(4) That in order to obtain the refund due, the taxpayer must apply, in writing, for a hearing with the Tax Commission, municipal court, district court, or referring agency named in the notice within sixty (60) days after the date of

the mailing of the notice. If the claim was filed by the Department of Human Services, the notice shall state that the taxpayer must apply, in writing, for a hearing with the Department within thirty (30) days after the date of the mailing of the notice. Tax Commission Form 505 can only be used to claim the refund when the Tax Commission is the agency claiming that a debt is owed.

(c) If the taxpayer against whom no debt, no unpaid municipal fines and cost, or final judgment is claimed fails to apply in writing for a hearing within sixty (60) days after the mailing of the notice, the taxpayer shall have waived his or her right to a refund. If the claim was filed by the Department of Human Services, the notice must state that if the taxpayer fails to apply in writing for a hearing with the Department within thirty (30) days after the date of the mailing of the notice, the taxpayer shall have waived his or her right to a refund. [**See:** 68 O.S. § ~~205.2(A)(3~~ 205.2(A)(4))]

710:50-11-10. Nondebtor spouse protest

If the municipal court, district court or agency asserting the claim receives a written request for hearing from the debtor or taxpayer against whom no debt, no municipal fines and cost, or final judgment is claimed ~~requesting a hearing~~, the agency, municipal court, or the district court shall grant a hearing according to the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. It shall be determined at the hearing whether the claimed sum is correct or whether an adjustment to the claim shall be made. Pending final determination at the hearing of the validity of the debt, unpaid fines and cost, or final judgment asserted by the municipal court, district court or the agency, no action shall be taken in furtherance of the collection of the debt, unpaid fines and cost, or final judgment. Appeals from actions taken at the hearing shall be in accordance with the provisions of the Administrative Procedures Act. **[See: 68 O.S. § 205.2(B)]**

710:50-11-11. Notification after final determination at hearing

(a) Upon final determination at a hearing, as provided for in 710:50-11-10, of the amount of the debt, unpaid fines and cost, or final judgment, or upon failure of the debtor or taxpayer against whom no debt, no unpaid fines and cost, or final judgment is claimed to request such a hearing, the municipal court, district court or the agency shall ~~submit in a manner prescribed by the Tax Commission, notification of the action taken on the claim and a request that the amount owed, including the collection expense, be deducted from the tax refund due to the debtor and transferred to the district court or the agency~~ apply the amount of the claim to the debt owed. Any amounts held by the municipal court, district court, or agency in excess of the final determination of the debt and collection expense must be refunded by the municipal court, district court, or agency to the taxpayer. However, if the tax refund due is inadequate to pay the collection expense and debt, unpaid fines and cost, or final judgment, the balance due the state agency, the municipal court, or the district court shall be a continuing debt or final judgment until paid in full.

(b) Upon receipt of ~~notification~~ a claim as provided in ~~this Section,~~ *OAC* 710:50-11-6 the Tax Commission shall:

(1) Deduct from the refund five percent (5%) of the gross proceeds owed to the state agency, municipal court, or district court and distribute it by retaining two percent (2%) and transferring three percent to the municipal court, district court or the state agency as an expense of collection. The two percent (2%) retained by the Tax Commission shall be deposited in the Tax Commission Fund;

(2) Transfer the amount of the claimed debt, unpaid fines and cost, or final judgment or so much thereof as is available to the state agency, municipal court, or the district court;

(3) Notify the debtor in writing as to how the refund was applied; and,

(4) Refund to the debtor any balance remaining after deducting the collection expense and debt, unpaid fines and cost, or final judgment. [**See:** 68 O.S. § 205.2(C) and (D)]

SUBCHAPTER 13. ESTIMATED TAX

710:50-13-9. Estimated tax using annualized income method

(a) Corporate taxpayers whose Oklahoma Taxable Income was not earned evenly throughout the year may use the annualized method as described in this Section, or in the case of individual taxpayers, in accordance with the provisions of the Internal Revenue Code.

(b) The interest for the underpayment of estimated tax is not applicable if the estimated tax paid at the respective installment dates is at least an amount equal to seventy percent (70%) of the tax for the taxable year, computed by placing, on an annualized basis, the Oklahoma taxable income:

(1) For the first three months of the taxable year in the case of the installment due on the 15th day of the fourth month;

(2) For the first three months of the taxable year in the case of the installment due on the 15th day of the sixth month;

(3) For the first six months of the taxable year in the case of the installment due on the 15th day of the ninth month; and

(4) For the first nine months of the taxable year in the case of the installment due on the 15th day of ~~the of~~ the first month of the succeeding taxable year.

(c) To annualize income, multiply the Oklahoma Taxable Income for the applicable period by 12 and divide by the number of months in ~~the in~~ the applicable period.

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-51. Military pay of ~~non-residents~~ nonresidents and income earned by spouse of nonresident servicemember

(a) Military pay earned in Oklahoma by ~~non-resident~~ nonresident personnel, stationed in Oklahoma while on active duty, shall be exempt from Oklahoma Income Tax. These earnings are treated as "out-of state" income. This exemption applies only to military pay earned in Oklahoma, and any other income from the performance of a service other than military duty is subject to Oklahoma Income Tax. ~~Nonmilitary earnings of a spouse are similarly taxable~~

(b) Beginning with tax year 2009, a nonresident spouse of a nonresident servicemember may be exempt from Oklahoma income tax on income from services performed in Oklahoma if all of the following conditions are met:

(1) The service member is in Oklahoma in compliance with military orders;

(2) The spouse is in Oklahoma to be with the service member; and

(3) The spouse maintains the same domicile as the service member.

(c) The following types of income of a nonresident spouse of a nonresident service member are not exempt from Oklahoma income tax:

(1) Income from an unincorporated business activity conducted in Oklahoma.

(2) The distributive share of the Oklahoma part of partnership income, gains, losses or deductions.

(3) The distributive share from Subchapter S Corporations doing business in Oklahoma.

(4) Net rents and royalties from real and tangible personal property located in Oklahoma.

(5) Gains from the sales or exchanges of real property, located in Oklahoma.

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 exits 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 (3) 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. 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 $150,000.00 in service in August 2010 which generates $1,500.00 of credit for investment/new jobs per tax year for a five (5) year period (tax year 2010 through 2014) for a total of $7,500.00. This results in the taxpayer generating $3,000.00 of tax credits between July 1, 2010 and June 30, 2012. The taxpayer can initially claim $1,500.00 in tax year 2012 and $1,500.00 in tax year 2013 of credits generated during the moratorium. Taxpayer may also claim an additional $1,500.00 of credits in both tax year 2012 and 2013. Final $1,500.00 of credits can be claimed in tax year 2014.

710:50-15-75. Recycling, reuse and source reduction incentives

(a) An Oklahoma Income Tax credit of 20% of the net investment costs of equipment and installation of facilities for the recycling, reuse, or source reduction of controlled industrial waste or deleterious substances is allowed.

(b) The Oklahoma Tax Commission will receive certifications from the Department of Environmental Quality. Allowed credits will be based on these certifications. The taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return. The credit must be taken within three (3) years of installation or actual use.

(c) The credit can not exceed the amounts certified by the Department of Environmental Quality or Fifty Thousand Dollars ($50,000.00), which ever is greater, and may be reduced on audit to actual costs.

(d) 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 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]

(e) The Oklahoma Tax Commission will provide certification assistance when requested. [**See:** 27A O.S.~~Supp.1993,~~ §§2-11-301 through ~~2-1-307~~ 2-11-307]

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~~ 2014, 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~~ 2014, 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.

710:50-15-82. Amendment and repeal of certain tax credit provisions; preservation of certain claims under repealed law

(a) **Certain tax credits amended and recodified.** Credit provisions dealing with hazardous wastes under the Recycling, Reuse, and Ultimate Destruction Incentive Act (68 O.S. §§2357.14 - 2357.20) have been amended and recodified as the **Recycling, Reuse, and Source Reduction Incentive Act** (27A O.S.~~Supp.1993,~~ §§2-11-301 through 2-11-307).

(b) **Certain tax credits no longer available after July 1, 1993.** The following statutes were repealed, effective July 1, 1993:

(1) 68 O.S. §2357.21, which dealt with the retroactive application of certain provisions of the Recycling, Reuse, and Ultimate Destruction Incentive Act described in subsection (a) of this Section;

(2) 68 O.S. §2357.23, which provided a credit for qualified clean-burning train locomotive fuel property; and

(3) 68 O.S. §§2357.51 through 2357.58, which provided credits pursuant to the Manufacturer Recycling Incentive Act.

(c) **Preservation of certain claims under repealed law.** Any person, firm, corporation, partnership or other legal entity which has made application or filed an information report on forms prescribed by the Oklahoma Tax Commission for credit under 68 O.S. 2357.23, 2357.51, 2357.52, 2357.53, 2357.54, 2357.55, 2357.56, 2357.57, or 2357.58, on or before July 1, 1993, shall qualify to receive any such credit provided all other statutory requirements have been met. [**See:** 68 O.S~~. Supp. 1993,~~ §2357.59]

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 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)~~ 2357.25(I)].

(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 entities 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.

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.

(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 ~~year~~ 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)~~ 2357.203(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)~~ 2357.203(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)~~ 2357.203(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 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, multimedia program or feature, which is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes including, but not limited to, national advertising messages that are broadcast on a national affiliate or cable network, fixed on film or digital video, which can be viewed or reproduced and which is exhibited in theaters, licensed for exhibition by individual television stations, groups of stations, networks, cable television stations or other means or licensed for home viewing markets;* **[**68 O.S. § 2357.101 (D)(1)**]**

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

(3) **"Production company"** means *a person who produces 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.

(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

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

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 credit 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.

(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) Credit for ethanol production under 68 O.S. § 2357.66. See *OAC* 710:50-15-106

(15) Credit 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.**

(1) The credit for investment/new jobs under 68 O.S. § 2357.4 may be generated during the tax credit moratorium period (July 1, 2010 through June 30, 2012) but is limited as to when the credit may be claimed. See *OAC* 710:50-15-74.

(2) The credit for electricity generated by zero-emission facilities under 68 O.S. § 2357.32A, may be generated between July 1, 2010 and June 30, 2011, but may not be claimed for any period prior to the taxable year beginning January 1, 2012

(3) The credit for qualified rehabilitation expenditures under 68 O.S. §2357.41 may be generated during the tax credit moratorium period (July 1, 2010 through June 30, 2012) but is limited as to when the credit may be claimed. See *OAC* 710:50-15-108.

710:50-15-111. Wire transfer fee credit

(a) **General provisions:** For tax year 2009 and subsequent tax years a credit is allowed against the tax imposed under 68 O.S. § 2355 in the amount of all electronic funds transfers fees paid per 63 O.S. § 2-503.1j by any individual or entity.

(b) **When to claim credit**: The credit for fees paid between July 1, 2009 and December 31, 2010 cannot be claimed prior to January 1, 2011 and must be claimed on the 2010 income tax return. The credit for fees paid on or after January 1, 2011 must be claimed on the tax return that corresponds with the tax year during which the fees were paid.

(c) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for five (5) succeeding years.

710:50-15-112. Credit for electric motor vehicle manufacturers

(a) **General provisions.** Electric motor vehicle manufacturers may claim a one-time income tax credit for electric motor vehicles, medium-speed electric motor vehicles and low-speed electric motor vehicles manufactured after June 30, 2010.

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

(1) "**Electric motor vehicle**" means a new motor vehicle originally equipped to be propelled only by electricity and that may be legally operated on both interstate highways and turnpikes in this state and that is eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act. The term does not include

medium-speed electric motor vehicles, or low-speed electric motor vehicles;

(2) "**Electric motor vehicle manufacturer**" means an entity that has received a manufacturer exemption permit pursuant to the provisions of 68 O.S. § 1359.2. Adding modifications to existing electric motor vehicles, existing medium-speed electric motor vehicles or existing low-speed electric motor vehicles shall not be considered manufacturing for purposes of this section;

(3) "**Low-speed electric motor vehicle**" means a new four-wheeled electrical vehicle that is powered by an electric motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act; and

(4) "**Medium-speed electric motor vehicle**" means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five (35) miles per hour and, other than the speed requirement, is manufactured in compliance with the National Highway Traffic Safety Administration standards as contained in 49 C.F.R. 571.500. In order to be eligible the vehicle must be eligible for registration pursuant to the Oklahoma Vehicle License and Registration Act.

(c) **Computation of credit.**

(1) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of Two Thousand Dollars ($2,000.00) for an electric motor vehicle;

(2) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of One Thousand Dollars ($1,000.00) for a medium-speed electric motor vehicle; and

(3) An electric motor vehicle manufacturer is allowed a per-vehicle-manufactured credit of Five Hundred Dollars ($500.00) for a low-speed electric motor vehicle.

(d) **Limitations.** The credit shall not be claimed with respect to any one vehicle based upon multiple definitions as set out in this Section even if such vehicle would otherwise qualify for tax credits based upon qualification pursuant to more than one definition.

(e) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for five (5) succeeding years.

710:50-15-113. Qualified independent biomedical research institute or qualified cancer research center credit

(a) **General provisions.** For tax years beginning after December 31, 2004, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 to any taxpayer who makes a donation to a qualified independent biomedical research institute. For tax years beginning after December 31, 2010 any taxpayer who makes a donation to a qualified cancer research institute is also eligible for the credit.

(b) **Definitions.**

(1) **"Qualified cancer research institute"** *means an organization which is exempt from taxation pursuant to the Internal Revenue Code whose primary focus is raising the standard of cancer clinical care in Oklahoma through peer-reviewed cancer research and education. The organization must be either an independent research institute or a program that is part of a state university which is a member of the Oklahoma State System of Higher Education and must receive at least Four Million Dollars ($4,000,000) in National Cancer Institute funding per year.*

(2) **"Qualified independent biomedical research institute"** *means an organization which is exempt from taxation under the Internal Revenue Code section 501(c)(3) whose primary focus is conducting peer-reviewed basic biomedical research. The organization shall have a board of directors, be able to accept grants in its own name, be an identifiable institute that has its own employees and administrative staff, and receive at least Fifteen Million Dollars ($15,000,000) in National Institute of Health funding each year.*

(c) **Qualification.** In order to qualify for the credit, taxpayers must make a donation to either a qualified independent biomedical research institute or a qualified cancer research institute

(d) **Computation of credit and limitations.** The credit is fifty percent (50%) of the amount donated, but may not exceed $1,000 ($2,000 for a married filing joint return) for each taxpayer for each type of donation. Taxpayers may not claim more than one credit for a donation to a qualified independent biomedical research institute and one credit for a donation to a qualified cancer research institute.

(e) **For donations made between January 1, 2007 and December 31, 2010.** If the total credit allowed 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 donations will be adjusted. The adjusted percentage allowable will be determined by multiplying fifty percent (50%) times Two Million Dollars ($2,000,000.00) and then dividing the result by the credits claimed in the preceding calendar year.

(f) **Special limits for tax year 2011.**

(1) For tax year 2011 only, no more than Fifty Thousand Dollars ($50,000.00) in credits for donations to a qualified cancer research institute will be allowed. The qualified cancer research institute will notify donors if their donations are eligible for the tax credit. The qualified

cancer research institute will also provide the donor with written acknowledgement of the donation and the amount of the credit, and will provide this information to the Oklahoma Tax Commission as well.

(2) If the total credit allowed for qualified donations to qualified independent biomedical research institutes results in the reduction in total Oklahoma income tax of more than One Million Dollars ($1,000,000.00) in tax year 2011, the percentage of the credit for qualified donations will be adjusted for tax year 2012.

(A) The percentage of credit allowable for donations to qualified independent biomedical research institutes for tax year 2012 will be determined by multiplying fifty percent (50%) times One Million Dollars ($1,000,000.00), then dividing the result by the amount of credit allowed for tax year 2011.

(B) Since the total credit for donations to qualified cancer research institutes is capped at Fifty Thousand Dollars ($50,000.00) for tax year 2011, the credit for donations to qualified cancer research institutes will remain fifty percent (50%) for tax year 2012.

(g) **For donations made on or after January 1, 2012.** The qualified cancer research institute and the qualified biomedical research institute will provide their donors with written acknowledgement of the donation and the amount of the credit, and will provide this information to the Oklahoma Tax Commission as well. If the total tax credits authorized by this Section exceed One Million Dollars ($1,000,000.00) in tax year 2012 or any subsequent tax year for donations to either a cancer research institute or an independent biomedical research institute, the Oklahoma Tax Commission shall permit any excess over One Million Dollars ($1,000,000.00) but will factor such excess into the percentage adjustment formula for subsequent tax years for each type of credit. For credits based on donations to qualified independent biomedical research institutes the adjusted percentage allowable will be determined by multiplying fifty percent (50%) times One Million Dollars ($1,000,000.00), then dividing the result by the credits allowed for donations to qualified independent biomedical research institutes claimed in the preceding tax year. For credits based on donations to qualified cancer research institutes the adjusted percentage allowable will be determined by multiplying fifty percent (50%) times One Million Dollars ($1,000,000.00), then dividing the result by the credits allowed for donations to qualified cancer research institutes claimed in the preceding tax year.

(h) **Credit non-refundable, nontransferable; carryover provision.** This credit may not be taken as a refund; nor may it be transferred. If the credit exceeds a taxpayer's liability, unused credits may be carried over for four (4) years.

SUBCHAPTER 20. LIMITED LIABILITY COMPANIES

710:50-20-1. Limited liability companies

(a) A limited liability company (LLC) which registers with the Secretary of State shall file an income tax return in the same manner as required under the Internal Revenue Code as amended. All rulings as issued by the Internal Revenue Service shall be binding in regards to the filing of tax returns and the reporting of income. A domestic limited liability company shall be treated the same and taxed as a domestic partnership and a foreign limited liability company shall be treated the same and taxed as a foreign partnership, provided that such domestic or foreign limited liability companies are classified as partnerships for federal purposes. [**See:** 68 O.S. §202]

(b) Income from the organization (LLC) shall be reported to Oklahoma as provided for under 68 O.S. §2358 and on the same form as prescribed under federal regulations.

(c) Operations carried on within and without the State of Oklahoma by an LLC shall be the same as for corporations, sub S corporations, partnerships, and any other organization which are covered under Public Law 86-272. The activities set out by Subsection A of 18 O.S. ~~Supp. 1992,~~ §2049 shall not be considered when determining the transaction of business for Oklahoma income tax purposes. [**See:** 18 O.S. §2049(C)]

[OAR Docket #11-446; filed 4-19-11]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 55. MOTOR FUEL

[OAR Docket #11-447]

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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Section 710:55-1-2, *Definitions*, has been amended to add the definition of "ethanol" and "fuel grade ethanol".

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

710:55-1-2. Definitions

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

"Ethanol", means "fuel grade ethanol". Also known as ethyl-alcohol or alcohol.

"Farm tractor", for purposes of this Chapter, *means all tractor-type, motorized farm implements and equipment, but does not include motor vehicles of the truck-type, pickup truck-type, automobiles, and other motor vehicles required to be registered and licensed under the Oklahoma Vehicle License and Registration Act.* [**See:** 68 O.S. § 500.4(C)]

"Fuel grade ethanol", means ethanol that has been blended with at least 2% gasoline per the US Tax and Trade Bureau to render the product unsuitable for human consumption. This product must meet the American Society for Testing and Materials standard in effect January 1, 1995, and successor rules, as the D-4806 specification for denatured fuel grad ethanol for further blending with gasoline for use as automatic spark-ignition engine fuels.

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

[OAR Docket #11-448]

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RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4. Contents of Monthly Sales Report [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-17.1. Vendors' Fine For Refusal to Accept 100% Disabled Veterans Claims For Sales Tax Exemption [NEW]
Subchapter 13. Sales and Use Tax Exemptions
Part 18. Precious Metals [NEW]
710:65-13-95. Exemption for Sales of Gold, Silver, Platinum, Palladium or Other Bullion Items for Storage in a Recognized Depository Facility [NEW]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-172. Exemption for Community Health Centers, Migrant Health Centers, Indigent Health Care Clinics, Certain Community-Based Health Care Centers, and Community Mental Health Centers [AMENDED]
Part 42. Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:65-13-275. Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate [AMENDED]
Subchapter 18. Sourcing Pursuant to the Streamlined Sales and Use Tax Administration Act
710:65-18-3. Sourcing of Retail Sales [AMENDED]
Subchapter 19. Specific Applications and Examples
Part 5. "C"
710:65-19-50. Coins and Bullion [AMENDED]
Subchapter 21. Use Tax
710:65-21-8. Out-of-State Retailers or Vendors Not Registered in Oklahoma [NEW]
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Section 710:65-3-4 has been amended in accordance with § 14 of House Bill 2359 which sets vendor sales and use tax discount/remuneration at 1%. **[68:1367.1 and 1410.1]**

New Section 710:65-7-17.1, in accordance with Senate Bill 1084 [2006] and Senate Bill 1321 [2010], has been added to set forth the punishment for vendors who refuse to accept qualifying 100% disabled veterans' claims for sales tax exemption. **[68:1361.1]**

A New Part 18, dealing with precious metals, has been added to Subchapter 13. A New Section 710:65-13-95 has been adopted to reflect the provisions of § 5 of House Bill 3166 which created a sales tax exemption for sales of gold, silver, platinum, palladium or other bullion items stored within a recognized depository facility. **[68:1357(42)]**

Section 710:65-13-172, relating to the sales tax exemption for certain community health centers, migrant health centers, indigent health care clinics, certain community-based health care centers, and community mental health centers, has been amended to correct a clerical error. **[68:1356(22)]**

Section 710:65-13-275 has been amended to advise qualifying 100% disabled veterans of the availability of the applicable form for complaints regarding denial of claims of sales tax exemption by vendors.

Section 710:65-18-3 has been amended consistent with § 3 of House Bill 3166 which removes the January 1, 2011 application of destination sourcing

to florist sales and establishes that all sales by a florist must be sourced to its business location, and to comply with current statutory authority. **[68:1354.27]**

Section 710:65-19-50, "*Coins and bullion*" has been amended to reflect the provisions of House Bill 3166 to reference the sales tax exemption for qualifying sales of gold, silver, platinum, palladium or other bullion items.

New Section 710:65-21-8 has been added to reflect the provisions of House Bill 2359 regarding notice requirements for certain out-of-state retailers or vendors not registered in Oklahoma

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-4. Contents of monthly sales report

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), sales tax number as it appears on the sales tax permit of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

(1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.

(2) The **"sales value"** of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.

(3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.

(4) The amount of tax due, including any city or county tax, or both, as described in (d) of this Section.

(5) The balance of tax due less any remuneration earned, as described in (b) of this Section.

(A) The return should show the amount of interest (if any) that is due.

(B) The return should show the amount of penalty (if any) that is due.

(6) Such other reasonable information as the Commission may require. [**See:** 68 O.S. §§1365, 1367]

(b) **Remuneration.** When the sales tax report with all required information included is timely filed, the vendor may deduct the applicable remuneration of one percent (1%) as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who files an incomplete report, files his report after the date of delinquency, or fails to make full payment on or before the due date.

~~(1) If the vendor is participating in the Commission's electronic funds transfer and electronic data interchange program, the applicable remuneration is two and one-fourth ($2\frac{1}{4}$) percent of the tax due.~~

~~(2) For all other vendors, the remuneration allowed shall be one and one-fourth ($1\frac{1}{4}$) percent of the tax due.~~

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Business Tax Electronic Filing Coordinator, Oklahoma Tax Commission, P.O. Box 269057, Oklahoma City, OK, 73126-9057, for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper and to deduct the remuneration of ~~two and one-fourth ($2\frac{1}{4}$)~~ one percent (1%).

(1) To determine whether a vendor is "unable" to file electronically, the following guidelines shall be utilized:

(A) The taxpayer does not have access to a computer or internet access at home or place of business; and,

(B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access; and,

(C) The taxpayer is unable to use the Telefile system.

(2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.

(3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to *OAC* 710:1-5-21 through 710:1-5-48, the rules of practice and procedure before the Commission.

(d) **Reporting for city and county taxes.**

(1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).

(2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

(3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.

(e) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement **"Excess Tax Collected"** should be written on the face of the report, under the line captioned **"Total Due."**

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-17.1. Vendors' fine for refusal to accept 100% disabled veterans claims for sales tax exemption

A vendor who willfully or intentionally refuses to honor a 100% disabled veteran's sales tax exemption is subject to punishment by an administrative fine for the first offense. A second or subsequent violation constitutes a misdemeanor punishable by a fine not to exceed Five Hundred Dollars ($500.00) per offense.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 18. PRECIOUS METALS

710:65-13-95. Exemption for sales of gold, silver, platinum, palladium or other bullion items for storage in a recognized depository facility

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

(1) **"Bullion"** means any precious metal, including, but not limited to, gold, silver, platinum and palladium, that is in such a state or condition that its value depends upon its precious metal content and not its form. The definition of "bullion" does not apply to fabricated metals that have been processed or manufactured for artistic use or as jewelry.

(2) **"Depository facility"** means an institution that accepts delivery of precious metals on behalf of the purchaser and provides storage of such precious metals, but shall not include financial institutions.

(3) **"Recognized depository facility"** means any facility which qualifies as a depository facility as defined in paragraph (2).

(b) **General provisions.** Sales of gold, silver, platinum, palladium or other bullion items such as coins and bars and legal tender of any nation, which legal tender is sold according to its value as precious metal or as an investment is exempt when stored within a recognized depository facility.

(c) **Exemption limited to eligible, properly documented transactions.** In order for such sales to be considered exempt from sales tax, a vendor, which is also a recognized depository facility, must provide its customer and retain a copy of documentation that the purchased bullion is to be kept for storage in the vendor's depository facility. Vendors which are not also acting as a recognized depository facility must maintain bills of lading or other documentation issued by the vendor or purchaser indicating that the bullion purchases are to be immediately transported and delivered to a "recognized depository facility" for storage.

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-172. Exemption for community health centers, migrant health centers, indigent health care clinics, certain community-based health care centers, and community mental health centers

(a) **Qualification for the exemption for community health centers, migrant health centers, indigent health care clinics and certain community-based health care centers.** Sales tax does not apply to the sale of tangible personal property or taxable services when sold to:

(1) Any federally qualified community health center as defined in Section 254c of Title 42 of the United States Code;

(2) Any migrant health center as defined in Section 254b of Title 42 of the United States Code;

(3) Any clinic receiving disbursements of state monies from the Indigent Health Care Revolving Fund pursuant to the provisions of Section 66 of Title 56 of the Oklahoma Statues;

(4) Any community-based health center which provides primary care services at no cost to the recipients, **and** is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3). For purposes of this Section, **"primary care services"** means health services related to family medicine, internal medicine, pediatrics, obstetrics, or gynecology that are furnished by physicians, and where appropriate, physician assistants, nurse practitioners, or other licensed medical professionals; or

(5) Any community mental health center as defined in Section 3-302 of Title 43A of the Oklahoma Statutes. For purposes of this Section, "**community mental health center**" means *a facility offering:*

(A) *A comprehensive array of community-based mental health services, including, but not limited to, inpatient treatment, outpatient treatment, partial hospitalization, emergency care, consultation and education, and*

(B) *Certain services at the option of the center, including, but not limited to, prescreening, rehabilitation services, pre-care and after-care, training programs, and research and evaluation programs.*

(b) **Application process.** Application for exemption is made by submitting to the Taxpayer Assistance Division , Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, a completed Form 13-16-A, contained in Packet E available telephonically at (405) 521-3160 or online at www.tax.ok.gov along with the applicable documentation set forth in (c) of this Section:

(c) **Supporting documentation required.**

(1) **Federally qualified community health centers or migrant health centers.** Federally qualified community health centers or migrant health centers, must submit the letter of notification from the U.S. Department of Health

and Human Services, recognizing that the center qualifies under the terms of the relevant statute.

(2) **Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund.** Clinics receiving disbursements of state monies from the Oklahoma Indigent Health Care Revolving Fund must submit a copy of the letter or disbursement voucher from the Fund, showing the date the funds were disbursed.

(3) **Community-based health centers.** Community-based health centers must submit the documentation described in (A) through (C) of this paragraph:

(A) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(B) A written description of the primary care services provided must be submitted, stating the activities of the organization, and evidenced by copies of the following, as applicable:

(i) By-laws;

(ii) An audit or other financial statement, showing the types and amounts of revenue received; and

(iii) ~~take~~ Intake documents or other forms used to obtain information from clients and which specifically reflect that the primary care services were being provided at no cost to the recipients.

(C) For the purposes of this paragraph, **"at no cost to the recipient"** means at no cost to either the recipient or any unit of government, or any insurance company, or any other person or entity. Centers which provide primary care services on a "sliding scale" fee schedule do **not** qualify for the exemption.

(4) **Community mental health centers.** Community mental health centers must submit to the Commission, as part of its application, proof of recognition by the Oklahoma Department of Mental Health and Substance Abuse Services that applicant qualifies as a Community Mental Health Center, along with a written description of the comprehensive array of community-based mental health and other optional services the facility offers, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property and services purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. §1352, are taxable to the contractor. A contractor may not purchase tangible personal property or services to perform contracts with qualifying health care organizations exempt from sales tax.

PART 42. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:65-13-275. Exemption for disabled veterans in receipt of compensation at the one hundred percent rate

(a) **General provisions.** Sales of tangible personal property or services are exempt from sales tax when made to persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service. The exemption includes sales to the spouse of such veteran or to a household member where the veteran resides and who is authorized to make purchases on behalf of the veteran in the veteran's absence, so long as the purchase is for the benefit of the qualified veteran.

(b) **Qualification to receive an exemption card.** To receive an exemption card under this Section, a veteran must provide a letter from the United States Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate and the veteran must be an Oklahoma "resident" as defined in 68 O. S. § 2353.

(c) **Exemption limitation.** The authorized exemption in this Section is limited to Twenty-five Thousand Dollars ($25,000.00) per year of qualifying purchases made by the qualified veteran, spouse or household member authorized to make purchases on behalf of the qualified veteran in the veteran's absence. The Tax Commission may request persons asserting or claiming exemption under this Section to provide a statement executed under oath, that the total sales amounts for which the exemption is applicable have not exceeded the yearly limitation of Twenty-five Thousand Dollars ($25,000.00). If an exempt sale exceeds the exemption limitation, the sales tax in excess of the limitation shall be treated as a direct sales tax liability and the Tax Commission may recover the tax including penalty and interest by the use of any method authorized by law.

(d) **Qualifying sales.** Sales are exempt if the qualified veteran has an interest in the funds presented and the purchase is made on his or her behalf, and the qualified veteran, spouse or household member authorized to make purchases on behalf of the veteran in the veteran's absence has presented the exemption card issued by the Oklahoma Tax Commission. All vendors shall honor the proof of eligibility for the sales tax exemption to both the qualified veteran and persons making purchases for the benefit of the disabled veteran. Qualifying 100% disabled veterans who have had claims for sales tax exemption denied by vendors may notify the Tax Commission of such denial by submitting to the Compliance Division a

signed and completed OTC Form 13-37, which is available telephonically at (405) 521-3281 or online at www.tax.ok.gov.

(e) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352 are taxable to the contractor. A contractor who performs improvements to real property for a disabled veteran in receipt of compensation at the one hundred percent (100%) rate who qualifies for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to disabled veterans in receipt of compensation at the one hundred percent rate.

SUBCHAPTER 18. SOURCING PURSUANT TO THE STREAMLINED SALES AND USE TAX ADMINISTRATION ACT

710:65-18-3. Sourcing of retail sales

For those sales that are not sales of mobile telecommunications services and are not the lease or rental of tangible personal property other than transportation equipment, the sales shall be sourced to the location for which city and county sales taxes will be charged in the following manner:

(1) *When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location;*

(2) *When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.* ~~*Provided, this [paragraph] shall not apply to florists until January 1, 2011. Prior to that date, all*~~ *All sales by florists shall be sourced to its business location;*

(3) *When the provisions of paragraphs (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;*

(4) *When the provisions of paragraphs (1), (2), and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and,*

(5) *When none of the previous rules of paragraphs (1), (2), (3) or (4) of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.* [68 O.S.Supp.2003, § 1354.27(A)]

SUBCHAPTER 19. SPECIFIC APPLICATIONS AND EXAMPLES

PART 5. "C"

710:65-19-50. Coins and bullion

~~(a)~~ ~~Where any coin~~ Coins or currency ~~is~~ exchanged in the open market at the current exchange rate~~, the transaction is~~ are not subject to ~~the~~ sales tax. However, with the exception of *OAC* 710:65-13-95 the following transactions are subject to Oklahoma sales tax:

(1) ~~where coins~~ Coins, ~~are~~ commemorative or otherwise, ~~and the coins, although legal tender in the issuing country and also acceptable as legal tender in other countries, are~~ purchased at rates not reflecting actual currency value (as for numismatic or coin collecting purposes or where the precious metal content of the coins determine their value)~~, the transaction is the sale of tangible personal property subject to the sales tax~~.

(~~b~~ 2) Sales of bullion. ~~are subject to sales tax. Bullion sold within Oklahoma and physically or constructively transferred into the state is subject to the sales tax. However, where the purchaser paid a sales tax in the state in which he took delivery, he is liable for the difference between the sales tax paid and the Oklahoma use tax.~~

(3) Sales of gold and silver commodity contracts ~~are not subject to sales tax unless~~ where delivery of the commodity is taken in Oklahoma. [**See:** 68 O.S. §§1352, 1354]

SUBCHAPTER 21. USE TAX

710:65-21-8. Out-of-state retailers or vendors not registered in Oklahoma

(a) **Definitions.** For the purposes of this Section:

(1) **"De minimis online auction website"** means any online auction website that facilitates total gross sales in Oklahoma in the prior year of less than $100,000.00 and reasonably expects Oklahoma sales in the current year will be less than $100,000.00.

(2) **"De minimis retailer"** means any non-collecting retailer that made total gross sales in Oklahoma in the prior year of less than $100,000.00 and reasonably expects Oklahoma sales in the current year will be less than $100,000.00.

(3) **"Non-collecting retailer"** means a retailer, not currently registered to collect and remit Oklahoma sales and use tax, who makes sales of tangible personal property from a place of business outside of Oklahoma to be

shipped to Oklahoma for use and who is not required to collect Oklahoma sales or use taxes.

(4) **"Oklahoma purchaser"** means a purchaser that requests goods be shipped to Oklahoma.

(5) **"Online auction website"** means a collection of web pages on the Internet that allows persons to display tangible personal property for sale which is purchased through a competitive process where participants place bids with the highest bidder purchasing the item when the bidding period ends.

(b) **Requirements for notice.** Effective October 1, 2010, every non-collecting retailer must give notice that Oklahoma use tax is due on nonexempt purchases of tangible personal property and should be paid by the Oklahoma purchaser.

(1) **Notice contents.** The notice must be readily visible and contain the information set forth as follows:

(A) The non-collecting retailer is not required, and does not collect Oklahoma sales or use tax;

(B) The purchase is subject to Oklahoma use tax unless it is specifically exempt from taxation;

(C) The purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means;

(D) The State of Oklahoma requires Oklahoma purchasers to report all purchases that were not taxed and pay tax on those purchases. The tax may be reported and paid on the Oklahoma individual income tax return [Form 511] or by filing a consumer use tax return. [Form 21-1]; and

(E) The referenced forms and corresponding instructions are available on the Oklahoma Tax Commission website, www.tax.ok.gov.

(2) **Website and/or catalog notice.** Notice on a website shall occur on a page necessary to facilitate the applicable transaction. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. Notice in a catalog shall be part of the order form. It shall be sufficient if the non-collecting retailer provides a prominent reference to a supplemental page that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma on page", if such page includes the principal notice required by this Section.

(3) **Invoice notice.** For internet purchases, the invoice notice must occur on the electronic order confirmation. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section. If the non-collecting retailer does not issue an electronic order confirmation, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement. For catalog purchases, the complete notice must be placed on the purchase order, bill, receipt, sales slip, order form, or packing statement.

(4) **Exceptions.**

(A) For internet purchases, notice on the check-out page fulfills both the website and invoice notice requirements simultaneously. It shall be sufficient if the non-collecting retailer provides a prominent linking notice that reads as follows: "See important Oklahoma sales tax information regarding the tax you may owe directly to the State of Oklahoma", if such linking notice directs the purchaser to the principal notice required by this Section.

(B) If a retailer is required to provide a similar notice for another state in addition to Oklahoma, the retailer may provide a consolidated notice so long as such notice includes the information contained in (b) of this Section, specifically references Oklahoma and meets the placement requirements of this Section.

(c) **Prohibition from advertising no tax due.** A non-collecting retailer may not state or display or imply that no tax is due on any Oklahoma purchase unless such display is accompanied by the notice required by (b) of this Section each time the display appears.

(1) For example, a summary of the transaction including a line designated "sales tax" and showing the amount of sales tax as "zero" or "0.00" would constitute a "display" implying that no tax is due on the purchase. Such a display must be accompanied by the notice required by (b) of this Section every time it appears.

(2) Notwithstanding the limitation in this subsection, if a non-collecting retailer knows that a purchase is exempt from Oklahoma tax pursuant to Oklahoma law, the non-collecting retailer may display or indicate that no sales tax is due even if such display is not accompanied by the notice required by (b) of this Section.

(d) **Invoice notification exception for online auction websites.** With the exception of notification on invoices, the provisions of this Section shall apply to online auction websites as defined in (a) of this Section.

(e) **De minimis exception.** A de minimis retailer and a de minimis online auction website, as defined in (a) of this Section, shall be exempt from the notice requirements in (b) of this Section.

[OAR Docket #11-448; filed 4-19-11]

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

[OAR Docket #11-449]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 2. Cigarette Stamp Tax

Part 1. General Provisions
710:70-2-10. Discount on Cigarette Tax Stamps Purchased [AMENDED]
Part 3. Delivery Sales
710:70-2-50. Filing Requirements for Persons Making "Delivery Sales of Cigarettes" [AMENDED]
Subchapter 7. Cigarette and Tobacco Products Sales by Federally Recognized Indian Tribes and Nations
710:70-7-4. Stamps Required [AMENDED]
710:70-7-5. Documentation That Purchaser Is Tribally Owned or Licensed Retail Store Must Be Obtained and Retained [REVOKED]
710:70-7-8. Cigarette Stamp Tax Rates for Sales by Federally-Recognized Indian Tribes and Nations [AMENDED]
710:70-7-9. Tobacco Products Tax Rates for Sales by Federally-Recognized Indian Tribes and Nations [AMENDED]

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Oklahoma Tax Commission; 68 O.S. §§ 203, 304, 322, 415 and 420

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ANALYSIS:
Section 710:70-2-10 has been amended to clarify that a discount is not available to a purchaser who has an outstanding assessment or delinquent report. Section 710:70-2-50 has been amended to implement the provisions of Senate Bill 608 [2009] which requires electronic filing by every wholesaler or manufacturer. **[68:312]**

Section 710:70-7-4 has been amended to implement the provisions of Senate Bill 608 [2009] to include tax-free stamps for non-compacting tribes. **[68:349.1]**Section 710:70-7-5 has been revoked because it no longer complies with current statutory authority.

Sections 710:70-7-8 and 710:70-7-9 have been amended to implement the provisions of Senate Bill 608 [2009] to include tax-free stamps for non-compacting tribes sales to members and the tax stamp rate for sales by non-compacting tribes to nontribal members.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-10. Discount on cigarette tax stamps purchased

(a) **Allowable discount.** Every person purchasing cigarette or tobacco tax stamps from the Oklahoma Tax Commission may do so at a reduction of one and one-half cents ($0.015) per stamp. The discount herein provided shall be the only discount allowed to purchasers from the Tax Commission.

(b) **Exceptions and limitations.** The discount described in this Section shall not be applicable or available:

(1) On purchases of less than One Hundred Dollars ($100.00) at any one time;

(2) To out-of-state purchasers who reside in states that do not give discounts on cigarette stamps purchased by State of Oklahoma cigarette dealers; ~~or,~~

(3) To a purchaser who has an unpaid assessment or is delinquent in one or more required reports; or,

(4) To a purchaser who refuses to comply with the laws of the State of Oklahoma. [**See:** 68 O.S.Supp.2004, §311]

PART 3. DELIVERY SALES

710:70-2-50. Filing requirements for persons making "delivery sales of cigarettes"

(a) **General.** Before delivering any cigarettes to purchasers, every person making delivery sales into Oklahoma, or mailing, shipping, or otherwise delivering cigarettes in connection with any such sales, must provide to the Oklahoma Tax Commission a written statement containing the following information:

(1) The name of the seller;

(2) The trade name of the seller;

(3) The address of the principal place of business of the seller; and,

(4) The address of any other place of business of the seller. [68 O.S. § 317.5(A)]

(b) **Monthly report of delivery sales required.** No later than the tenth day of each calendar month, each person who has made a delivery sale, or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous month, must make a memorandum report to the Oklahoma Tax Commission of the following information:

(1) The name of the purchaser;

(2) The brands of cigarettes sold; and,

(3) The quantity of cigarettes sold. [68 O.S. § 317.5(B)]

(c) **Alternative method of compliance with reporting requirement.** Any person who satisfies the requirements set out in 15 U.S.C. 376 shall be deemed to have met the reporting requirements set out in (b) of this Section. [68 O.S. § 317.5(C)]

(d) **Reports must be filed electronically.** All required reports must be filed electronically in the format prescribed by the Compliance Division.

SUBCHAPTER 7. CIGARETTE AND TOBACCO PRODUCTS SALES BY FEDERALLY RECOGNIZED INDIAN TRIBES AND NATIONS

710:70-7-4. Stamps required

All cigarettes sold or held for sale in the State of Oklahoma shall bear one of the following stamps:

(1) A stamp indicating that the retailer selling or holding for sale such cigarettes is a federally recognized Indian tribe or nation, or licensee thereof, which has entered into a Compact with the State of Oklahoma and is paying the payments specified thereunder; or

(2) A stamp indicating that the retailer selling or holding for sale such cigarettes is a federally recognized Indian tribe or nation, or licensee thereof, which has not entered into a Compact with the State of Oklahoma and the cigarettes bearing such stamps are being held for sale to members of that Indian tribe or nation; or

(3) A stamp indicating that the retailer selling or holding for sale such cigarettes does not meet the requirements of one of the above-referenced categories and is paying the tax levied pursuant to 68 O.S. §301 et seq.

710:70-7-5. Documentation that purchaser is tribally owned or licensed retail store must be obtained and retained [REVOKED]

~~(a) In order for a wholesaler to sell to a tribally owned or licensed retail store at a rate of less than that of the cigarette tax imposed by 68 O.S. §301 et seq., the wholesaler must receive from said retailer a certificate, affidavit, license or other documentation showing that the purchaser is a tribally owned or licensed store within the meaning of 68 O.S. §348.~~

~~(b) Such certificate, affidavit, license, or other documentation must be retained by the wholesaler during the course of business with the tribally owned or licensed retailer and for a period of three (3) years thereafter.~~

710:70-7-8. Cigarette stamp tax rates for sales by federally-recognized Indian tribes and nations

(a) **Designation of rates.** Tax rates set out in this Section are for packages of twenty (20) cigarettes. Rates for packages of twenty-five (25) cigarettes are Twenty-five percent (25%) greater than the rates for the twenty-unit packages.

(b) **Rates applicable to sales on Indian country by federally-recognized Indian tribes or nations, or their licensees.** Rates applicable to cigarette sales ~~of cigarettes~~ made on the Indian country ~~by~~ of a federally-recognized Indian tribe~~s~~ or nation~~s,~~ by that tribe or nation or ~~their~~ its licensee~~s~~ are:

(1) **State/tribal rate.** The state/tribal rate is 51.50 cents per pack. The rate applies to compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Tax Commission.

(2) **State/tribal border rate.** The state/tribal border rate is 25.75 cents per pack for any retailer located within twenty (20) miles of the state line between Oklahoma and Kansas or Oklahoma and Missouri. This rate applies to compacts containing provisions requiring the filing of reports and payment of tax to the compacting tribe when reports and payments are made to the Tax Commission.

(3) **New compact rate.** The new compact rate is 85.75 cents per pack. The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (b)(5) apply by specific compact provision.

(4) **Kansas border rate.** The Kansas border rate is 60.75 cents per pack. This rate applies to tribes' or licensees' locations close to the Kansas border, as designated by the terms of their "new" compacts.

(5) **Exception rate.** The "exception" rate is 5.75 cents per pack. This rate applies to sales made by tribes or their licensees under compacts, the terms of which are not applicable to the circumstances set out in (b)(1) through (b)(4) of this Section.

(6) **Noncompact rate for sales to tribal members.** The noncompact rate for sales made by tribes or nations without a compact or their licensees to members of their tribe or nation is 0.00 cents per pack. The packs must be stamped with black stamps issued by the Oklahoma Tax Commission.

(7) **Noncompact rate for sales to other than tribal members.** The noncompact rate for sales made by tribes or nations without a compact or their licensees to other than members of their tribe or nation is $1.03 per pack.

710:70-7-9. Tobacco products tax rates for sales by federally-recognized Indian tribes and nations

(a) **New compact rate.** The terms **"new compact"** and **"new compact rate"** apply to compacts signed after January 1, 2003, which contain the provision that the rate will increase by an amount equal to any tax increase that becomes effective on or after January 1, 2004, and to sales made thereunder, unless the terms of subsection (f) apply by specific compact provision:

(1) For little (Class A) cigars $0.02925 each.

(2) For all other (Class C) cigars: $0.0975 each.

(3) For smoking tobacco: Fifty percent (50%) of the Factory List Price.

(4) For chewing tobacco: Thirty-seven and one-half percent (37.5%) of the Factory List Price.

(b) **State/tribal rate.** The state/tribal rate applies to sales made by tribes or their licensees with compacts known as state/tribal which require reporting and payment to the tribe at the same time reporting and payment of tax is made to the Tax Commission.

(1) For little (Class A) cigars ~~$0.009~~ $0.18 each.

(2) For all other (Class C) cigars: ~~$0.03~~ $0.06 each.

(3) For smoking tobacco: ~~Twenty~~ Forty percent ~~(20%)~~ (40%) of the Factory List Price.

(4) For chewing tobacco: ~~Fifteen~~ Thirty percent ~~(15%)~~ (30%) of the Factory List Price.

(c) **State/tribal border rate.** The state/tribal border rate applies to any retailer located within twenty (20) miles of the state line between Oklahoma and Kansas or Oklahoma and Missouri. This rate applies to sales made by tribes or their licensees with compacts known as state/tribal which require reporting and payment to the tribe at the same time reporting and payment of tax is made to the Tax Commission.

(1) For little (Class A) cigars $0.009 each.

(2) For all other (Class C) cigars: $0.03 each.

(3) For smoking tobacco: Twenty percent (20%) of the Factory List Price.

(4) For chewing tobacco: Fifteen percent (15%) of the Factory List Price.

(d) **Kansas border rate.** The Kansas border rates apply to tribes' or licensees' locations that are close to the Kansas border, as designated by the terms of their "new" compacts:

(1) For little (Class A) cigars: $0.00225 each.

(2) For all other (Class C) cigars: $0.0075 each.

(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.

(4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.

(e) **Texas border rate.** The Texas border rates apply to tribes' or licensees' locations that are close to the Texas border, as designated by the terms of their "new" compacts.

(1) Texas border rate prior to September 1, 2009:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Fourteen point seven eight seven percent (14.787%) of the Factory List Price.

(D) For chewing tobacco: Twelve point two eight seven percent (12.287%) of the Factory List Price.

(2) Texas border rate on or after September 1, 2009 and ending on or before August 31, 2010:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Twenty-three point five nine percent (23.59%) of the Factory List Price.

(D) For chewing tobacco: Eighteen point five nine percent (18.59%) of the Factory List Price.

(3) Texas border rate on or after September 1, 2010 and ending on or before August 31, 2011:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Twenty-seven point three nine four percent (27.394%) of the Factory List Price.

(D) For chewing tobacco: Twenty-four point eight nine four percent (24.894%) of the Factory List Price.

(4) Texas border rate on or after September 1, 2011 and ending on or before August 31, 2012:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Forty-one point one nine seven percent (41.197%) of the Factory List Price.

(D) For chewing tobacco: Thirty-one point one nine seven percent (31.197%) of the Factory List Price.

(5) Texas border rate on or after September 1, 2012:

(A) For little (Class A) cigars: $0.00225 each.

(B) For all other (Class C) cigars: $0.0075 each.

(C) For smoking tobacco: Fifty percent (50%) of the Factory List Price.

(D) For chewing tobacco: Thirty-seven point five percent (37.5%) of the Factory List Price.

(f) **Exception rate.** The "exception" rates apply to sales made by tribes' and licensees' locations specified by the terms of the tribes' new compact.

(1) For little (Class A) cigars: $0.00225 each.

(2) For all other (Class C) cigars: $0.0075 each.

(3) For smoking tobacco: Ten percent (10%) of the Factory List Price.

(4) For chewing tobacco: Seven and one-half percent (7.5%) of the Factory List Price.

(g) **Noncompact rate for sales to tribal members.** The noncompact rates for sales made by tribes or nations without a compact or their licensees to members of their tribe or nation are:

(1) For little (Class A) cigars: $0.00 each.

(2) For all other (Class C) cigars: $0.00 each.

(3) For smoking tobacco: Zero percent (0%) of the Factory List Price.

(4) For chewing tobacco: Zero percent (0%) of the Factory List Price.

(h) **Noncompact rate for sales to other than tribal members.** The noncompact rate for sales made by tribes or nations without a compact or their licensees to other than members of their tribe or nation are:

(1) For little (Class A) cigars: $0.036 each.

(2) For all other (Class C) cigars: $0.12 each.

(3) For smoking tobacco: Eighty percent (80%) of the Factory List Price.

(4) For chewing tobacco: Sixty percent (60%) of the Factory List Price.

[OAR Docket #11-449; filed 4-19-11]

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

[OAR Docket #11-450]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Saving Quality Jobs Program
Part 1. General Provisions
710:85-3-1. Purpose [AMENDED]
Subchapter 5. Small Employer Quality Jobs Program
710:85-5-1. Purpose [AMENDED]
710:85-5-8. Procedure for Filing Report, Review, Determination [AMENDED]
710:85-5-15. Denial, Cessation, And Resumption of Incentive Payments [AMENDED]

Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-3. Procedure upon Qualification; Payment [AMENDED]

AUTHORITY:
68 O.S. § 203 and 3907; Oklahoma Tax Commission

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ANALYSIS:
Sections 710:85-3-1 and 710:85-5-1 have been amended to update statutory citations.

Section 710:85-5-8 has been amended to clarify policy and eliminate confusion regarding the reporting of the total amount of gross payroll, rather than the individual amounts. **[68:3905]**

Section 710:85-5-15 has been amended to implement the provisions of Section 2, Senate Bill 1966, Second Regular Session of the 52nd Legislature (2010), which extends to twenty-four (24) months the period in which a Small Quality Jobs participant is allowed to meet its contractual requirements for new jobs and average annualized wages. **[68:3905]**

Section 710:85-7-3 has been amended to comply with current statutory law which requires a production company to either have already filed or will file an Oklahoma tax return to be eligible for a rebate payment. **[68:3624]**

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM

PART 1. GENERAL PROVISIONS

710:85-3-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the administration, allocation and payment of certain tax incentives pursuant to 68 O.S.~~Supp.1994,~~ §§3701 through 3712, the Saving Quality Jobs Act.

SUBCHAPTER 5. SMALL EMPLOYER QUALITY JOBS PROGRAM

710:85-5-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the administration, allocation and payment of certain tax incentives pursuant to the Small Employer Quality Jobs Incentive Act. [68 O.S.~~Supp.1997,~~ §§3901 et seq.]

710:85-5-8. Procedure for filing report, review, determination

(a) **Contents of report.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a report for gross payroll paid the previous quarter. The report on forms prescribed by the Commission, shall include:

(1) Name of qualified establishment;
(2) Identification number of qualified establishment;
(3) Period for which report is filed;
(4) Actual number of new direct jobs during period of report;
(5) ~~Individual gross~~ Gross payroll for each new direct job for the establishment for the report period; and
(6) Other information required to be submitted by the Commission.

(b) **Reports to constitute a claim.** The reports filed pursuant to this Section shall constitute ~~an annual~~ a claim for incentive payments. The establishment must continue to file quarterly reports until reports covering the seven year incentive period have been filed, or until it is no longer qualified to receive incentive payments.

(c) **Commission action upon receipt of reports.** Upon receipt of the reports for the initial calendar quarter and for each subsequent calendar quarter, the Commission shall make the following determinations:

(1) That the establishment has created or maintained the minimum number of new direct jobs as specified in 68 O.S. § 3904(C)(3);
(2) That the individuals employed in the new direct jobs were paid an annualized wage which equaled or exceeded the applicable percentage of the average county wage as determined by the Department upon the approval of the application; and
(3) That a determination by the Department has been made that the establishment continues to meet the requirements set out in the initial approval.

710:85-5-15. Denial, cessation, and resumption of incentive payments

(a) **Failure to meet requirements for incentive payments ~~within 12 months of the date of approval~~.** An establishment that has not met the requirements for receiving incentive payments, as determined by the review described in *OAC* 710:85-5-8, within twelve (12) months of the date ~~the~~ of its application ~~is approved,~~ or after July 1, 2011, within twenty-four (24) months of the date of its application, is ineligible to receive any incentive payments under the existing application and approval.

(b) **Failure to meet requirements during any of the twenty-seven (27) calendar quarters subsequent to the initial calendar quarter.** An establishment which fails to meet the requirements set out in *OAC* 710:85-5-8 in any of the twenty-seven (27) calendar quarters subsequent to the initial calendar quarter, is ineligible for an incentive payment for that calendar quarter. If the establishment meets the requirements in a later calendar quarter, the incentive payment for the later calendar quarter may be made after the review and determination for that later calendar quarter, as set out in *OAC* 710:85-5-8 is completed.

SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357(21); and,

(2) That an Oklahoma income tax return has been filed or will be filed by the claimant for the tax year in which the production expenses were made.

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund" on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the documented expenditures were made. The amount of payments in any single fiscal year shall not exceed Five Million Dollars ($5,000,000.00). If the amount of approved claims exceeds the amount specified in this Section in a fiscal year, then the payments will be made in the order in which claims are approved by the office and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

[OAR Docket #11-450; filed 4-19-11]

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

[OAR Docket #11-451]

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RULES:
Subchapter 3. Telecommunication for the Hearing-Impaired Surcharge
710:95-3-3. Telecommunications for the hearing-impaired surcharge [AMENDED]
Subchapter 5. Waste Tire Recycling
710:95-5-3. Waste tire recycling fee [AMENDED]
710:95-5-8. Transactions to which the fee is inapplicable [AMENDED]
710:95-5-9. Examples [AMENDED]
Subchapter 9. Professional Licensing Compliance Review
710:95-9-2. Definitions [AMENDED]
710:95-9-3. General provisions [AMENDED]
Subchapter 17. Prepaid Wireless Fee [NEW]
710:95-17-1. Purpose [NEW]
710:95-17-2. [RESERVED]
710:95-17-3. Definitions [NEW]
710:95-17-4. [RESERVED]
710:95-17-5. Fees, reports, payments and penalties [NEW]
710:95-17-6. [RESERVED]
710:95-17-7. Due date that falls on Saturday, Sunday or holiday [NEW]
710:95-17-8. [RESERVED]
710:95-17-9. Contents of monthly prepaid wireless fee report [NEW]
710:95-17-10. [RESERVED]
710:95-17-11. Registrants must file a return for every reporting period [NEW]
710:95-17-12. [RESERVED]
710:95-17-13. Records required to document resale transactions [NEW]
710:95-17-14. [RESERVED]
710:95-17-15. Sourcing purchases of prepaid wireless telecommunications service [NEW]
Subchapter 19. Business Activity Tax [NEW]
710:95-19-1. Purpose [NEW]
710:95-19-2. Definitions [NEW]
710:95-19-3. General provisions [NEW]
710:95-19-4. Filing requirements [NEW]
710:95-19-5. Tax rate [NEW]
710:95-19-6. Tax credit [NEW]
710:95-19-7. Special provisions for combined / consolidated filers [NEW]
710:95-19-8. Apportionment [NEW]

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ANALYSIS:
Subchapter 5, *"Waste Tire Recycling"*, has been amended consistent with Section 1 of Senate Bill 441 [2010] relating to the transactions and vehicles to which waste tire fees are applicable.
New Subchapter 17, *"Prepaid Wireless Fee"* and the new sections contained therein have been added to implement the provisions of House Bill 2556 [2010] which impose a $0.50 fee on every retail sale of prepaid wireless telecommunication services.
New Subchapter 19, *"Business Activity Tax"* and the new sections contained therein have been added to implement the provisions of SJR 61 [2010] which impose a tax of $25 per year on all non-corporate entities "doing business" in Oklahoma and an additional tax of 1% of the net revenue derived from business activity allocated to Oklahoma.
Sections 710:95-3-3, 710:95-9-2 and 710:95-9-3 have been amended to update statutory citations.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 1, 2011:

SUBCHAPTER 3. TELECOMMUNICATION FOR THE HEARING-IMPAIRED SURCHARGE

710:95-3-3. Telecommunications for the hearing-impaired surcharge

(a) The Telecommunications for the Hearing-Impaired Act levies a five cent per month surcharge on each access line provided by a local exchange telephone company. The surcharge must be added to the subscriber's telephone bill, unless the subscriber is exempt from sales tax.

(b) The local exchange telephone company shall remit the surcharge to the Oklahoma Tax Commission, on forms prescribed, on or before the 15th day of the month following the end of each quarter.

(c) When the balance of the Hearing Impaired Revolving Fund equals the three-year average of expenditures, collection of the surcharge by the local exchange telephone company will temporarily stop. Collection of the surcharge is to be resumed when the account balance has been reduced to one-half the original surplus.

(d) The ~~Business Tax Division~~ Taxpayer Assistance Division will notify, in writing, the local exchange telephone companies on the effective date of the moratorium on collections. Subscribers shall not be billed for the surcharge for any billing cycle that begins on or after the moratorium effective date.

(e) When the Fund balance requires the surcharge to be resumed, the ~~Business Tax Division~~ Taxpayer Assistance Division will notify the local exchange telephone companies, in writing, the effective date of resumption of the surcharge. Subscribers shall be billed and the surcharge on the next billing cycle that begins on or after the effective date the charge is to be resumed. [**See:** 63 O.S. §§2418-2419 ~~(Supp.1990)~~]

SUBCHAPTER 5. WASTE TIRE RECYCLING

710:95-5-3. Waste tire recycling fee

(a) **Applicability of the fee.** The fee levied by the Oklahoma Waste Tire Recycling Act is assessed in the following instances:

(1) All sales of tires for motor vehicles, whether used on or off road, ~~except~~ and all sales of tires that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter for ~~"implements of husbandry" as defined by Section 1-125 of Title 47 of the Oklahoma Statutes.~~ implements of husbandry and agricultural equipment.

(2) All first registrations of motor vehicles required to be registered, except those registered under a proportional registration plan, as provided by 47 O.S. § 1120;

(b) **Amounts.** The amount of the fee due will be determined based upon the size of the tire rim or use of the tire, as follows:

(1) $1.00 per tire, where the tire rim diameter is less than or equal to seventeen and one-half (17 $\frac{1}{2}$") inches;

(2) $2.50 per tire, where the tire rim diameter is greater than seventeen and one-half (17 $\frac{1}{2}$") inches but less than or equal to nineteen and one-half (19 $\frac{1}{2}$") inches.

(3) $3.50 per tire, where the tire rim diameter if greater than nineteen and one-half (19 $\frac{1}{2}$") inches.

(4) $1.00 per tire, for tires to be used on motorcycles, minibikes, motor-driven cycles, or motorized bicycles.

(5) Beginning July 1, 2010, a fee of five cents ($0.05) per pound of the weight of the tire with a minimum fee of Two Dollars and fifty cents ($2.50) per tire, for tires to be used on implements of husbandry and agricultural equipment that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter.

(6) Beginning July 1, 2013, a fee of five cents ($0.05) per pound of the weight of the tire with a minimum fee of Two Dollars and fifty cents ($2.50) per tire, for all tires to be used on implements of husbandry and agricultural equipment.

(c) **Report.** The Commission shall provide a report, on a monthly basis, to the DEQ of the fees remitted by each tire dealer and motor license agent.

(d) **Payments.** Upon receipt of monthly reports from the DEQ, the Commission will issue payments from the Fund to qualified applicants.

710:95-5-8. Transactions to which the fee is inapplicable

(a) The Oklahoma Waste Tire Recycling Fee is not applicable to sales for resale to holders of valid Oklahoma Sales Tax Permits who are in the business of selling tires. The sale for resale provision will only be valid if the purchaser holds an Oklahoma resale permit and actually resells the tires. The fee applies to tires sold to mechanics or others not holding sales tax permits.

(b) Pursuant to 27A O.S.Supp.2002. § 2-11-403(A)(3), the Oklahoma Waste Tire Recycling Fee is not applicable to the sale of a used tire by a tire dealer on which the waste tire fee has previously been paid, provided that the tire dealer can document that the tire carcass was one on which the fee was previously paid when the tire was originally purchased, either as a new tire or as a used tire, or when the vehicle upon which it was mounted was first registered in Oklahoma. This documentation may consist of a copy of the bill of sale, invoice, or other document showing when, where, by whom, and the circumstances under which the fee was collected.

(c) The Oklahoma Waste Tire Recycling Fee is not applicable to the transfer of a tire carcass by a tire owner to a tire recapper, who after completion of the recapping, delivers the recapped tire back to the owner of the tire, since no sale of the tire has been make, but rather, a service has been performed.

(d) The Oklahoma Waste Tire Recycling Fee is not applicable to the sale of a recapped tire by a tire dealer where the fee has previously been paid and the documentation described in (b) of this Section has been obtained.

(e) No fee shall be assessed by a tire dealer if the customer retains the used agricultural tire for use on a farm or ranch.

710:95-5-9. Examples

(a) **Transactions to which fee is applicable.** The waste tire recycling fee applies to the transactions and vehicles indicated in (1) through ~~(7)~~ (8) of this subsection:

(1) Cars and light trucks.

(2) Motorcycles and mopeds.

(3) School buses and automobiles owned by schools.

(4) Tires sold to governmental agencies.

(5) Tires sold for farm tagged motor vehicles.

(6) Tires sold for commercial trucks, truck-tractor (semi-trucks), and trailers.

(7) First registration in Oklahoma of automobiles, motorcycles, mopeds, or trucks, including farm tagged motor vehicles and commercial motor vehicles which are not registered under the International Registration Plan.

(8) Tires that are not more than fourteen (14) inches wide and forty-four (44) inches in diameter sold for implements of husbandry and agricultural equipment.

(b) **Transactions to which fee is not applicable.** The waste tire recycling fee does not apply to the transactions and vehicles indicated in (1) through ~~(13)~~ (11) of this subsection:

(1) Airplanes.

(2) Bicycles.

(3) Riding lawn mowers.

(4) Wheelbarrows.

(5) Push mowers.

~~(6) Farm tractors.~~

~~(7) Implements of husbandry.~~

(~~8~~ 6) Forklifts.

(~~9~~ 7) Prior to July 1, 2013, tires that are more than fourteen (14) inches wide and forty-four (44) inches in diameter for agricultural equipment and implements of husbandry including ~~Devices~~ devices designed and adapted to be used exclusively for agricultural, horticultural, or livestock-raising purposes, including:

(A) Farm tank-type wagons of less than 1200 gallons capacity;

(B) Trailers and semitrailers exclusively used to and from the farm to market; and

(C) Utility, all-terrain vehicles of less than 1500 pounds which are equipped and used for farm or ranch operations.

(~~10~~ 8) Tires sold for backhoe, grader, and other construction machinery.

(~~11~~ 9) First registration in Oklahoma of vehicles registered under the International Registration Plan.

(~~12~~ 10) All-terrain vehicles.

(~~13~~ 11) Off-road motorcycles.

SUBCHAPTER 9. PROFESSIONAL LICENSING COMPLIANCE REVIEW

710:95-9-2. Definitions

In addition to the terms defined in Section 238.1(H) of Title 68 of the Oklahoma Statute, the following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission.

"In compliance" with state income tax laws means that all income tax filing obligations have been met, and balances due have been paid in full. For purposes of this Section, in the case of a licensee with an outstanding obligation upon initial review, **"in compliance"** includes the following situations:

(A) The licensee has filed all reports due and entered into a payment program with the Commission for the taxes due;

(B) The licensee has provided documentation that the licensee is currently participating in a payment plan and is current in all payments; or,

(C) The licensee has a pending request for relief before the Commission, or has been determined to be an "innocent spouse" with regard to an outstanding obligation, pursuant to 710:50-3-60 through 710:50-3-65.

[**See:** 68 O.S.~~Supp.2001,~~ § 238.1(D)]

*"**Licensing entity**" means a bureau, department, division, board, agency, commission or other entity of this state or of a municipality in this state that issues a state license.* [**See:** 68 O.S. § 238.1(H)(2)]

*"**State license**" means a license, certificate, registration, permit, approval or other similar document issued by a licensing entity granting to an individual or business a right or privilege to engage in a profession, occupation or business in this state. "**State license**" does not include an inactive license*

issued by a licensing entity which does not grant an individual the right to engage in a profession, occupation, or business in this state. [**See:** 68 O.S.~~Supp.2001~~ § 238.1(H)(1)]

710:95-9-3. General provisions

(a) **Information to be provided.** Each licensing entity shall provide to the Commission a list of all its licensees, along with social security numbers and other identifying information that may be required by the Commission. The list, in the form of a complete renewal file, should be provided to the Commission the month following the license renewal cycle. [**See:** 68 O.S.~~Supp.2001,~~ § 238.1(B)]

(b) **Requisite lead time and format.** Every licensing entity shall provide the information described in subsection (a) in a timely manner, so there is a minimum of six months lead time within which to research and resolve any compliance issues with licensees. [**See:** 68 O.S.~~Supp.2001,~~ § 238.1(B)]

(c) **Contact information.** The Commission's Professional Licensing Compliance Unit can be reached by phone at 522-6800 or by E-mail at **license-review@oktax.state.ok.us.**

SUBCHAPTER 17. PREPAID WIRELESS FEE

710:95-17-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of the prepaid wireless fee under the Oklahoma Statutes.

710:95-17-2. [RESERVED]

710:95-17-3. Definitions

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

"Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.

"Prepaid wireless nine-one-one fee" means the fee that is required to be collected by a seller from a consumer in the amount established in Section 2843.2 of Title 63 of the Oklahoma Statutes.

"Prepaid wireless telecommunications service", as defined in paragraph 12 of subsection A of Section 1354.30 of Title 68 of the Oklahoma Statutes, means a telecommunications wireless service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Provider" means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

"Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than for resale.

"Seller" means a person who sells prepaid wireless telecommunications service to another person.

710:95-17-4. [RESERVED]

710:95-17-5. Fees, reports, payments and penalties

(a) **Fee imposition.** A fifty cent ($0.50) fee is imposed on every retail sale of prepaid wireless telecommunications service occurring in Oklahoma. Every seller of prepaid wireless telecommunications services must collect the fifty cent ($0.50) fee on every purchase of prepaid wireless telecommunications service not for resale. The fee is collected by the seller from the consumer and should be separately stated on the invoice, receipt or similar document provided to the consumer, or otherwise disclosed to the consumer. [63 O.S. § 2843.2(B)&(C)].

(b) **Fee incidence:** The prepaid wireless fee is the liability of the consumer. However, the seller must remit all prepaid wireless fees collected from consumers and in the event the seller fails to separately state the prepaid wireless fee on the consumers invoice or receipt, the seller will be deemed to have collected the fee and will be liable for payment thereof. [63 O.S. § 2843.2(E)]

(c) **Examples of prepaid wireless telecommunications service.** Examples of prepaid wireless telecommunications services include cellular phones preloaded with a set dollar amount, minutes or units of air time, or sold with rebates for airtime; calling cards for cellular phones preloaded with a set dollar amount, minutes or units of air time and the recharging of a reusable cellular phone calling card or the cellular phone itself with additional minutes or units of air time.

(d) **Examples and illustrations.** Examples and illustrations of situations involving fee calculation and the base determination for purposes of sales tax collection and other applicable taxes, fees and surcharges.

(1) **Multiple purchases.** Sellers must collect a fee for each product of prepaid wireless telecommunications service sold at retail. For example, if a consumer simultaneously buys five (5) preloaded cellular phone cards, $0.50 is imposed on each card resulting in a total of $2.50 in prepaid wireless fees.

(2) **Fee excluded from base.** When separately stated on the invoice, the prepaid wireless fee should not be included in the base for measuring sales tax or any other applicable tax, fee, surcharge, or other charge that is imposed by the state, any political subdivision of this state, or any intergovernmental agency. [63 O.S. § 2843.2(F)]

(e) **Monthly electronic reporting.** On the 20th of the month every seller of prepaid wireless telecommunications service, except as noted in (f) of this Section, shall report and make payment of the fees for the previous calendar month in accordance with the Tax Commission's electronic funds transfer and electronic data interchange program available online at www.ok.tax.gov. [63 O.S. § 2843.2(H)]

(f) **Exception to electronic reporting and payment.** Any seller which has been granted an exception to the electronic filing requirement for sales tax reporting and payment purposes pursuant to *OAC* 710:65-3-4(c) shall automatically receive an electronic filing exception for purposes of reporting and paying prepaid wireless fees. These sellers shall file Form BT-146 on or before the 20th day of each month. Remittances covering the prepaid wireless fees must accompany the prepaid wireless return. Form BT-146 is available telephonically at (405) 521-3160 or online at www.tax.ok.gov.

(g) **Interest.** Interest at the rate of one and one-quarter percent (1 1/4%) per month will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent fees at one and one-quarter percent (1 1/4%) per month from the date of delinquency until paid. [68 O.S. § 217]

(h) **Penalty for failure to file and remit.** A seller who fails to file a return and remit the full fee amount within fifteen (15) days after the due date shall be subject to a penalty of ten percent (10%) of the fee amount due. [68 O.S. § 217]

(i) **Waiver of penalty; interest.** At the discretion of the Tax Commission, the interest or penalty, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [**See:** 68 O.S. §§ 220]

710:95-17-6. [RESERVED]

710:95-17-7. Due date that falls on Saturday, Sunday or holiday

If a due date of a prepaid wireless report falls on Saturday, Sunday or a holiday, such due date shall be considered to be the next business day.

710:95-17-8. [RESERVED]

710:95-17-9. Contents of monthly prepaid wireless fee report

(a) **General provisions.** Every seller making retail sales of prepaid wireless telecommunications service shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), account number of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

(1) Total number of retail transactions.

(2) Amount of prepaid wireless nine-one-one fees.

(3) Amount of seller's retention, if applicable.

(4) The balance of fees due less any retention amount allowed, as described in (b) of this Section.

(A) The return should show the amount of interest (if any) that is due.

(B) The return should show the amount of penalty (if any) that is due.

(5) Such other reasonable information as the Tax Commission may require. [63 O.S. § 2843.2(H)]

(b) **Seller's retention.** When the prepaid wireless fee report with all required information included is timely filed, and the total amount of fees reported are timely paid, the seller may deduct and retain three percent (3%) of the prepaid wireless nine-one-one fees collected from consumers. The three percent (3%) retention amount may not be deducted and retained by a seller who files an incomplete report, files his report after the date of delinquency, or fails to make full payment on or before the due date. [63 O.S. § 2843.2(I)]

710:95-17-10. [RESERVED]

710:95-17-11. Registrants must file a return for every reporting period

Sellers making retail sales of prepaid wireless telecommunications services must file a return for each reporting period, notwithstanding the fact that, during one or more of such reporting periods, there is no item sold at retail subject to the prepaid wireless fee. On the return for such a reporting period, the seller should indicate that no retail sales were made and that no fees are due. [63 O.S. § 2843.2(H)]

710:95-17-12. [RESERVED]

710:95-17-13. Records required to document resale transactions

Where the nature of the seller's business is such that a portion or all of its sales of prepaid wireless telecommunications services are for resale, the records that must be kept to document the resale nature of the transaction are as follows:

(1) The name and address of the customer,

(2) The date of the transaction,

(3) The number of prepaid wireless services purchased for resale,

(4) A copy of the purchaser's resale number issued by the Tax Commission along with a written statement signed by a person authorized to bind the business that it is in the business of reselling the items being purchased, and that the items being purchased are for resale. The certification may be made in the manner set forth in *OAC* 710:65-13-200(a)(1), and

(5) Such other information as may be necessary to establish the nontaxable character of such transactions. [63 O.S. 2843.2(K)]

710:95-17-14. [RESERVED]

710:95-17-15. Sourcing purchases of prepaid wireless telecommunications service

A retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction shall be sourced as follows:

(1) *When the retail transaction does not occur at a business location of the seller, the retail transaction is sourced to the location where receipt by the consumer, or the consumer's donee, designated as such by the consumer, occurs, including the location indicated by instructions for delivery to the consumer or donee, known to the seller;*

(2) *When the provisions of paragraph 1 of this subsection do not apply, the sale is sourced to the location indicated by an address for the consumer that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;*

(3) *When the provisions of paragraphs (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for consumer obtained during the consummation of the sale, including the address of a consumer's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and*

(4) *When none of the previous rules of paragraphs (1), (2), or (3) of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold. If the seller knows the mobile telephone number, the location will be that which is associated with the mobile telephone number.* [63 O.S. § 2843.2(D)]

SUBCHAPTER 19. BUSINESS ACTIVITY TAX

710:95-19-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq, and to facilitate the administration, enforcement, and collection of the Oklahoma Business Activity Tax (68 O.S. § 1215 et seq).

710:95-19-2. Definitions

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

"Business activity" generally means the conducting of an active trade or business carried on by any person and includes one or more active operations that form a part of the process of attempting to earn income or profit. A person conducts an active trade or business if assets, including royalties, patents, trademarks, and other intangible assets, held by the person are used in the active trade or business of one or more related businesses. The mere ownership of a royalty interest or a working interest in mineral rights does not constitute conduct of an active trade or business. The payment of compensation to employees or independent contractors for financial or legal services that are reasonably necessary for the operation of the entity does not constitute conduct of an active trade or business. Simply holding a seat on the board of directors of an entity does not by itself constitute conduct of an active trade or business.

*"**Doing business**" means and includes each and every act, power or privilege exercised or enjoyed in this state, as an incident to, or by virtue of the powers and privileges acquired by individual persons or entities;*

*"**Entity**" means any person other than an individual;*

*"**Net revenue**" means "**total revenue**" less all ordinary trade or business expenses other than interest, income taxes, depreciation and amortization. Deduction items allocated or apportioned to this state which are attributable to excluded revenues items shall not be deductible in arriving at net revenue;*

*"**Person**" means any natural person, firm, partnership, joint venture, association, limited liability company, corporation, state banking association, national banking association, credit union organized under the laws of this state, joint-stock company, business trust, estate, trust, and any other group or combination doing business as a unit;*

*"**Tax year**" is the calendar year on the basis of which any person is required to pay the tax levied or imposed under* the Business Activity Tax.

*"**Total revenue**"means all revenues reportable by a person on the federal income tax return filed by such person or if a federal income tax return is not required to be filed by a person and such nonfiling person is not otherwise exempt from ad valorem taxes on such person's intangible personal property, such nonfiling person's total income revenues received or accrued, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided herein. The following revenues shall be excluded from the definition of "total revenue":*

(A) *Interest, except interest from credit sales,*

(B) *Dividends and distributions received from corporations, and distributive or proportionate shares of total receipts and other income from a pass-through entity as defined under Section 2385.29 of Title 68 of the Oklahoma Statutes;*

(C) *Real estate rentals,*

(D) *Royalty interests or working interests in mineral rights,*

(E) *Net capital gains, as defined in Section 1222(11) of the Internal Revenue Code, included in the federal income tax return of a person, and*

(F) *Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee*

expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement.

710:95-19-3. General provisions

(a) The Business Activity Tax (BAT) applies to all entities regardless of form, (e.g., sole proprietorships, partnerships, LLCs, trusts and all types of corporations) doing business in Oklahoma. The BAT initially applies to taxable net revenue received on and after January 1, 2010. The BAT is an annual privilege tax measured by net revenue on business activities in this state.

(b) Persons are considered doing business in this state if any of the following apply:

(1) The person is domiciled in this state as an individual for business purposes or is domiciled in this state for corporate, commercial or other business purposes.

(2) The person owns or uses any part of its capital in this state.

(3) The person has property in this state with an aggregate value of at least Fifty Thousand Dollars ($50,000.00) at any time during the calendar year. Owned property is valued at original cost and rented property is valued at eight times the net annual rental charge.

(4) The person has payroll in this state of at least Fifty Thousand Dollars ($50,000.00) during the calendar year. Payroll in this state includes all of the following:

(A) Any amount subject to withholding by the person under 68 O.S. § 2385.2;

(B) Any other amount the person pays as compensation to an individual under the supervision or control of the person for work done in this state; and

(C) Any other amounts the person pays for services performed in this state on its behalf by another.

(5) The person has sales in this state of at least Five Hundred Thousand Dollars ($500,000.00) during the calendar year.

(6) The person has at least twenty-five percent (25%) of the person's total property, total payroll, or total sales at any time during the calendar year within this state.

(7) The person otherwise has nexus with this state to an extent that the person can be required to remit the tax imposed under this act under the Constitution of the United States.

710:95-19-4. Filing requirements

(a) Sole proprietors filing Federal Schedule C (or Federal Schedule C-EZ and farmers filing a Federal Schedule F) must report their Oklahoma business activity using OTC Form 511 BAT filed with their individual income tax return, subject to the same due dates as the individual income tax returns. Sole proprietors (and farmers filing Federal Schedule F) that file more than one Federal Schedule C (or Federal Schedules C-EZ or Federal Schedule F) are required to combine all the Federal Schedule C (or Federal Schedule C-EZ or Federal Schedule F) business activities and file only one OTC Form 511 BAT.

(b) The following entities (whether domestic or foreign) are required to report their Oklahoma business activity using OTC Form BT190: Corporations, Sub Chapter S Corporations, Limited Liability Companies, Partnerships and Trusts. The OTC Form BT190 and any applicable tax must be filed and paid by July 1 following the calendar year for which the business activity is being reported. If the tax is not paid before the next ensuing September 15, the penalties provided in 68 O.S. § 1224 shall apply.

(c) The following information is required to be reported on OTC Form 511 BAT or OTC Form BT190 as applicable.

(1) The amount of total revenue allocated or apportioned to Oklahoma and the deductions allowed to arrive at net revenue.

(2) The type of entity for which the return is being filed and the location of the person's office or offices.

(3) The North American Industry Classification System (NAICS) code for the business activity in which the person is engaged.

(4) An entity's responsible parties which include the names of the officers, members, partners or registered agents, if any, and the residence and post office address of each as the same appear of record on the last day of the tax year.

(d) Persons failing to comply with filing requirements are subject to penalties provided in 68 O.S. § 1224.

710:95-19-5. Tax rate

(a) **Tax imposed for tax years 2010 through 2012.**

(1) For any corporation and any other person subject to the franchise tax levied under the provisions of 68 O.S. §§ 1203 through 1205, the Business Activity Tax is equal to the amount of franchise tax such person paid or was required to pay for the taxable period ending prior to December 31, 2010.

(2) Sole proprietors filing Federal Schedule C or Federal Schedule C-EZ, farmers filing a Federal Schedule F, and limited liability companies doing business in the State of Oklahoma are levied an annual minimum tax of Twenty-five Dollars ($25.00).

(b) **Tax imposed for tax years 2013 and subsequent years.**

(1) For tax years beginning on or after January 1, 2013, there is levied on each person doing business in the State of Oklahoma an annual minimum tax of Twenty-five Dollars ($25.00).

(2) In addition to the minimum tax, there is levied an additional tax of one percent (1%) of the net revenue derived from business activity that is allocated or apportioned to the State of Oklahoma.

710:95-19-6. Tax credit

(a) For tax years, 2010 through 2012, sole proprietors and farmers are allowed a credit against the tax levied by 68 O.S. § 2355 in the amount of Twenty-five Dollars ($25.00). The credit may only be taken for the year in which the Business Activity Tax is levied and may only be taken if the Business

Activity Tax is timely paid. The credit is not refundable and may not be carried forward.

(b) For LLC's and any other entity (except sole proprietors and farmers) not subject to the franchise tax levied under the provisions of 68 O.S. §§ 1203, 1204, and 1205, the remittance to the Oklahoma Tax Commission of the BAT shall be considered as a credit against the total amount such person is required to pay or remit annually for certification or registration fees pursuant to the provisions of 18 O.S. § 2055.2. In no event shall the credit be refunded.

710:95-19-7. Special provisions for combined / consolidated filers

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

(1) **"Affiliated group"** is a group in which a controlling interest of one or more entities is owned by a common corporate or non-corporate owner(s) or by one or more of the member entities.

(2) **"Combined group"** are entities that are part of an affiliated group engaged in a unitary business and that are required to file a group report under 68 O.S. Section 1225..

(3) **"Consolidated group"** is a group of two or more corporations treated as a single person for purposes of the Business Activity Tax

(4) **"Reporting person"** is the person in a consolidated group or combined group that has designated by that group to legally bind the group for all filings and tax liabilities and to receive all legal notices with respect to matters under the Oklahoma Business Activity Tax Code [68 O.S. § 1215 et seq,]

(b) Two or more corporations that file federal income tax returns on a consolidated basis are required to file consolidated returns for purposes of determining their net revenue subject to Oklahoma Business Activity Tax.

(c) Corporations, or any portion of such corporation in the consolidated group which is also included in a combined group as part of a unitary business must determine the combined group's total revenue and net revenue. The group's total revenue and net revenue must be separately stated as an entity in the consolidated group's returns for purposes of determining their Oklahoma Business Activity Tax liability.

(d) Corporations, or any portion thereof, included in a consolidated group that are not included in a combined group shall determine the corporation's total revenue and net revenue on a component member by component member basis.

(e) The combined group is a single entity for purposes of application of the Business Activity Tax.

(f) A combined group must determine its total revenue by determining the total revenue of each of its members if the member were a separate entity and then adding the total revenues of the members together and subtracting, to the extent included items of total revenue received from another member of the combined group.

(g) A combined group must determine its applicable deductions for ordinary trade or business expenses to compute net revenue by determining the ordinary trade or business expenses (other than interest, taxes, depreciation and amortization) for each of its members as if the member were a separate entity and then adding the amounts of ordinary trade or business expenses together; and any ordinary trade or business expenses paid from one member of the combined group to another member of the combined group

710:95-19-8. Apportionment

In determining the manner that a person's net revenue is apportioned to this state for purposes of the Business Activity Tax, three (3) factors shall be used: total revenue, as defined in this subchapter, the property factor and payroll factor, as determined in accordance with the procedures provided in Section 2358 of Title 68 of the Oklahoma Statutes. To determine the total revenue, the numerator of the fraction is the entity's total revenue from business activities done in this state and the denominator is the entity's total revenue from its entire business activities done both in this state and outside this state. A person's net revenue is apportioned to this state by multiplying the person's net revenue from the entire business done in all locations by the sum of eighty percent |(80%) of the total revenue factor and ten percent (10%) of each of the property factor and the payroll factor

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TITLE 715. TEACHERS' RETIREMENT SYSTEM
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #11-485]

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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
715:1-1-5, 715:1-1-6, 715:1-1-7, 715:1-1-8, 715:1-1-10, and 715:1-1-12 are being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director and the Assistant Executive Secretary to Assistant Executive Director, as mandated by HB 1935.
CONTACT PERSON:
Kim Bold, Rules Liaison, Teachers' Retirement System of Oklahoma, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105, 405-521-2223

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

715:1-1-5. Executive ~~Secretary~~Director

The Executive ~~Secretary~~Director shall be the administrative officer for the Board of Trustees and shall be responsible for the general administration of the Retirement System.

(1) All employees shall be under the direct supervision of the Executive ~~Secretary~~Director, and shall be recommended by the Executive ~~Secretary~~Director with approval by the Board of Trustees.

(2) The Secretary-Treasurer shall be an employee of TRS.

(3) All vouchers drawn against TRS shall be signed by two members of the administrative staff: the Executive ~~Secretary~~Director, the Assistant Executive ~~Secretary~~Director, the Secretary-Treasurer, or the Comptroller.

(4) The Executive ~~Secretary~~Director shall make reports to the Board of Trustees at its regular monthly meetings in regard to administrative matters, funds and budgetary matters, and present statements showing the general condition of the System's finances.

715:1-1-6. Bonds (protective)

(a) Under supervision of the Board, the administration of the System is carried out by the Executive ~~Secretary~~Director and the office staff. The State Treasurer, who is the custodian of the Teacher's Retirement funds, is under a $50,000 bond to the Board of Trustees. A $25,000 bond is required of the Executive ~~Secretary~~Director.

(b) All persons employed by TRS, except the Secretary-Treasurer, shall be bonded by a blanket bond in an amount not in excess of $20,000. The position of Secretary-Treasurer shall be covered by an individual bond in the amount of $25,000. The amount of the bonds of the Executive ~~Secretary~~Director and the State Treasurer is set by the Teacher's Retirement law.

(c) A cash and securities bond provides coverage on securities, $10,000 inside the premises and $30,000 outside the premises, and cash, $500 inside the premises and $1,000 outside the premises. A depositor's forgery bond in the amount of $10,000 protects TRS and its members against forgery on checks.

715:1-1-7. Purchases

The Executive ~~Secretary~~Director shall have authority to make such purchases of equipment and supplies as may be needed for the operation of TRS, subject to approval by the Board of Trustees.

715:1-1-8. Payment of salaries and claims

(a) The Executive ~~Secretary~~Director is authorized to approve and pay all payrolls for the regular personnel and extra help of TRS, as provided in the budget approved by the Board of Trustees. The Executive ~~Secretary~~Director and the Secretary-Treasurer must comply with the law in making purchases of supplies, printing materials and equipment. Claims for all traveling expenses, utility bills, communications, bond premiums, rentals, payments of death claims to beneficiaries or estates, tax-sheltered annuity claims, and maintenance and repair of machines, when properly audited and approved by the Secretary-Treasurer or the Executive ~~Secretary~~Director, may be paid before approval by the Board of Trustees. In the event of the absence of the Secretary-Treasurer or the Executive ~~Secretary~~Director, the Assistant Executive ~~Secretary~~Director may also sign for approval of claims.

(b) The retired member payroll shall be paid when approved by the Secretary-Treasurer and the Executive ~~Secretary~~Director, or in the event of an absence, the Assistant Executive ~~Secretary~~Director may approve for one. The Board of Trustees shall then make final approval at the next regular meeting following the date on which the checks were mailed to retired members.

715:1-1-10. Grievances and complaints

Grievances and complaints are usually settled by correspondence or informal conference between the member or beneficiary and the staff of the Teachers' Retirement System.

(1) Any interested person with a grievance which cannot be settled in this manner may appeal the decision of the staff to the executive ~~secretary~~director of the Teachers' Retirement System. Request for an informal hearing before the executive ~~secretary~~director must be in writing and include a clear statement of the grievance or complaint. The executive ~~secretary~~director will provide a written response within thirty (30) days, stating the official position of Teachers' Retirement in the matter before appeal. The response will either grant or deny the appellant's request. If denied, the executive ~~secretary~~director shall provide to the member the applicable statutes, rules and administrative procedures used in reaching a decision to deny the appeal of the member. "Interested person" means any member of the Teachers' Retirement System; any beneficiary of a member; any retiree of the Teachers' Retirement System; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school.

(2) Any decision of the executive ~~secretary~~director may be appealed to the Board of Trustees of the Teachers' Retirement System. The member must appeal the decision of the executive ~~secretary~~director within sixty (60) days of receipt of notification of denial by the executive ~~secretary~~director.

(3) All cases of appeals to the Board of Trustees will be assigned to an administrative hearing judge, who will conduct a hearing and prepare a proposed order to the Board of Trustees. The executive ~~secretary~~director shall appoint the administrative hearing judge from a list of individuals previously employed by the Board of Trustees to act in this role. All hearings shall be conducted in the offices of the Teachers' Retirement System at a time and date agreed to by the parties. It is expected that any party to the hearing will provide timely notice to the other parties if a delay or failure to appear is anticipated.

(4) Hearings will be conducted under the provisions of the Administrative Procedures Act [75 O.S. 250 et. seq.]. Opportunity shall be afforded all parties to respond and present evidence and arguments on all issues involved. The administrative hearing judge will have the authority to conduct the hearing and rule on the admissibility of all evidence. Any party shall at all times have the right to counsel, provided that such counsel must be duly licensed to practice law by the Supreme Court of Oklahoma, and provided further that such counsel shall have the right to appear and act for and on behalf of the party he represents. Upon the completion of the hearing, the administrative hearing judge shall afford the appellant the opportunity to present a written brief and arguments to be included as part of the record. Legal counsel for Teachers' Retirement shall be provided an equal opportunity to respond to appellant's written brief and arguments if requested. Once all evidence, arguments and briefs are received by the administrative hearing judge the record shall be closed.

(5) At the close of the hearing, the administrative hearing judge shall, as soon as practical, prepare a proposed order to be delivered to the Board of Trustees. This proposed order shall include findings of fact, based exclusively on the evidence and on matters officially noted in the record of the hearing, conclusions of law and a recommended order to the Board of Trustees. A copy of this proposed order shall be provided to all parties by the executive ~~secretary~~director.

(6) The member shall have the right to file a written statement outlining any objections, exceptions and/or arguments he desires the Board of Trustees to consider in its consideration of the hearing judge's proposed order. This statement must be filed with the executive ~~secretary~~director within twenty (20) days of receipt of the hearing judge's proposed order. No additional evidence or materials may be introduced by the member which were not presented at the hearing. The executive ~~secretary~~director and/or TRS staff may prepare a written response in rebuttal to the member's statement. A copy of any response by TRS will be provided to the member at least ten (10) days prior to the time the member's appeal is scheduled for consideration by the Board of Trustees. The member may waive the ten (10) day limit if it would delay scheduling the matter before the Board.

(7) The executive ~~secretary~~director may, prior to submitting the hearing officer's report to the Board of Trustees, settle any grievance or complaint in a manner agreeable to the appellant. In settling any grievance the executive ~~secretary~~director shall not exceed the authority previously granted to him or her by the Board of Trustees. The executive ~~secretary~~director shall report to the Board of Trustees any settlement which occurs after the hearing officer's report is filed.

(8) Consideration of the member's case will be scheduled before the Board of Trustees as soon as possible after the proposed order and any additional written materials have been filed with the Board in accordance with this section. Unless mutually agreed to by all parties, no hearing before the Board will be scheduled within ten (10) working days of such filings.

(9) At the meeting at which the Board of Trustees will consider the proposed order, the member will be afforded an opportunity to make a brief statement to the Board concerning the facts and any arguments he wishes to present and will be allowed to respond to questions from Trustees. Failure of the member to appear at the Board hearing without prior notification will result in the member relinquishing his right to be heard by the Board. If such absence was unavoidable, the member may petition the Board for a rehearing. The Chairman of the Board of Trustees will have final authority to set the amount of time any party may have to present information to the Board.

(10) After consideration of all evidence and arguments, both oral and written, the Board will make a final determination on the proposed order. The Board of Trustees may accept, reject or accept as-modified the proposed order. The Board may make its own conclusions and issue an order in concert with those findings; or re-open the case and hear evidence themselves. If the Board decides to hear the case, it will determine whether to review the complete record, including a transcript of the original hearing conducted by the administrative hearing judge and all documentary evidence, or open the case to receive new evidence and testimony. As in all matters before the Board, seven (7) votes are necessary to approve any motion, resolution or order under consideration. A copy of the Board's final order will be delivered via mail to the member and his representative by the executive ~~secretary~~director of TRS.

(11) Any member receiving an adverse ruling from the Board retains certain rights under the Administrative Procedures Act. The member may file an action for judicial review in District Court in Oklahoma County. Such action must be filed within thirty (30) days after the aggrieved party is notified of the Board's order. The member may also petition for a rehearing, reopening or reconsideration of the appeal by the Board. Such petition must be filed with the executive ~~secretary~~director of TRS within ten (10) days from the date of the Board's decision and must be based on 75 O.S. 317.

(12) The Administrative Procedures Act prohibits direct or indirect communications by members and/or the representatives of members with the Board of Trustees in connection with any issue of fact or law regarding an appeal before the Board, except upon notice which provides an opportunity for all parties to participate. The Board of Trustees will not consider any evidence or statements made to them by members in connection with a pending appeal.

715:1-1-12. Public participation in adoption of rules

The Board encourages members to participate in the review and promulgation of rules governing the Teachers' Retirement System.

(1) Any interested person may informally request adoption of a rule by correspondence or conference with Teachers' Retirement System staff members. If satisfactory results cannot be achieved in this manner, any interested person may petition the Teachers' Retirement System to adopt, amend, or repeal a rule by filing a clear, written request to initiate rulemaking procedures with the executive ~~secretary~~director. The petition shall set forth the exact text of the proposed rule and the petitioner's name and address, and the name, business address, and telephone number of petitioner's counsel, if any. The petition may also include written documents in support of the petition.

(2) "Interested person" means any member of the Teachers' Retirement System; any beneficiary of a member; any retiree of the Teachers' Retirement System; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school.

(3) The executive ~~secretary~~director shall grant or deny the petition within 60 days of its receipt. The executive ~~secretary~~director may consult informally with staff members and the petitioner in reaching a decision. The petition may be amended with consent of the petitioner at any time before a final decision is rendered.

(A) Upon granting the petition in writing, the executive ~~secretary~~director shall inform the Board and request authority to initiate rulemaking proceedings pursuant to the Administrative Procedure Act and the rules and regulations of the Teachers' Retirement System.

(B) Denial of the petition by the executive ~~secretary~~director, and reasons therefore, shall be in writing. The petitioner may appeal this decision to the Board of Trustees provided that a written notice of appeal is filed with the executive ~~secretary~~director within sixty (60) days after the decision of the executive ~~secretary~~director is issued. If no such notice of appeal is timely filed, or if the next regularly scheduled meeting of the Board of Trustees will occur more than sixty (60) days after receipt of the petition by the executive ~~secretary~~director, and the petitioner is unwilling to waive the deadline for a final decision until that meeting, the decision of the executive ~~secretary~~director shall be the final decision of Teachers' Retirement System. The final decision of the Board shall be based on the written petition and written decision of the executive ~~secretary~~director unless the Board orders a hearing on the petition. If the Board approves the petition, the executive ~~secretary~~director shall initiate rulemaking proceedings pursuant to the Administrative Procedure Act and the rules and regulations of the Teachers' Retirement System.

(4) Oral and written data, views, and arguments on a proposed rule may be submitted informally to the executive ~~secretary~~director by informal conference or correspondence within twenty (20) days after publication of notice of the proposed rule is filed with the Department of Libraries.

(5) A written request for a public hearing on a proposed substantive rule may be submitted to the executive ~~secretary~~director within ten (10) days after publication of notice of the proposed substantive rule provided that the request is made by 25 persons, a governmental subdivision or agency, or an association having at least 25 members. The request shall contain the name and address of each person requesting the hearing and shall clearly specify the proposed rule for which a hearing is requested.

(6) The executive ~~secretary~~director shall schedule the proposed rule for hearing on a date no earlier than seven days after notice of the hearing date is published and no later than 20 days after receipt of the written request. The executive ~~secretary~~director or the Board of Trustees may reschedule the hearing in the interest of justice or administrative necessity or for good cause; however, the proposed rule shall not be adopted prior to the requested hearing.

(7) The executive ~~secretary~~director shall designate himself, a Teachers' Retirement System employee, or a specially appointed person as hearing officer to take the testimony of any interested person in support of or in opposition to the rule. The hearing officer shall designate the order of taking testimony and may establish reasonable time limits on oral testimony, provided that reasonable opportunity is given to amplify oral testimony in writing. All hearings will be held in the offices of Teachers' Retirement System, unless for good cause Teachers' Retirement System shall designate another place of hearing.

[OAR Docket #11-485; filed 4-21-11]

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

[OAR Docket #11-486]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 1. Membership Provisions
715:10-1-7 [AMENDED]
Subchapter 5. Establishing Other Service Credits
715:10-5-6 [AMENDED]
715:10-5-17 [AMENDED]

715:10-5-31 [AMENDED]
Subchapter 9. Survivor Benefits
715:10-9-6 [AMENDED]
Subchapter 11. Withdrawal From Membership and Refund of Deposits
715:10-11-2 [AMENDED]
Subchapter 13. Contributions for Membership Service
715:10-13-1 [AMENDED]
715:10-13-9 [AMENDED]
Subchapter 15. Service Retirement
715:10-15-5 [AMENDED]
715:10-15-24 [AMENDED]
Subchapter 17. Post-Retirement Employment
715:10-17-6 [AMENDED]
715:10-17-7 [AMENDED]

AUTHORITY:
70 O.S. Section 17-101, et seq., especially Section 17-106(10); Board of Trustees

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Subchapter 15. Service Retirement
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INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:
715:10-1-7 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935.

715:10-5-6 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935.

715:10-5-17 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935. Additionally, this rule is being amended to correct a typographical error in the first paragraph - the word "perform" is being changed to "performed."

715:10-5-31 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935.

715:10-9-6 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935.

715:10-11-2 is being amended to clarify when pre-tax contributions can be refunded to a terminating optional member; specifically, the amendment adds that pre-tax contributions can be refunded once the member turns 62.

715:10-13-1 is being amended to clarify fringe benefits and regular annual compensation. The amendment specifically excludes from regular annual compensation any employer contributions to a deferred compensation plan not provided to all qualified members of the employer.

715:10-13-9 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935. Additionally, this rule is being amended to clarify the process for submitting monthly remittance reports from local school districts.

715:10-15-5 was adopted as an emergency rule and is being promulgated as a permanent rule to allow a member who elected a reduced benefit a one-time irrevocable election to change their retirement plan within sixty (60) days of the retirement date. Additionally, this rule will allow a member who elected the maximum benefit, and marries after the retirement date, a one-time election to change their retirement plan.

715:10-15-24 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935.

715:10-17-6 is being amended to clarify post-retirement earnings limits; specifically, the amendment removes earnings limits on post-retirement employment for members who have been retired for 36 months or more.

715:10-17-7 is being amended to change the title of the Executive Secretary of the Oklahoma Teachers Retirement System to Executive Director, as mandated by HB 1935.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF MAY 26, 2011:

SUBCHAPTER 1. MEMBERSHIP PROVISIONS

715:10-1-7. Membership in education associations

Any member absent from employment in the public schools of Oklahoma because of election or appointment as a local, state or national education association officer shall be allowed to retain membership in TRS by making the contribution required of such member by Title 70 Okla. Stat. Section 17-116.2 and any other applicable statute. For purposes of this section the following shall apply:

(1) An education association is defined as an organization of educators established for the sole purpose of promoting the advancement of educational goals in Oklahoma or at the national level. A local or state association must be duly organized under the laws of the state of Oklahoma with a charter or articles of incorporation filed with the appropriate state agency and must comply with all applicable laws of the state of Oklahoma. A national association must be duly registered or chartered for the purpose of furthering educational goals at the national level.

(2) An "officer in an association" is a current member of TRS who is elected or appointed to an employment position within the association commensurate with a position in the public schools of Oklahoma defined as "classified" personnel by 70 O.S. 17-101. The officer must receive compensation for services rendered commensurate with compensation received for similar services in the public schools of Oklahoma.

(3) A member must notify TRS in writing on the form provided by TRS, the member's intent to elect to continue membership in TRS within thirty (30) days of becoming employed by an eligible association. In making this election the member shall agree to make payment in accordance with 70 O.S. 17-116.2 for the period of employment that qualifies for continued membership and to comply with all statutes and rules of TRS in maintaining membership.

(4) The maximum years of creditable service a member may receive for one such absence shall not exceed twelve (12) continuous years. A member may again qualify for creditable service in an educational association provided that the member returns to employment in the public schools of Oklahoma for a minimum of the same number of years received as credit in the former education association.

(5) On the recommendation of the Executive ~~Secretary~~Director, the Board of Trustees may deny eligibility to any local state or national association, when it is judged not to conform with the intent of 70 O.S. 17-116.2 or when it is determined that the association was not established for the sole purpose of promoting the advancement of education.

(6) Effective July 1, 1994, a member may elect to continue membership as provided in paragraph (3) above only if the member has ten (10) years of contributory Oklahoma service prior to July 1, 1994.

SUBCHAPTER 5. ESTABLISHING OTHER SERVICE CREDITS

715:10-5-6. Verification of Oklahoma service before membership

All requests for previous or prior Oklahoma service must be properly documented. Verification of such service is the responsibility of the member. Teachers' Retirement System "Verification of Oklahoma Service" form must be completed by the current superintendent, business manager, secretary of the school board or treasurer of the school board of the school where the service was performed.

(1) An application for past Oklahoma service must be accompanied by documentation consisting of one of the following:

(A) Actual Payroll Registers - which must show names of employer/employee; employee's Social Security Number; and monthly salary.

(B) A Social Security Detailed Earnings Information Record - which must include employer and salary by calendar year.

(C) W-2 Tax Records - Actual copies for each calendar year needed or photocopies of state income tax returns.

(2) Teachers' Retirement System will review and consider other supporting documentation in conjunction or in lieu of the above. The executive ~~secretary~~director will rule on the acceptability of all documents presented by members or employing schools in determining credit for past service.

(3) Under no circumstance will TRS accept affidavits from school officials, co-workers or third parties to attest service performed by a member.

715:10-5-17. Adjustment for military service after retirement

All credit for active military duty ~~perform~~performed after July 1, 1943, must be purchased prior to the official retirement date of the member. No credit or adjustment will be made to a member's account after retirement unless evidence points to a clear and convincing error on the part of TRS staff. The Executive ~~Secretary~~Director will rule on the circumstances when such cases arise. Credit for active military duty will be accepted for eligible service prior to July 1, 1943, when evidence of such service is provided to TRS. An adjustment in the monthly retirement benefits of the member will be made beginning with the next check due if proper documentation is received by TRS by the 15th of the month. The adjustment in benefits shall not be retroactive.

715:10-5-31. Documentation of service

TRS reserves the right to require documentation of all service years credited to a member's account.

(1) Members who are claiming eligible service after the school year in which it was actually rendered must verify the claim on the appropriate Teachers' Retirement System form. The specific documentation required will depend on the type of service being purchased. Under no circumstances will affidavits be accepted as documentation.

(2) The ultimate responsibility for obtaining verification of service is that of the member.

(3) The correctness of the service must be certified on the appropriate form by an official of the school where the service was rendered. This can be done by the superintendent, business manager, secretary of the school board, or treasurer of the school board at the time the certification is made. The certification must be based upon existing records maintained by the school and certified copies of these records must be attached to the application.

(4) TRS will also accept federal or state tax records, or Detailed Earnings Information records from the Social Security Administration, as supporting documentation of employment where records cannot be obtained from the employing school, or where the records available are not deemed to be conclusive.

(5) No credit may be granted unless clear and convincing proof of eligible service has been provided from a source other than the applicant member. A conclusion that clear and convincing proof has not been provided should in no way be construed as a challenge to the member's or any other affidavit's truthfulness and integrity.

(6) The executive ~~secretary~~director of TRS shall be empowered to determine the completeness of documents submitted by a member in establishing service credit.

SUBCHAPTER 9. SURVIVOR BENEFITS

715:10-9-6. Probate Waivers

(a) In the event a member dies, leaving no living beneficiary or having designated his estate as beneficiary, the System shall require the judicial appointment of an administrator or executor for the member's estate prior to payment of any benefits or unpaid contributions. However, this requirement may be waived by the System for any benefits or unpaid contributions in the amount of $5,000.00 or less, upon presentation of:

(1) the member's valid Last Will and Testament

(2) an Affidavit of Heirship naming all heirs to the member's estate which must state:

(A) that the value of the deceased member's entire estate is subject to probate, and that the estate wherever located, less liens and encumbrances, does not exceed Five Thousand Dollars ($5,000), including the payment of benefits or unpaid contributions from the System;

(B) a description of the personal property claimed (including the death benefit or unpaid contributions or both), together with a statement that such personal property is subject to probate; and

(C) a claim by each individual claiming heir identifying the amount of personal property that the heir is claiming from the System, and that the heir has been notified of, is aware of and consents to the identified claims of all the other claiming heirs of the deceased member pending with the System.

(3) a Hold Harmless Agreement signed by all heirs;

(4) a Corroborating Affidavit from someone other than an heir who is familiar with the deceased member; and

(5) proof of payment of expenses of last sickness, death and burial, including all medical, hospital and funeral expenses.

(b) The Executive ~~Secretary~~Director of the Teachers' Retirement System shall retain complete discretion in determining which requests for probate waiver may be granted or denied, for any reason. If there is any question as to the validity of any document herein required, the judicial appointment requirement shall not be waived.

(c) After paying any death benefits or unpaid contributions to any claiming heirs as provided by this section, the Teachers' Retirement System is discharged and released from any and all liability, obligation and costs to the same extent as if the System had dealt with a personal representative of the deceased member. The System is not required to inquire into the truth of any matter specified in this section or into the payment of any estate tax liability.

SUBCHAPTER 11. WITHDRAWAL FROM MEMBERSHIP AND REFUND OF DEPOSITS

715:10-11-2. Withdrawal of optional membership while still employed

A non-classified optional member may voluntarily terminate TRS membership while continuing employment in the public schools of Oklahoma, if:

(1) Proper application is made to TRS. Withdrawal may be made no earlier than two (2) months after date of application and no earlier than the receipt by TRS of the final deposit to the member's account.

(2) The financial officer of the employing school certifies the effective date of the member's last contributions and the date payment will be remitted to TRS.

(3) Any member who withdraws under the conditions listed here may rejoin the Teachers' Retirement System, under the provision of OAC 715:10-1-4(8). A member who terminates membership under this section cannot redeposit contributions withdrawn under this section at a later date, even if the individual returns to membership in TRS. The member will also forfeit any right to purchase service performed from the date of termination of membership under this section and prior to the re-entry date, and will forfeit any unused sick leave accumulated from the date of termination of membership under this section and prior to the re-entry date.

(4) A member's contributions cannot be terminated, by either the member or the employer, without termination of TRS membership. Any member who ceases contributions while still employed in an optional position shall be deemed to have become an ineligible member of TRS, and will have forfeited all rights to retirement benefits provided by TRS.

(5) An employer may prevent its employees from withdrawing, under this rule, if the employer has a negotiated labor agreement, or formalized IRS plan, prohibiting such terminations and withdrawals.

(6) After-tax contributions can be refunded to an optional member prior to separation from service. Pre-tax contributions cannot be refunded until the member terminates employment or turns 62. Following termination of employment, TRS should be contacted for the proper form to be completed for return of pre-tax contributions. Upon completion of the verification form by the school and the mandatory four-month waiting period, payment of the balance of the account will be made at the same time as regular withdrawals.

SUBCHAPTER 13. CONTRIBUTIONS FOR MEMBERSHIP SERVICE

715:10-13-1. Regular annual compensation requirements

Each member of the Teachers' Retirement System is required to make contributions to the Retirement Fund. Monthly contributions are a set percent of "regular annual compensation". Regular annual compensation is defined as wages plus fringe benefits, excluding the flexible benefit allowance provided by Section 26-105 of Title 70 of the Oklahoma Statutes,

and shall include all normal periodic payments as provided in subsection D of Section 17-116.2 of Title 70 of the Oklahoma Statutes. Wages and fringe benefits for retirement purposes are defined as normal periodic payment for service the right to which accrues on a regular basis in proportion to the service performed. Such periodic payments shall include staff development or other periodic payments to qualifying members. Fringe benefits shall include employer-paid group health and disability insurance, group term life insurance, annuities and pension contributions and IRS Code Section 125 cafeteria benefits provided on a periodic basis to all qualified members of the employer, which qualify as fringe benefits under the United States Internal Revenue Code. Excluded from regular annual compensation are: employer contributions to a deferred compensation plan that is not provided to all qualified members of the employer, expense reimbursement payments; office, vehicle, housing or other maintenance allowances; the flexible benefit allowance provided pursuant to Section 26-105 of Title 70 of the Oklahoma Statutes; payment for unused vacation and sick leave; any payment made for reason of termination or retirement; maintenance or other non-monetary compensation; payment received as an independent contractor or consultant; or any benefit payments not made pursuant to a valid employment agreement. Contributions can only be remitted on actual wages and fringe benefits. No individual can contribute on unearned or non-existent compensation. Under no circumstances can members pay retirement contributions on more than they actually earn.

715:10-13-9. Monthly remittance report of contributions

A remittance report shall be prepared and filed with the Executive ~~Secretary~~Director of the Teachers' Retirement System by the superintendent of schools or the financial secretary of a school, on the form supplied by the Teachers' Retirement System each month for each payroll period occurring during that month. This remittance report shall be submitted as an electronic file as specified by the Executive Director.

(1) School officials preparing the claims shall prepare an alphabetical list of all members comprising the report, the amount of contributions both taxed and non-taxed (paid by the employer on a before tax basis) for each employee and the total monthly compensation amount. Monthly compensation shall be the total compensation (including benefits) for the pay period and shall not in any case be less than 1/12th of the maximum compensation option elected by the member. The report must include a listing of ~~the retired members~~all persons who are employed by the school and the amount of employer contributions remitted for each ~~retired member~~employee. ~~Monthly compensation shall be the total compensation (including benefits) for the pay period and shall not in any case be less than 1/12th of the maximum compensation option elected by the member. (This list shall be known as TRS Form 50.)~~

(2) Schools shall send the TRS Form 32, Summary of Payroll Remittance, along with warrants covering the total amount to be remitted ~~shall accompany TRS Form 50~~for each month. All employee contributions, employer contributions, retired member contributions and matching funds for the pay period shall be remitted at the same time.

(3) TRS Form 1-A Personal Data shall be required for each new member of the Teachers' Retirement System. This form must be mailed to TRS prior to or with the first remittance report containing the name of a new employee/member.

(4) Payments for prior school years may not be included on current year reports. These payments must be handled as a back payment including any interest which may be due. Contact Teachers' Retirement System for proper billing of these amounts.

~~(5) Special permission may be obtained to make a computerized report on magnetic media when it is to the advantage of both the remitting agency and the Teachers' Retirement System. Details of computerized reporting requirements are available from Teachers' Retirement. Prior approval by TRS is required before a school may utilize this option. (Note: Approval by the State Department of Education for an alternate accounting system does not guarantee acceptance for use in TRS reporting.)~~

(~~6~~5) The employer of each member shall ~~deposit~~submit the required school reports and corresponding funds within ten (10) days of the last day of each calendar month ~~all employer and employee contributions of each member due the Retirement System for payroll periods ending during the calendar month~~. ~~Employer and employee contribution amounts~~Any required reports and corresponding funds not ~~paid~~submitted to the Retirement System after thirty (30) days from the end of the payroll month shall be subject to a monthly late charge of one and one-half percent (1 1/2%) of the unpaid balance to be paid by the employer to the Retirement System compounding monthly for each month payment is overdue.

(~~7~~6) Reports for the summer months of June, July and August must be made on three individual TRS Form 32 reports; however, they can all be sent to TRS at the same time. Reports for July and August of the preceding school year must be prepared and filed as separate reports from reports filed for the new year beginning July 1. Contributions due for one fiscal or school year shall not be commingled on the same remittance report with contributions for the next fiscal or school year.

(~~8~~7) The ~~executive secretary~~Executive Director of TRS may, at any time, require additional items to be included on the monthly remittance report or require additional reports when in the ~~executive secretary's~~Executive Director's judgment such information is necessary for the efficient operation of the System or to comply with state statutes.

(~~9~~8) Receipts shall be issued by the Teachers' Retirement System to the remitting agency making the remittance.

SUBCHAPTER 15. SERVICE RETIREMENT

715:10-15-5. Date of retirement contract is binding; revocation of contract

The final contract for retirement becomes binding on the effective date shown on the contract and shall be known as the date of retirement. The contract may be revoked by the member, or the retirement plan changed, before the date of retirement. Any change or revocation must be in writing, delivered to the Teachers' Retirement System, Oklahoma City, Oklahoma, or postmarked by the United States Postal Service prior to the effective date of retirement. After the retirement date, the contract cannot be canceled~~, nor the retirement plan changed~~. After the retirement date the retirement plan cannot be changed except as outlined in paragraphs one (1) and two (2) below. If the member elected the Option 2 or Option 3 retirement contract and the member's designated beneficiary dies before the retirement date, the member may select another retirement plan without penalty. If a Maximum or Option 1 retiree should die during the month following the date of retirement and before the first retirement benefit is due, any distribution to beneficiaries designated on the member's retirement contract shall be paid pursuant to OAC 715:10-9-1 and 715:10-9-2.

(1) After the retirement date, a member who elected a reduced benefit under Option 1, Option 2, Option 3 or Option 4 may make a one-time irrevocable election to change their retirement plan within sixty (60) days of the retirement date. The beneficiary designated by the member at the time of retirement shall not be changed if the member makes the election provided for in this paragraph. Such election must be made in writing, delivered to the Teachers' Retirement System, Oklahoma City, Oklahoma, or postmarked by the United States Postal Service prior to the sixtieth day after the date of retirement.

(2) A member who elected the Maximum benefit and marries after the retirement date, may make a one-time election to change to an Option 2 or Option 3 benefit and name the member's spouse as the designated beneficiary. The member shall provide proof of the member's good health before the Board of Trustees will permit a change to either Option 2 or 3 and the naming of a designated beneficiary. A medical examination conducted by a licensed physician is required for purposes of determining good health. Such examination must be approved by the Medical Board. The member shall be required to provide proof of age for the new beneficiary. The Board of Trustees shall adjust the monthly benefit to the actuarially equivalent amount based on the new designated beneficiary's age. Such election must be made in writing using the forms proscribed by the Teachers' Retirement System and delivered to the Teachers' Retirement System, Oklahoma City, Oklahoma, or postmarked by the United States Postal Service prior to one (1) year after the date of marriage, or July 1, 2011, whichever date is later.

715:10-15-24. Due-date of retirement benefit payments

(a) Monthly benefit payments are due the first day of each month to all eligible retirees. Payments are deposited in the United States Postal Service, or paid to a designated agent providing electronic fund transfers, on the last day of each month. The benefit payment for the month in which the retired member died, if not previously paid, shall be made to the member's beneficiary, or, if the member has no beneficiary, to the member's estate. The amount of the benefit payment for the month in which the member died shall be equal to the full monthly benefit payment, regardless of the day of the month on which the retired member died. TRS cannot be responsible for payments lost in the mail, except that duplicate payments will be processed after fifteen (15) days.

(b) Effective January 1, 2000, newly retired members shall be required to receive monthly benefit payments via electronic fund transfers to a banking or financial institution designated. The retiree and receiving institution must complete the form prescribed for this purpose by the Teachers' Retirement System. In the event the electronic fund transfer creates an undue hardship on the retiree, the executive ~~secretary~~director of the Teachers' Retirement System may waive this requirement when it is determined to be in the best interest of the member and the Retirement System.

SUBCHAPTER 17. POST-RETIREMENT EMPLOYMENT

715:10-17-6. Earnings limits

(a) Effective July 1, 2003, the annual earnings limit from employment in the public schools of Oklahoma for a retired member under age 62 may not exceed one-half (1/2) of the member's final average salary used in computing retirement benefits or $15,000, whichever is less.

(b) Effective July 1 2003, the annual earnings limit from employment in the public schools of Oklahoma for a retired member age 62 or older may not exceed one-half (1/2) of the member's average salary used in computing retirement benefits or $30,000, whichever is less.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, effective July 1, ~~2003~~2008, any retired member who has been retired for thirty-six (36) months or more may ~~earn up to $30,000 annually~~receive annualized earnings from employment in the public schools of Oklahoma with no reduction in retirement benefits.

(d) For purposes of this rule the following shall apply:

(1) Earnings shall mean "regular annual compensation" as defined in OAC 715:10-13-1 and 70 O.S. § 17-116.2(D). Earnings shall include any payment by a public school for services rendered by a retired member who is employed for any purpose whatsoever. Supplemental retirement payments paid by a former public school employer in accordance with 70 O.S. 17-105(9) or other applicable state statutes or payments to an independent contractor or consultant, pursuant to a lawful contract which complies with the requirements of 70 O.S. § 6-101.2(B), will not be counted as earnings.

(2) Earnings in excess of the maximum limit will result in a loss of future retirement benefits of one dollar ($1) for each one dollar ($1) earned over the maximum.

(3) The earnings limits will, in all cases, be applied on a calendar year basis from January 1 through December 31.

(4) The earnings limit for the calendar year in which a member retires shall be one-twelfth (1/12th) of the annual limit multiplied by the number of months the member is eligible to work and receive payments from the public schools of Oklahoma.

(5) The earnings limit for the calendar year in which a member reaches age 62 shall be prorated in equal monthly increments with the month in which the member's birth date occurs counted at the higher earnings level.

(6) The earnings limit for the calendar year in which a member reaches his or her thirty-sixth (36th) month of retirement shall be prorated in equal monthly increments.

(7) For purposes of this section, for a retired member whose average salary exceeds $40,000, "average salary" means the weighted or aggregated average used to compute monthly benefits for all the member's years of credited service.

715:10-17-7. Employment by a disabled retiree

A member retired under the disability retirement provisions of TRS is not eligible to be employed, in any capacity, by any school, public or private, in Oklahoma or in other state, from the date of retirement to age 62. After age 62, a member receiving disability retirement shall be eligible for post-retirement employment under the same conditions outlined above for other retired members.

(1) A disabled retiree who returns to Oklahoma public education employment at an annual salary equal to or greater than the annual salary received at the time of disability shall again become a contributing member of TRS. Disability retirement payments shall be suspended until the member has qualified to be restored to active service. Upon completion of six (6) months of membership service, the member shall be considered as having met the requirements to be restored to active service. At such time, disability retirement shall be terminated and the unused portion of the accumulated contributions shall be re-established in the member's active retirement account. If the member again retires under a regular retirement allowance, eligibility to receive a monthly retirement allowance shall be based on total years of creditable service (see OAC 715:10-15-21).

(2) Each retired member, who has not attained age 62, receiving disability retirement from TRS shall complete a TRS Report of Earned Income by Disabled Member Form and file such form with TRS by April 15 each year. The report will list all "earned" income from all sources. Failure to complete a TRS Report of Earned Income by Disabled Member Form may result in suspension of monthly benefits if the executive ~~secretary~~director of TRS deems such action necessary and appropriate (see OAC 715:10-15-22).

[OAR Docket #11-486; filed 4-21-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 35. WELL DRILLER AND PUMP INSTALLER LICENSING

[OAR Docket #11-555]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
785:35-1-4. Violations and penalties [AMENDED]
Subchapter 5. General Requirements to Maintain Licenses and Operator Certifications
785:35-5-3. Requirements for multi-purpose completion report [AMENDED]
Subchapter 7. Minimum Standards for Construction of Wells
785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes [AMENDED]
785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings [AMENDED]
785:35-7-3. Variances to minimum standards for construction of wells [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. §§ 1020.1 et seq., 1020.16 and 1085.2
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n/a
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n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended Oklahoma Administrative Code ("OAC") Title 785, Chapter 35 as follows:

The OWRB has amended the rules governing the well drillers program to establish an administrative fine schedule for violation of specific rules and to provide for issuance of administrative citations which will advise the person violating specified rules of a hearing date at which the person may contest the issuance of the citation and/or amount of the fine; to require that all monitoring well and geotechnical boring multi-purpose completion reports be submitted electronically online unless a waiver of such requirement is granted and specifying the process to request a waiver; to revise the separation distance from a water well to an aerobic spray area for a septic system from fifteen feet (15') to twenty-five feet (25'); to allow the use of bentonite chips as well as bentonite pellets for the filter pack seal for monitoring well construction; and to remove the notary requirement for variance requests.

The circumstances creating the need for these amendments include comments received from the Well Drillers and Pump Installers Advisory Council, and issues arising in the implementation of the program by OWRB staff during the preceding year. See 82 O.S. §§ 1020.1 and following, 1020.16 and 1085.2.

CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 1. GENERAL PROVISIONS

785:35-1-4. Violations and penalties

(a) **Misdemeanor violations.** Any person who, after notice from the Board violates or refuses or neglects to comply with any provision of 82 0.S. 1991, §§1020.1 through 1020.22, as amended and the rules of this Chapter, or who commits waste shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-Five Dollars ($25.00) nor more than Two Hundred Fifty Dollars ($250.00) for each offense. Any person who, after notice that he is in violation thereof continues to violate any provision of this act, and fails to comply therewith within a reasonable length of time, is guilty of a separate offense for each day the violation continues.

(b) **Administrative penalties.** *The Board may, after notice and hearing, impose on any person administrative penalties of up to Five Thousand Dollars ($5000.00) and may revoke, suspend or deny renewal of any license or operator certification for each violation of the rules regarding license or certification requirements, the requirement to obtain a license or certification, or minimum construction or installation standards. Each day a violation continues shall constitute a separate violation. Such administrative penalties shall be deposited in the Well Drillers and Pump Installers Remedial Action Indemnity Fund except as otherwise provided in* 785:35-1-5(c). [82:1020.16(E)]

(1) **Notice of violation and proposed assessment.** In addition to revoking, suspending or not renewing a license or operator certification, the Board may impose administrative penalties against drillers or operators who fail, refuse or neglect to comply with rules or orders of the Board. Such administrative penalties shall be imposed only after notice and opportunity for hearing on the proposed imposition of such penalties. The notice of the proposed assessment of administrative penalties shall inform the respondent of the provisions of the Board rules or order at issue and the proposed amount of the penalty. A letter, citation, petition, notice of violation, consent order or final order may constitute a notice of proposed assessment for purposes of initiating administrative penalty proceedings if it meets the requirements of this section.

(2) ~~**Determining amount of penalty.** In setting the administrative penalty amount, the Board may consider the following:~~

~~(A) The nature, duration and number of previous instances of failure by respondent to comply with requirements of law, Board rules and orders;~~

~~(B) The efforts of the driller or operator to correct deficiencies or other instances of failure to comply with the requirements of law, Board rules and orders subject of the proposed penalty;~~

~~(C) The cost of carrying out actions required to meet the requirements of law and Board rules and orders;~~

~~(D) Any established penalty set forth in these rules;~~

~~(E) Other factors deemed appropriate by the Board.~~

Administrative fine schedule. The schedule of fines in this Section is based on violation of requirements common to the rules promulgated under authority of the 82 O.S. Section 1085.2; Oklahoma Groundwater Law in 82 O.S. Section 1020.1 and following, particularly Section 1020.16 on well driller and pump installer licensing. The fine schedule for citations issued by the Board for violations of the following requirements is:

(A) Engaged in commercial activity without a license.
- (i) First - $1,000.00
- (ii) Second or subsequent - up to $5,000.00.

(B) Engaged in commercial activity without an operator's certification.
- (i) First - $1,000.00.
- (ii) Second or subsequent - up to $5,000.00.

(C) Failure to have present a certified operator at the drilling, plugging or pump installation site.
- (i) First - $1,000.00.
- (ii) Second or subsequent up to $5,000.00.

(D) Failure to have rig used in drilling or pump installation properly identified
- (i) First - $1,000.00.
- (ii) Second or subsequent up to $5,000.00.

(E) Failure to submit a multi-purpose completion report form or electronic version
- (i) First - $50.00.
- (ii) Second or subsequent $250.00.

(F) Violation of groundwater well, fresh water observation well and water well test holes minimum standard
- (i) First - $1,000.00.
- (ii) Second or subsequent up to $5,000.00.

(G) Violation of heat exchange well minimum standard
- (i) First - $1,000.00.
- (ii) Second or subsequent up to $5,000.00..

(H) Violation of monitoring well and geotechnical boring minimum standard
- (i) First - $1,000.00.
- (ii) Second or subsequent up to $5,000.00.

(I) Violation of pump installation minimum standard.
- (i) First - $1,000.00.
- (ii) Second or subsequent up to $5,000.00.

(J) Violation of minimum standard for plugging and capping wells and test holes.

(i) First - $1,000.00.

(ii) Second or subsequent up to $5,000.00.

(K) Violation of minimum standard for plugging site assessment observation well, monitoring well and geotechnical borings.

(i) First - $1,000.00.

(ii) Second or subsequent up to $5,000.00.

(3) ~~**Procedures for penalty assessment.**~~

~~(A) The notice of proposed assessment of administrative penalties shall specify a time, date and place for a hearing.~~

~~(B) Failure of respondent to appear at the hearing shall be deemed to constitute an agreement with the imposition of the penalty in the amount proposed as set forth in the notice, and proposed findings, conclusions and order shall not be prepared in that instance. The Board and respondent may also agree to an informal disposition of the matter. In either situation, the matter shall be presented to the Board for consideration of entering a final order assessing the administrative penalty.~~

~~(C) The administrative penalty is due and payable immediately upon issuance of the final order, unless otherwise provided therein.~~

~~(D) If the Board believes that violations are continuing after issuance of the administrative penalty order, it may seek the issuance of additional orders to assess penalties occurring in the period after issuance of the previous assessment orders.~~

Administrative Citations

(A) Issuance of a citation. A citation which is issued to a person for violation of one or more of the compliance requirements provided in Section 785:35-1-4(b)(2) shall advise the person of the hearing date at which the person may contest the issuance of the citation and/or the amount of the fine. Such hearings shall be conducted in compliance with the Oklahoma Administrative Procedures Act and the Oklahoma Open Meetings Act.

(B) Orders following hearing. A final order may uphold the citation as issued, reduce the amount of the fine or dismiss the action. A default order may be issued if the person cited has been advised in writing of the hearing date and fails to appear. The fine is due and payable immediately upon issuance of the order unless otherwise provided therein. A final order is appealable to the district court in accordance with the Oklahoma Administrative Procedures Act.

(4) ~~**Established penalty for failure to submit reports.** Unless otherwise specifically determined by the Board, the penalties to be assessed for the failure to submit multipurpose completion reports within sixty (60) days after completion of the activity as required by Board rules shall be as follows, provided that to avoid such an assessment the Board may from time to time provide an amnesty period of a duration and under such conditions to be set forth in a written notice to be provided to all licensees:~~

~~(A) For the first time penalties are assessed against a licensee or operator for failure to submit such reports, $50 for each report, provided that the licensee or operator shall submit an acceptable report with the associated penalty within thirty (30) days after receipt of the notice; and~~

~~(B) For the second or additional times that penalties are assessed against a licensee or operator for failure to submit such reports, $250 for each report, provided that the licensee or operator shall submit an acceptable report with the associated penalty within thirty (30) days after receipt of the notice.~~

Payment of fines. A person who is ordered to pay a fine shall submit the fine to the Oklahoma Water Resources Board, 3800 North Classen Boulevard, Oklahoma City, Oklahoma 73118. A person who decides not to contest the issuance of the citation shall submit payment of the fine to the same address on or before the hearing date indicated on the citation.

SUBCHAPTER 5. GENERAL REQUIREMENTS TO MAINTAIN LICENSES AND OPERATOR CERTIFICATIONS

785:35-5-3. Requirements for multi-purpose completion report

Each licensee or certified operator as the case may be shall file a multi-purpose completion report for each groundwater well, water well test hole, fresh water observation well, ~~monitoring well, site assessment well, geotechnical boring,~~ or heat exchange well completed or plugged. The report shall be on forms provided by the Board or electronically online and shall be filed within sixty (60) days after the date of completion or plugging. Each licensee or certified operator as the case may be shall file a multi-purpose completion report electronically online for each monitoring well, site assessment observation well and geotechnical boring within sixty (60) days after the date completed or plugged. Information regarding multiple monitoring wells, geotechnical borings and heat exchange wells may be accumulated together in a single report if all of the excavations are located in the same ten-acre tract, have substantially the same lithology encountered in the subsurface, and have substantially the same depth and construction. If more than one boring or well is included on a multi-purpose completion report, a site map shall be attached to the report which indicates the distance of each well or boring from permanent reference points such as streets, roads or section lines. Provided, a report need not be filed for a geotechnical boring 20 feet deep or less in which groundwater or contamination is not present. Effective July 1, 2009, all multi-purpose completion reports shall be submitted with latitude and longitude data.

SUBCHAPTER 7. MINIMUM STANDARDS FOR CONSTRUCTION OF WELLS

785:35-7-1. Minimum standards for construction of groundwater wells, fresh water observation wells, and water well test holes

(a) **General requirements.**

(1) **Minimum standards.** The minimum standards set forth in this subchapter apply to all groundwater wells, fresh water observation wells and water well test holes whether constructed by a person having a valid license or by any other person. More stringent construction standards may be required for areas of known contamination as identified in Chapter 45, Appendix H.

(2) **Construction of wells.** Flowing and non-flowing groundwater wells, observation wells and water well test holes are to be constructed in a manner as to prevent waste and to prevent contamination of groundwater by pollution material either entering the ground around the casings or tubing, or entering the fresh groundwater from pollution sources below the ground, or by entering the fresh well water by leaking wells, casing pipe fittings, pumps, or well seals.

(3) **Proper maintenance, plugging and capping.** The well driller and/or the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources, and to see that unused wells are properly capped or plugged.

(b) **Minimum location standards.**

(1) Every new groundwater well, fresh water observation well and water well test hole shall be located a minimum distance from possible pollution sources as prescribed in this subsection or as otherwise authorized by a variance granted by the Executive Director. Possible pollution sources include but are not limited to existing or proposed septic tanks, sewer lines, absorption fields or beds, seepage pits, building foundations, waste pits, lagoons, oil or gas wells, and landfills. The minimum distance between the possible pollution source and the well or test hole shall be as follows, provided that other governmental agencies may require wells to be located at distances greater than the minimum distances set forth in this paragraph:

(A) 10 feet from a closed or tight sanitary sewer line, ~~15~~ 25 feet from aerobic (above ground) sprinkler spray, and 50 feet from an aerobic sprinkler head,

(B) 300 feet from the outside perimeter of an existing or proposed waste lagoon for a feedlot or confined animal feeding operation, and

(C) 50 feet from all other pollution sources, provided however, if the well is 50 feet to 75 feet and located down-gradient or level from a possible source of pollution, a twenty foot (20') surface seal shall be installed, and

(D) 75 feet from all other pollution sources if the well is level with the pollution source and 100 feet from all other pollution sources if the well is located down-gradient from the pollution source.

(2) If not prohibited by the owner of the well or other governmental agency requirements, groundwater wells which will not be used for drinking water may be located closer to a possible pollution source than the minimum distances specified in paragraph (1) of this subsection if all of the following conditions are met:

(A) the possible pollution source is not a wastewater lagoon, and not a subsurface septic system,

(B) before the well is drilled, the well driller advises the person wanting the well drilled that the well is subject to contamination,

(C) the owner of the proposed well notifies the Board that the owner will authorize the driller to drill the well closer to the possible pollution source than the minimum location standard,

(D) the outside water-tight casing is properly cement grouted or completed with ten (10) feet bentonite in the lower one-half (1/2) portion and ten (10) feet cement grout in the upper one-half (1/2) portion at least twenty (20) feet down from the land surface or pitless adaptor connection.

(3) If a well driller or other person proposing to drill a well encounters a structure, object or other situation and is unsure whether it may be a possible source of pollution, he shall contact Board staff and obtain approval for location of the well.

(c) **Casing of groundwater and fresh water observation wells.** Except for sand point wells, requirements for casing of groundwater wells and fresh water observation wells shall be as follows:

(1) The casing shall be installed to seal off any groundwater zones containing water which does not meet the groundwater quality standards as set forth in Oklahoma's Water Quality Standards. In no case shall a well be completed in a salt water zone.

(2) New groundwater and fresh water observation wells shall have:

(A) Outside water-tight production casing cement grouted from land surface to a minimum depth of ten (10) feet below the land surface, and to such further depth as may be necessary, depending upon the character of the underground formations, to extend into an impervious stratum, where such stratum is found above the source aquifer.

(B) Casing seated at top of the first impervious stratum suitable for casing point. Where an impervious formation or tight confined bed does not occur at the well site, the casing shall be extended as far as practicable below the water table and wherever possible, at least ten (10) feet below the minimum seasonal stage of the water table.

(C) Casing joints threaded, welded, or glued with water well construction glue so as to be water-tight.

(D) Casing that extends at least twelve (12) inches above the natural ground level or eight (8) inches above the floor surface for surface pad completions. In areas where known flooding occurs, the casing

shall extend twenty-four (24) inches above the maximum level of such flooding.

(E) Casing meeting or exceeding the following:

(i) new or clean and sanitary used carbon or stainless steel, or

(ii) new PVC fresh water well casing which has a S.D.R. rating of twenty-six or stronger and which may be plain end with threaded connector, and with all joints made water-tight by cleaning and cementing, using manufacturer's recommended thinner and cement for use in fresh water wells, or

(iii) fiberglass or other material which meets or exceeds N.S.F. approval for casing which is specially designed for use in a water well.

(d) **Cement grouting and concreting.** Except for sand point wells, cement grouting and concreting requirements for groundwater wells and fresh water observation wells shall be as follows. These requirements must be met before the drilling rig is taken from the site.

(1) All new groundwater wells and fresh water observation wells shall be made water-tight around the outside of the production casing by cement grouting to such depths as may be necessary to exclude pollution, but in no case shall the cement grout seals be less than ten (10) continuous feet in depth, provided that five (5) feet of bentonite may be installed immediately below five (5) feet of cement grout for the total 10 feet continuous seal. If surface pipe and production casing are used, the cement grouting and/or bentonite seal shall be installed outside the surface pipe casing in all instances beginning July 1, 2005, provided the following provisions apply:

(A) a variance may be issued by the Director for an alternative completion design due to site specific conditions, and

(B) if a sleeve is used at the surface for the sole purpose of attaching a pitless adapter, the sleeve shall be installed or embedded within the surface seal, extend a minimum of eight feet (8') below ground level in the borehole, and the surface seal shall be a minimum of one and one-half inch ($1\frac{1}{2}$") thick.

(C) If the surface casing does not extend twelve inches (12") above natural ground level and a pitless cap or sanitary seal is not installed, then a ten foot (10') cement grout/bentonite surface seal shall be installed in the area between the surface and production casings terminating within four feet (4') of land surface.

(D) When deemed necessary to utilize conductor or surface casing to control flowing material near surface, an additional cement/bentonite seal shall originate ten feet (10') below the base of the conductor/surface casing and shall terminate ten feet (10') above the base of the conductor/surface casing between the conductor/surface casing and production casing.

(2) The cement or cement/bentonite seal shall originate at a minimum ten (10) foot depth and terminate no deeper than four feet (4') from the natural land surface for a minimum total length of ten feet (10') after all settling of the cement or bentonite/cement has occured, unless a written waiver is first obtained from the Board.

(3) The cement grout shall consist of a mix ratio of one (1) 94 pound sack of cement to a maximum of six (6) U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of fifty percent (50%) aggregate by dry weight may be added to the portland cement to form the cement grout, provided the aggregate is a size that will not create a potential to cause bridging in the annular space.

(4) A maximum of twenty percent (20%) percent bentonite may be added to the slurry, which bentonite shall be prehydrated to the manufacturer's recommended consistency. Prehydration requires that the bentonite be properly mixed with the recommended amount of water before the mixture is installed.

(5) The well borehole shall be a minimum diameter of at least three (3) inches greater than the outside diameter of the well casing or production tubing adjacent to the borehole utilized in the surface seal.

(6) This annular space shall be filled with cement grout or cement/bentonite to the minimum ten (10) foot depth, or such further depth as may be necessary to exclude pollution.

(7) Where a pitless well adapter or unit is being installed, the grouting shall start below the junction of the pitless well adapter or unit where it attaches to the well casing and shall continue to at least ten (10) feet below this junction.

(8) If a high solids bentonite grout is used for the bentonite seal portion below the cement grout portion of the surface seal, the grout shall contain a minimum, twenty percent (20%) solids by dry weight.

(9) It is not an acceptable installation method to install dry cement around the casing and then add water.

(e) **Well development requirements for groundwater wells except sand point wells or fresh water observation wells.** Upon completion of the groundwater well or fresh water observation wells and before conducting the yield of drawdown tests, the well driller shall clean and develop the well to remove drill cuttings and drilling mud.

(f) **Disinfection of groundwater or fresh water observation wells.** Requirements for disinfection of groundwater or fresh water observation wells shall be as follows:

(1) All water used in the drilling of the well shall be potable water or uncontaminated chlorinated water having not less than 100 parts per million chlorine.

(2) A new, repaired, or modified well shall first be thoroughly cleaned and prepared for receiving pumping equipment.

(3) Thereafter, the well and pumping equipment shall be disinfected with chlorine so applied that a concentration of at least one hundred (100) parts per million of chlorine shall be obtained in all parts of the water in the well.

(4) A minimum contact period of two (2) hours shall be provided before pumping the well to flush chlorine solution from the fresh water distribution system.

(g) **Access port or water level measuring device.** Upon completion of a new groundwater or fresh water observation well and before the well is put into service, the well driller will equip the well with either an access port that will allow for the measurement of the depth to static water surface or a static water level measuring device.

(h) **Sand point well construction requirements.** Unless otherwise approved by variance, applicable minimum standards set forth in this section and the following minimum construction requirements apply to sand point wells:

(1) The sand point well shall be drilled to a total depth of no more than thirty feet (30'); and

(2) A pilot hole shall be constructed first, with cement installed to a depth of three feet (3') around surface casing, then the remaining bore hole can be installed then production casing installed.

785:35-7-2. Minimum standards for construction of monitoring wells and geotechnical borings

(a) **General requirements.**

(1) **Applicability of minimum standards.** The minimum standards set forth herein apply to all monitoring wells, including site assessment observation wells and unsaturated zone monitoring wells, and geotechnical borings, whether constructed by a person having a valid license or by any other person.

(2) **Construction.** Monitoring wells and geotechnical borings shall be constructed in such a manner as to prevent waste and contamination of groundwater by pollution material entering the ground around the casing or boring, by entering the wells or boring, or by entering the fresh groundwater from pollution sources below the ground.

(A) **Drilling equipment.** Drilling equipment shall be decontaminated if contamination is encountered in the well or borehole.

(B) **Drilling procedures.** Drilling procedures shall be carried out in such a manner that will prevent or minimize contamination.

(C) **Construction material.** All construction material shall be in a condition that will prevent or minimize contamination.

(3) **Proper maintenance and plugging.** The driller and the well owner are charged with the responsibility of taking whatever steps are reasonable in a particular situation to guard against waste and contamination of the groundwater resources and to see that unused wells and boring are properly plugged.

(4) **Other regulations.** These rules are minimum standards and other laws and regulations which are more stringent may be applicable.

(b) **Minimum standards for construction of monitoring wells.**

(1) **Diameter of borehole.**

(A) The diameter of boreholes for monitoring wells, with the exception of boreholes for unsaturated zone monitoring wells, shall be at least three inches greater than the nominal diameter of the well casing and screen for the entire length of the casing.

(B) The diameter of boreholes for unsaturated zone monitoring wells shall be at least one and one-half (1 1/2") inches greater than the nominal diameter of the well casing for the entire length of the casing.

(2) **Casing selection and casing joints.**

(A) All wells shall be cased. Casing material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations.

(B) When PVC casing is used, the casing shall meet or exceed the standard dimension ratio (SDR) of twenty-one (21).

(C) The minimum diameter for monitoring well casing shall be a nominal two (2) inches, with the exception of casing for unsaturated zone monitoring wells. The minimum diameter for unsaturated zone monitoring well casing shall be a nominal one-half inch. Methane gas probes at solid waste management sites shall be exempt from minimum casing diameter requirements.

(D) The casing shall be connected by flush threaded joints or have the ability to be connected by another mechanical method that does not introduce pollutants into the well. Glued joint casing shall not be used when monitoring organics.

(E) The casing joints shall be made water tight by a method that does not introduce pollutants into the well (e.g. wrapping the casing joint with Teflon tape or placing an o-ring or gasket in the joint).

(3) **Bottom cap required.** A bottom cap shall be installed on each monitoring well.

(4) **Screen selection and setting.**

(A) All wells shall be screened and screen material shall be selected according to groundwater geochemistry, anticipated lifetime of monitoring program, well depth, parameters to be monitored and other site specific considerations, provided that the minimum screen depth shall be two and one-half feet (2 $\frac{1}{2}$') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission.

(B) The well screen shall be factory wire wrapped or factory slotted. Well screens shall not be field slotted.

(C) Slot size shall be selected to prevent or minimize infiltration of the filter pack through the well screen.

(D) Screens shall be of sufficient length to detect, monitor or otherwise describe the contaminant plume according to site specific conditions (e.g. seasonal

water level fluctuations). Screen length shall be determined so that commingling of fluids from separate groundwater zones does not occur.

(E) Screen joints shall be placed in the well in such a manner as not to interfere with the accurate investigation of the groundwater quality.

(5) **Filter pack selection and placement.**

(A) All wells shall be have a filter pack and aggregates used for filter pack shall consist of uncontaminated quartz sand, silica or other material that will not affect the groundwater quality.

(B) Filter pack shall be selected to prevent or minimize infiltration of the geologic formation (e.g. fines migration or sand buildup).

(C) Filter pack shall extend two (2) feet above the top of the screen unless such extension would allow vertical communication of pollution through the filter pack.

(D) Filter pack shall be placed in the annulus of the well in such a manner that bridging of the filter pack material will not occur.

(E) When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the filter pack shall extend a minimum of 0.5 feet above the top of the screen.

(6) **Sealing requirements.** Requirements for proper filter pack sealing, annular sealing and surface sealing for monitoring wells shall be as follows:

(A) **Sealing material.** All sealing materials shall be compatible with ambient geological, hydrogeological and climatic conditions, as well as any man-induced conditions anticipated to occur during the life of the monitoring well. Any cement used as a sealant shall be equivalent to or have the same properties as ASTM C-150 cement types I-V (commonly known as Portland cement).

(B) **Filter pack seal.** A minimum of two (2) feet of ~~uniformly sized particles of~~ sodium bentonite pellets, chips or granules of no less than 0.25 inches and no more than 0.75 inches in size shall be placed immediately over the filter pack in each site assessment observation well or monitoring well and properly hydrated.

(C) **Annular seal.** The annular space above the filter pack seal shall be filled with a cement grout, bentonite grout, bentonite chips or a cement/bentonite grout mixture to within two (2) feet of the surface. The cement grout shall have a mix ratio of one 94 pound sack of cement to a maximum of six U.S. gallons of water. The cement and water must be mixed to the proper consistency as recommended by the cement manufacturer before the mixture is installed around the casing. A maximum of twenty percent (20%) bentonite by dry weight may be added to the cement grout to form the cement/bentonite grout mixture. The bentonite shall be prehydrated to the manufacturer's recommended consistency. The bentonite grout shall be a high solids bentonite grout with at least twenty percent (20%) bentonite by dry weight. The bentonite shall be mixed according to the manufacturer's recommended consistency.

(D) **Surface seal.** A concrete or cement grout surface seal shall be placed around the casing immediately above the annular seal from a depth of two (2) feet to land surface.

(E) **Tremie requirements for grout.** When the placement of grout will exceed twenty (20) feet, the grout shall be placed in the annulus of the well through a tremie pipe and filled or pumped from the bottom upward.

(F) **Multiple cased or screened wells.** No adjacent or collinear casings in the same borehole shall be allowed. No multiple screened intervals in the same casing shall be allowed. Wells shall be drilled with sufficient distances between them so as to prevent the commingling of aquifer zones.

(G) **Special annular, filter pack, and surface seal conditions.** When water or vapor levels being monitored are encountered within five (5) feet of the land surface, the required depths set forth in C and D above for the filter pack and annular seals shall be reduced to fill the annular space from the top of the filter pack materials to the bottom of the cement surface seal, provided that the minimum screen depth shall be two and one-half feet (2 $\frac{1}{2}$') below the land surface, provided further that the minimum screen depth shall be two feet (2') below land surface for tank pit monitoring wells at tank locations regulated by the Oklahoma Corporation Commission. The surface seal shall extend a minimum of one (1) foot below land surface.

(7) **Surface pad requirements.**

(A) A concrete or cement surface pad shall be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick.

(B) The surface pad shall be sloped so to insure that all surface water flows away from the well.

(C) The surface pad is not required if the well is completed in competent concrete or asphalt paving, or if the well is an unsaturated zone monitoring well or a site assessment well that is located in a proposed solid waste disposal site and neither is used for a period exceeding one (1) year.

(8) **Top cap requirements.**

(A) A threaded or flange cap or compression seal shall be installed upon completion of the well to prevent unauthorized use of the well (e.g. tampering with the well or the entrance of foreign material into the well).

(B) The cap or seal shall have the capability of being locked if the well is flush mounted and the well protector is not capable of being locked.

(9) **Monitoring well and site assessment observation well protection.** Protection shall be provided for the casing of monitoring wells or site assessment observation wells by either of the following methods:

(A) An aluminum or steel surface casing shall be set a minimum of 12 inches through the cement or concrete surface pad and shall extend a minimum of 24 inches above the pad or ground. The top of the protective casing shall be fitted with a locking cap and shall be marked to clearly identify the well as a monitoring well or site assessment observation well; or

(B) If flush mounting is required, then the well shall be completed with a well protector that is capable of supporting vehicular traffic, provided that flush mounting of the casing of monitoring wells installed at concentrated animal feeding operations after July 1, 2006, shall be prohibited. The well protector shall be raised a minimum of one-half (1/2) inch above the surface pad or paving and shall be clearly marked to identify the well as a monitoring well or site assessment observation well. The surface seal shall be sloped so that surface water flows away from the well protector and the bond between the well protector and the removable cover shall be made watertight.

(10) **Direct Push (DP) Monitoring Wells and Piezometers.**

(A) Monitoring wells and piezometers that are installed using direct push (DP) technology shall comply with the applicable standards in 785:35-7-2 for reporting, casing, screening, filter pack, filter pack placement, filter pack seal, development, decontamination, surface seal, cleaning, protection, marking, and completion.

(B) DP monitoring wells and piezometers shall be authorized as applicable at the discretion of the state or federal agency having jurisdiction over a specific site.

(C) DP monitoring wells and piezometers shall also comply with the following additional standards:

(i) DP monitoring wells and piezometers shall only be authorized for a one (1) year term; and

(ii) The outside diameter of the borehole shall be at least three inches (3") greater than the nominal diameter of the well casing and screen; and

(iii) Granular bentonite shall not be used in the sealed interval below the static water level; and

(iv) Casing diameter shall be a minimum one inch (1") and shall meet or exceed schedule 40 standards; and

(v) Wells and piezometers shall not be constructed through more than one water bearing formation and shall not be greater than 50 feet in depth unless a variance is obtained.

785:35-7-3. Variances to minimum standards for construction of wells

(a) Variances from any of the minimum standards for construction of wells set forth in this subchapter may be granted by the Board when it is demonstrated that the construction proposed will protect the quantity and quality of the groundwater from contamination and waste. Requests for variances must be completed on forms provided by the Board and submitted prior to beginning any work related to the variance, unless otherwise approved by the Executive Director of the Board as provided in this section.

(b) Requests for variances shall be accompanied by any plans, specifications or other information detailing the type of variance requested and reasons for the variance request.

(c) Requests for variances must be signed by the licensed well driller, contain a ~~notarized~~ signature from the landowner of the land where the work is being done, and contain a certification signed by a licensed professional engineer that activities allowed by such variance will not cause pollution; provided however, a certification from a licensed professional engineer shall not be mandatory for a variance request to water well construction minimum standards unless otherwise required by the Executive Director.

(d) Staff shall review the plans, specifications and data for purposes of determining the potential impacts on the groundwater and, if deemed advisable, may consult with all person requesting the variance, landowner and licensed professional engineer or hydrogeologist. Staff shall then make a recommendation to the Executive Director about the request for variance.

(e) The Executive Director may approve the requested variance, deny the requested variance, or approve the requested variance subject to certain conditions being met.

[OAR Docket #11-555; filed 4-22-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 45. OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #11-556]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Surface Water Quality Standards
Part 3. Beneficial Uses and Criteria to Protect Uses
785:45-5-12. Fish and wildlife propagation [AMENDED]
785.45-5-13. Agriculture [AMENDED]
785:45-5-16. Primary Body Contact Recreation [AMENDED]
Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [REVOKED]
Appendix A.1. Designated Beneficial Uses of Surface Waters Water Quality Management Basin 1, Middle Arkansas River [NEW]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S., §§ 1085.30 and 1085.30a; 27A O.S., § 1-3-101; and 82 O.S. § 1085.2
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n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB') has amended various provisions of the Oklahoma Water Quality Standards ("OWQS") codified in OAC 785:45 as follows:

Several amendments have been adopted to be responsive to comments made by the U.S. Environmental Protection Agency ("EPA") regarding the State of Oklahoma's draft 2010 list of waterbodies with beneficial uses that are not supported with respect to specified pollutants (referred to as the "303(d) list"). The adopted amendments include adding or modifying assessment procedures for listing and reporting beneficial use support with respect to Fish and Wildlife Propagation (regarding dissolved oxygen in OAC 785:45-5-12), Agriculture (in 785:45-5-13), and Primary Body Contact Recreation (regarding E. coli, enterococci and fecal coliform, in 785:45-5-16). The circumstance which created the need for these amendments is that EPA has made an interpretation under the federal Clean Water Act and Code of Federal Regulations to the effect that the pertinent use support assessment procedures currently codified in OAC 785:46 Subchapter 15 are inadequately covered in OAC 785:45 as water quality standards. The intended effects of the amendments are to satisfy EPA's comments on the draft 303(d) list for 2010, to insure that the pertinent assessment procedures are treated as water quality standards, and to avoid action by EPA to take over some or all of development of the 303(d) list for Oklahoma.

OAC 785:45-5-16, Primary Body Contact Recreation, has also been amended in two other ways. The first of these additional amendments is deletion of the criteria for fecal coliform. This amendment is needed because EPA guidance has recommended that in order to protect the Primary Body Contact Recreation use, fecal coliform criteria should be replaced with E. coli and enterococci criteria. The latter criteria have already been promulgated in Oklahoma. The intended effect of this amendment is to remove criteria that have been demonstrated to be poor indicators for protecting body contact recreation.

The second additional amendment of OAC 785:45-5-16 is to clarify that single sample maximum criteria are to be used for swimming advisories only. This amendment is needed because EPA guidance has recommended that single sample maximum criteria are not appropriate for determining beneficial use support.

Appendix A.1, Designated Beneficial Uses of Surface Waters, Water Quality Management Basin 1, Middle Arkansas River, has been revoked and reenacted with the addition of an HQW designation for Saline Creek and Little Saline Creek, tributaries to Lake Hudson. The circumstance which created the need for these amendments is that affected landowners in the area have requested this designation. The basis for the request includes evidence that historic water quality and physical habitat provide conditions which are better than the promulgated criteria in OAC 785:45 Appendix G, and there is significant local support for promulgation of the HQW designation. The intended effect of this revision is to provide consistent protection for all waters with similar environmental conditions.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 5. SURFACE WATER QUALITY STANDARDS

PART 3. BENEFICIAL USES AND CRITERIA TO PROTECT USES

785:45-5-12. Fish and wildlife propagation

(a) **List of subcategories.** The narrative and numerical criteria in this section are designed to maintain and protect the beneficial use classification of "Fish and Wildlife Propagation". This classification encompasses several subcategories which are capable of sustaining different climax communities of fish and shellfish. These subcategories are Habitat Limited Aquatic Community, Warm Water Aquatic Community, Cool Water Aquatic Community (Excluding Lake Waters), and Trout Fishery (Put and Take).

(b) **Habitat Limited Aquatic Community subcategory.**

(1) Habitat limited aquatic community means a subcategory of the beneficial use "Fish and Wildlife Propagation" where the water chemistry and habitat are not adequate to support a "Warm Water Aquatic Community" because:

(A) Naturally occurring water chemistry prevents the attainment of the use; or

(B) Naturally occurring ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of a sufficient volume of effluent to enable uses to be met; or

(C) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(D) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or

(E) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of the "Warm Water Aquatic Community" beneficial use.

(2) Habitat Limited Aquatic Community may also be designated where controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act as amended, which would be necessary to meet standards or criteria associated with the beneficial use subcategories of Cool Water Aquatic Community or Warm Water Aquatic Community, would result in substantial and widespread economic and social impact.

(c) **Warm Water Aquatic Community subcategory.** Warm Water Aquatic Community means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality and habitat are adequate to support climax fish communities.

(d) **Cool Water Aquatic Community subcategory.** Cool Water Aquatic Community means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support cool water climax fish communities and includes an environment suitable for the full range of cool water benthos. Typical species may include smallmouth bass, certain darters and stoneflies.

(e) **Trout Fishery subcategory.** Trout Fishery (Put and Take) means a subcategory of the beneficial use category "Fish and Wildlife Propagation" where the water quality, water temperature and habitat are adequate to support a seasonal put and take trout fishery. Typical species may include trout.

(f) **Criteria used in protection of fish and wildlife propagation.** The narrative and numerical criteria to maintain and protect the use of "Fish and Wildlife Propagation" and its subcategories shall include:

(1) **Dissolved oxygen.**

(A) Dissolved oxygen (DO) criteria are designed to protect the diverse aquatic communities of Oklahoma.

(B) Allowable loadings designed to attain these dissolved oxygen criteria are provided as follows:

(i) For streams with sufficient historical data, the allowable load shall be based on meeting the dissolved oxygen concentration standard at the seven-day, two-year low flow and the appropriate seasonal temperatures.

(ii) For streams lacking sufficient historical data, or when the appropriate flow is less than one (1) cubic foot per second (cfs), the allowable load shall be based on meeting the dissolved oxygen concentration standard at one (1) cfs and the appropriate seasonal temperature.

(iii) Provided, for streams designated in OAC 785:45 Appendix A as HLAC or WWAC which have sufficient historical data as determined by the permitting authority, the allowable BOD load may be based upon meeting the dissolved oxygen concentration standard at the applicable seasonal temperature and corresponding seasonal seven-day, two-year low flow.

(iv) Provided further, in stream segments where dams or other structures have substantially affected the historic flow regime of the stream segment, including but not limited to the portions of the Verdigris and Arkansas Rivers constituting the McClellan-Kerr Arkansas River Navigation System, a properly designed and implemented site-specific hydrologic study approved by the permitting authority and the Board may be used to determine the appropriate regulatory low flow. In such circumstances, the allowable BOD load may be based upon meeting the dissolved oxygen concentration standard at the applicable seasonal temperature and the site-specific regulatory low flow.

(C) Except for naturally occurring conditions and as modified in (D) of this paragraph, the dissolved oxygen criteria are as set forth in Table 1 of Appendix G of this Chapter.

(D) For purposes of assessment, listing and reporting under sections 303(d) and 305(b) of the federal Clean Water Act as amended, the procedure for determining use support of the Fish and Wildlife Propagation beneficial use or any subcategory thereof with respect to dissolved oxygen shall be as follows:

(i) **General support test for all streams.** If more than two concentrations of DO in a stream are observed to be below 2.0 mg/L in any given year, the Fish and Wildlife Propagation beneficial use shall be deemed to be not supported.

(ii) **Support tests for HLAC streams.**

(I) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the stream are less than 4.0 mg/L from April 1 through June 15 and less than 3.0 mg/L during the remainder of the year.

(II) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the stream are less than 4.0 mg/L from April 1 through June 15 or less than 3.0 mg/L during the remainder of the year due to other than naturally occurring conditions.

(iii) **Support tests for WWAC streams.**

(I) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the stream are less than 6.0 mg/L from April 1 through June 15 and less than 5.0 mg/L during the remainder of the year.

(II) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples from the stream are less than 6.0 mg/L and 10% or less of the samples are less than 5.0 mg/L from April 1 through June 15, or more than 10% of the samples are less than 5.0 mg/L and 10% or less of the samples are less than 4.0 mg/L from June 16 through October 15.

(III) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the stream are less than 5.0 mg/L from April 1 through June 15, or less than 4.0 mg/L from June 16

through October 15, or less than 5.0 mg/L from October 16 through March 31, due to other than naturally occurring conditions.

(iv) **Support tests for CWAC and Trout streams.**

(I) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the stream are less than 7.0 mg/L from March 1 through May 31 and less than 6.0 mg/L during the remainder of the year.

(II) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples from the stream are less than 7.0 mg/L and 10% or less of the samples are less than 6.0 mg/L from March 1 through May 31, or more than 10% of the samples are less than 6.0 mg/L and 10% or less of the samples are less than 5.0 mg/L from June 1 through October 15.

(III) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the stream are less than 6.0 mg/L from March 1 through May 31, or less than 5.0 mg/L from June 1 through October 15, or less than 6.0 mg/L from October 16 through the last day of February, due to other than naturally occurring conditions.

(v) **Support tests for WWAC lakes.** The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if both the Surface and Water Column criteria prescribed in (vi)(I) and (vii)(I) of this subparagraph (D) are satisfied. If either of the Surface or Water Column criteria prescribed in (vi)(II) or (vii)(II) produce a result of undetermined, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion; provided, if either of the Surface or Water Column criteria prescribed in (vi)(III) or (vii)(III) produce a result of not supported, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion.

(vi) **Surface criteria for WWAC lakes.**

(I) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the epilimnion during periods of thermal stratification, or the entire water column when no stratification is present, are less than 6.0 mg/L from April 1 through June 15 and less than 5.0 mg/L during the remainder of the year.

(II) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples from the epilimnion during periods of thermal stratification, or the entire water column when no stratification is present, are less than 5.0 mg/L and 10% or less of the samples are less than 4 mg/L from June 16 through October 15, or more than 10% of the samples from the surface are less than 6.0 mg/L and 10% or less of the samples are less than 5.0 mg/L from April 1 through June 15.

(III) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the epilimnion during periods of thermal stratification, or the entire water column when no stratification is present, are less than 5.0 mg/L from April 1 through June 15 or less than 4.0 mg/L from June 16 through October 15, or less than 5.0 mg/L from October 16 through March 31, due to other than naturally occurring conditions.

(vii) **Water Column criteria for WWAC lakes.**

(I) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported during periods of thermal stratification with respect to the DO criterion if less than 50% of the volume (if volumetric data is available) or 50% or less of the water column (if no volumetric data is available) of all sample sites in the lake are less than 2.0 mg/L.

(II) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined during periods of thermal stratification with respect to the DO criterion if 50% or more, but not greater than 70%, of the water column at any given sample site in the lake is less than 2.0 mg/L due to other than naturally occurring conditions.

(III) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported during periods of thermal stratification with respect to the DO criterion if 50% or more of the water volume (if volumetric data is available) or more than 70% of the water column (if no volumetric data is available) at any given sample site is less than 2.0 mg/L.

(IV) If a lake specific study including historical analysis produces a support status which is contrary to an assessment obtained from the application of (I), (II) or (III) of (D)(vii) of this section, then that lake specific result will control.

(viii) **Additional application/exercise when support undetermined.** In instances where application of the tests in this subparagraph (D) initially produce a result that the pertinent subcategory is undetermined with respect to the DO criterion, such shall be subject to additional investigation that considers diurnal data for further application of such tests in order to resolve the determination of use support.

(2) **Temperature.**

(A) At no time shall heat be added to any surface water in excess of the amount that will raise the temperature of the receiving water more than 2.8°C outside the mixing zone.

(B) The normal daily and seasonal variations that were present before the addition of heat from other than natural sources shall be maintained.

(C) In streams, temperature determinations shall be made by averaging representative temperature measurements of the cross sectional area of the stream at the end of the mixing zone.

(D) In lakes, the temperature of the water column and/or epilimnion, if thermal stratification exists, shall not be raised more than 1.7°C above that which existed before the addition of heat of artificial origin, based upon the average of temperatures taken from the surface to the bottom of the lake, or surface to the bottom of the epilimnion if the lake is stratified.

(E) No heat of artificial origin shall be added that causes the receiving stream water temperature to exceed the maximums specified below:

(i) The critical temperature plus 2.8°C in warm water and habitat limited aquatic community streams and lakes except in the segment of the Arkansas River from Red Rock Creek to the headwaters of Keystone Reservoir where the maximum temperature shall not exceed 34.4°C.

(ii) 28.9°C in streams designated cool water aquatic community.

(iii) 20°C in streams designated trout fishery (put and take).

(F) Water in privately-owned reservoirs used in the process of cooling water for industrial purposes is exempt from these temperature restrictions, provided the water released from any such lake or reservoir into a stream system shall meet the water quality standards of the receiving stream.

(3) **pH (hydrogen ion activity).** The pH values shall be between 6.5 and 9.0 in waters designated for fish and wildlife propagation; unless pH values outside that range are due to natural conditions.

(4) **Oil and grease (petroleum and non-petroleum related).**

(A) All waters having the designated beneficial use of any subcategory of fish and wildlife propagation shall be maintained free of oil and grease to prevent a visible sheen of oil or globules of oil or grease on or in the water.

(B) Oil and grease shall not be present in quantities that adhere to stream banks and coat bottoms of water courses or which cause deleterious effects to the biota.

(5) **Biological Criteria.**

(A) Aquatic life in all waterbodies with the beneficial use designation of Fish and Wildlife Propagation (excluding waters designated "Trout, put-and-take") shall not exhibit degraded conditions as indicated by one or both of the following:

(i) comparative regional reference data from a station of reasonably similar watershed size or flow, habitat type and Fish and Wildlife beneficial use subcategory designation or

(ii) by comparison with historical data from the waterbody being evaluated.

(B) Compliance with the biological criteria to protect Fish and Wildlife Propagation set forth in this paragraph shall be based upon measures including, but not limited to, diversity, similarity, community structure, species tolerance, trophic structure, dominant species, indices of biotic integrity (IBI's), indices of well being (IWB's), or other measures.

(6) **Toxic substances (for protection of fish and wildlife).**

(A) Surface waters of the state shall not exhibit acute toxicity and shall not exhibit chronic toxicity outside the chronic regulatory mixing zone. Acute test failure and chronic test failure shall be used to determine discharger compliance with these narrative aquatic life toxics criteria. The narrative criterion specified in this subparagraph (A) which prohibits acute toxicity shall be maintained at all times and shall apply to all surface waters of the state. The narrative criterion specified in this subparagraph (A) which prohibits chronic toxicity shall apply at all times outside the chronic regulatory mixing zone and within the zone of passage to all waters of the state except:

(i) When a discharge into surface waters designated with the Fish and Wildlife Propagation beneficial use complies with and meets the discharge permit limitations but the flow immediately upstream from the discharge is less than one (1)

cubic foot per second or when the flow falls below the seven-day, two-year low-flow, whichever is larger. For purposes of the permitting process, the regulatory low flow shall be the larger of one (1) cubic foot per second or the seven-day, two-year low flow; and

(ii) To streams listed as ephemeral in Appendix A.

(B) Procedures to implement these narrative criteria are found in OAC 785:46 Subchapter 3.

(C) Toxicants for which there are specific numerical criteria are listed in Table 2 of Appendix G of this Chapter.

(D) For toxicants not specified in Table 2 of Appendix G of this Chapter, concentrations of toxic substances with bio-concentration factors of 5 or less shall not exceed 0.1 of published LC50 value(s) for sensitive representative species using standard testing methods, giving consideration to site specific water quality characteristics.

(E) Concentrations of toxic substances with bio-concentration factors greater than 5 shall not exceed 0.01 of published LC50 value(s) for sensitive representative species using standard testing methods, giving consideration to site specific water quality characteristics.

(F) Permit limits to prevent toxicity caused by discharge of chlorine and ammonia are determined pursuant to the narrative criteria contained within (A) and (B) of this paragraph.

(G) The acute and chronic numerical criteria listed in the "Fish and Wildlife Propagation" column in Table 2 of Appendix G of this Chapter apply to all waters of the state designed with any of the beneficial use sub-categories of Fish and Wildlife Propagation. The numerical criteria which prohibit acute toxicity apply outside the acute regulatory mixing zone.

(i) The numerical criteria specified in Table 2 of Appendix G which prohibit chronic toxicity shall apply at all times outside the chronic regulatory mixing zone and within the zone of passage to all waters of the state except:

(I) When a discharge into surface waters designated with the Fish and Wildlife Propagation beneficial use complies with and meets the discharge permit limitations but the flow immediately upstream from the discharge is less than one (1) cubic foot per second or when the flow falls below the seven-day, two-year low-flow, whichever is larger. For purposes of the permitting process, the regulatory low flow shall be the larger of one (1) cubic foot per second or the seven-day, two-year low flow; and

(II) To streams listed as ephemeral in Appendix A.

(ii) Equations are presented in Table 2 of Appendix G for those substances whose toxicity varies with water chemistry. Metals listed in Table 2 of Appendix G are measured as total metals in the water column.

(H) For purposes of assessment per OAC 785:46-15-5, criteria for dissolved metals identified in Table 3 of Appendix G of this Chapter may be ascertained and implemented as an alternative to the total recoverable metals criteria set forth in Table 2 of Appendix G. Such dissolved metals criteria may be determined by multiplying the total recoverable numerical criteria in OAC 785:45 Appendix G, Table 2 by the conversion factors identified in Table 3 of Appendix G.

(7) **Turbidity.**

(A) Turbidity from other than natural sources shall be restricted to not exceed the following numerical limits:

(i) Cool Water Aquatic Community/Trout Fisheries: 10 NTUs;

(ii) Lakes: 25 NTUs; and

(iii) Other surface waters: 50 NTUs.

(B) In waters where background turbidity exceeds these values, turbidity from point sources shall be restricted to not exceed ambient levels.

(C) Numerical criteria listed in (A) of this paragraph apply only to seasonal base flow conditions.

(D) Elevated turbidity levels may be expected during, and for several days after, a runoff event.

(8) **Sediments.** Concentrations or loads of suspended or bedded sediments that are caused by human activity shall not impair the Fish and Wildlife Propagation use or any subcategory thereof.

785:45-5-13. Agriculture

(a) **General.** The surface waters of the State shall be maintained so that toxicity does not inhibit continued ingestion by livestock or irrigation of crops.

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

(1) **"Long term average concentration"** means the arithmetic mean of at least ten samples taken across at least twelve months.

(2) **"Short term average concentration"** means the arithmetic mean of all samples taken during any 30-day period.

(c) **Subcategories of the Agriculture beneficial use.**

(1) The narrative and numerical criteria stated or referenced in this section and in Appendix F of this chapter are designed to maintain and protect the beneficial use classification of "Agriculture". This classification encompasses two subcategories which are capable of sustaining different agricultural applications. These subcategories are Irrigation Agriculture and Livestock Agriculture.

(2) Irrigation Agriculture means a subcategory of the Agriculture beneficial use requiring water quality conditions that are dictated by individual crop tolerances.

(3) Livestock Agriculture is a subcategory of the Agriculture beneficial use requiring much less stringent protection than crop irrigation.

(4) If a waterbody is designated in Appendix A of this Chapter with the Agriculture beneficial use but does not have a designation of a subcategory thereof, the criteria for Irrigation Agriculture shall be applicable.

(d) **Highly saline water.** Highly saline water should be used with best management practices as outlined in "Diagnosis and Reclamation of Saline Soils," United States Department of Agriculture Handbook No. 60 (1958).

(e) **General criteria for the protection of Irrigation Agriculture.** This subsection prescribes general criteria to protect the Irrigation Agriculture subcategory. For chlorides, sulfates and total dissolved solids at 180°C (see Standard Methods), the arithmetic mean of the concentration of the samples taken for a year in a particular segment shall not exceed the historical "yearly mean standard" determined from the table in Appendix F of this Chapter. For permitting purposes, the long term average concentration shall not exceed the yearly mean standard. Yearly mean standards shall be implemented by the permitting authority using long term average flows and complete mixing of effluent and receiving water. ~~Furthermore, not more than one (1) in twenty (20) samples randomly collected at a site shall exceed the historical value of the "sample standard" calculated for that segment.~~ For permitting purposes, the short term average concentration shall not exceed the sample standard. Sample standards shall be implemented by the permitting authority using short term average flows and complete mixing of effluent and receiving water. The data from sampling stations in each segment are averaged, and the mean chloride, sulfate, and total dissolved solids at 180°C are presented in Appendix F of this Chapter. Segment averages shall be used unless more appropriate data are available.

(f) **Historic concentrations.** The table in Appendix F of this Chapter contains statistical values from historical water quality data of mineral constituents. In cases where mineral content varies within a segment, the most pertinent data available should be used.

(g) **Criteria to protect Irrigation Agriculture subcategory.** For the purpose of protecting the Irrigation Agriculture subcategory, neither long term average concentrations nor short term average concentrations of minerals shall be required to be less than 700 mg/L for TDS, nor less than 250 mg/L for either chlorides or sulfates.

(h) **Criteria to protect Livestock Agriculture subcategory.** For the purpose of protecting the Livestock Agriculture subcategory, neither long term average concentrations nor short term average concentrations of minerals shall be required to be less than 2500 mg/L for TDS.

(i) **Support tests.** For purposes of assessment, listing and reporting under sections 303(d) and 305(b) of the federal Clean Water Act as amended, the procedure for determining use support of the Agriculture beneficial use or any subcategory thereof with respect to TDS, chlorides and sulfates shall be as follows:

(1) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to TDS or chlorides or sulfates if both the mean of all sample concentrations calculated for that parameter from that waterbody do not exceed the yearly mean standard prescribed in OAC 785:45 Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E, and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in OAC 785:45 Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E.

(2) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to TDS or chlorides or sulfates if either the mean of all sample concentrations calculated for that parameter from that waterbody exceeds the yearly mean standard prescribed in OAC 785:45 Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria prescribed in OAC 785:45 Appendix E. Provided, if the sample concentrations are each less than 700 mg/L for TDS, or less than 250 mg/L for either chlorides or sulfates, then the Agriculture beneficial use shall be deemed to be fully supported for that parameter.

785:45-5-16. Primary Body Contact Recreation

(a) Primary Body Contact Recreation involves direct body contact with the water where a possibility of ingestion exists. In these cases the water shall not contain chemical, physical or biological substances in concentrations that are irritating to skin or sense organs or are toxic or cause illness upon ingestion by human beings.

(b) In waters designated for Primary Body Contact Recreation the following limits for bacteria set forth in (c) of this section shall apply only during the recreation period of May 1 to September 30. The criteria for Secondary Body Contact Recreation will apply during the remainder of the year.

(c) Compliance with 785:45-5-16 shall be based upon meeting the requirements of one of the ~~three (3)~~ options specified ~~below~~ in (1) or (2) of this subsection (c) for bacteria. Upon selection of one (1) group or test method, said method shall be used exclusively over ~~that thirty (30) day~~ the time period prescribed therefor. Provided, where concurrent data exist for multiple bacterial indicators on the same waterbody or waterbody segment, no criteria exceedances shall be allowed for any indicator group.

(1) ~~Coliform Bacteria: The bacteria of the fecal coliform group shall not exceed a monthly geometric mean of 200/100 ml, as determined by multiple tube fermentation or membrane filter procedures based on a minimum of not less than five (5) samples collected over a period of not more than thirty (30) days. Further, in no more than 10% of the total samples during any thirty (30) day period shall the bacteria of the fecal coliform group exceed 400/100 ml.~~

~~(2)~~ Escherichia coli (E. coli): The E. coli geometric mean criterion is 126/100 ml. For swimming advisory and permitting purposes, E. coli shall not exceed a monthly geometric mean of 126/100 ml based upon a minimum of

not less than five (5) samples collected over a period of not more than thirty (30) days. ~~No~~ For swimming advisory and permitting purposes, no sample shall exceed a 75% one-sided confidence level of 235/100 ml in lakes and high use waterbodies and the 90% one-sided confidence level of 406/100 ml in all other Primary Body Contact Recreation beneficial use areas. These values are based upon all ~~collected~~ samples collected over the recreation period. ~~Analysis procedures shall follow EPA 600/4-85/076, "Test Methods for Escherichia coli and Enterococci in Water by the Membrane Filter Procedure."~~ For purposes of sections 303(d) and 305(b) of the federal Clean Water Act as amended, beneficial use support status shall be assessed using only the geometric mean criterion of 126/100 milliliters compared to the geometric mean of all samples collected over the recreation period.

(~~3~~2) **Enterococci:** The Enterococci geometric mean criterion is 33/100 ml. For swimming advisory and permitting purposes, Enterococci shall not exceed a monthly geometric mean of 33/100 ml based upon a minimum of not less than five (5) samples collected over a period of not more than thirty (30) days. ~~No~~ For swimming advisory and permitting purposes, no sample shall exceed a 75% one-sided confidence level of 61/100 ml in lakes and high use waterbodies and the 90% one-sided confidence level of 108/100 ml in all other Primary Body Contact Recreation beneficial use areas. These values are based upon all ~~collected~~ samples collected over the recreation period. ~~Analysis procedures shall follow EPA 600/4-85/076, "Test Methods for Escherichia coli and Enterococci in Water by the Membrane Filter Procedure."~~ For purposes of sections 303(d) and 305(b) of the federal Clean Water Act as amended, beneficial use support status shall be assessed using only the geometric mean criterion of 33/100 milliliters compared to the geometric mean of all samples collected over the recreation period.

APPENDIX A.1. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 1, MIDDLE ARKANSAS RIVER [REVOKED]

APPENDIX A.1. DESIGNATED BENEFICIAL USES OF SURFACE WATERS WATER QUALITY MANAGEMENT BASIN 1, MIDDLE ARKANSAS RIVER [NEW]

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Arkansas River from mouth of Canadian River to the mouth of the Verdigris River including Webbers Falls Reservoir	121400010260, 121400010060, 121400010010, 121400010070, 121500010005	EWS	WWAC	•	PBCR	•	•		
Dirty Creek	120400020010	PPWS	WWAC	•	PBCR		•		
Tributary of Dirty Creek at SW 1/4, Sec. 31, T12N, R21E, IM	120400		HLAC	•	SBCR		•		
South Fork of Dirty Creek	120400020030		WWAC	•	PBCR		•		
East Pourum Creek at NE SE SE, Sec. 2, T10N,R19E, IM	120400020060		HLAC	•	SBCR		•		
Georges Fork	120400020110	EWS	WWAC	•	PBCR		•		
Tributary of Georges Fork at SE 1/4, Sec. 35, T12N, R19E, IM	120400	EWS	HLAC	•	SBCR		•		
Warner (Connors) Lake	120400020140	PPWS	WWAC	•	PBCR		•		
Tributary of Dirty Creek at SE 1/4, Sec. 1, T12N, R18E, IM	120400020250		WWAC	•	PBCR		•		
Lower Illinois River from headwater of Robert S. Kerr Reservoir to Tenkiller Dam	121700010010	PPWS	Trout	•	PBCR	•	•	HQW	

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Upper Illinois River from Tenkiller Dam, including Tenkiller Reservoir upstream to Barren Fork confluence	121700020010, 121700020210, 121700020300, 121700020020, 121700020220	PPWS	CWAC	•	PBCR		•	HQW	NLW
Cato Creek	121700020090	PPWS	WWAC	•	PBCR		•		
Terrapin Creek	121700020130	PPWS	WWAC	•	PBCR		•		
Caney Creek	121700040010, 121700020230	PPWS	CWAC	•	PBCR		•		
Negro Jake (Hollow) Creek	121700040020		CWAC		PBCR		•		
Park Hill Branch	121700020270		WWAC	•	PBCR		•		
Barren Fork from mouth upstream to Hwy. 59	121700020310, 121700050010, 121700050170_00	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
North Mining Camp (Hollow) Creek	121700050040		CWAC		PBCR		•		
Tyner Creek	121700050090	PPWS	CWAC	•	PBCR		•	ORW	
Dennison Hollow	121700050110	PPWS	CWAC	•	PBCR		•	ORW	
Peacheater Creek	121700050120	PPWS	CWAC	•	PBCR		•	ORW	
Scraper Hollow	121700050130	PPWS	CWAC	•	PBCR		•	ORW	
England Hollow	121700050140	PPWS	CWAC	•	PBCR		•	ORW	
Green Creek	121700050150	PPWS	CWAC	•	PBCR		•	ORW	
Shell Branch	121700050180	PPWS	CWAC	•	PBCR		•	ORW	
(East) Peavine Creek	121700050190		CWAC		PBCR		•		
Barren Fork from Hwy. 59 to Arkansas State Line	121700050170_10	PPWS	CWAC	•	PBCR		•	ORW	
Evansville Creek	121700050200	PPWS	CWAC	.•	PBCR		•	ORW	

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Upper Illinois River upstream of Barren Fork confluence	121700020300, 121700030010, 121700030080, 121700030280, 121700030350	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
Luna (Branch) Creek	121700030260		CWAC		PBCR		•		
Winset Hollow Creek	121700030230	PPWS	WWAC	•	PBCR		•		
Steely Hollow Creek	121700030120		CWAC		PBCR		•		
Tahlequah Creek (Town Branch)	121700030020, 121700030040	PPWS	CWAC	•	PBCR		•	ORW	
Flint Creek	121700030290, 121700060010_00, 121700060010_10	PPWS	CWAC	•	PBCR		•	ORW	Scenic River
Sager Creek	121700060080	PPWS	CWAC	•	PBCR		•	ORW	
Ballard Creek	121700030370	PPWS	CWAC	•	PBCR		•	ORW	
Tributary of Arkansas River at Sec. 7, T12N, R21E, IM	120400		WWAC	•	PBCR		•		
Greenleaf Creek including Greenleaf Lake and Watershed	120400010100, 120400010110, 120400010120, 120400010130, 120400010140, 120400010150, 120400010160, 120400010170, 120400010180, 120400010190, 120400010200	PPWS	WWAC	•	PBCR		•	SWS	
Star (Oxbow) Lake	120400010230		WWAC	•	PBCR		•		
Sand Creek	120400010240		HLAC	•	SBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Bayou Manard	120400010280	PPWS	WWAC	•	PBCR		•		
Coody Creek	120400010400	PPWS	WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Grand River Main Stem (Grand Neosho River) from mouth to Kansas State Line, including Lake Hudson and (Grand) Lake o' the Cherokees but excluding Fort Gibson Reservoir	121600010010, 121600010040, 121600010190, 121600010280, 121600020010, 121600020020, 121600020130, 121600020140, 121600020170, 121600030010, 121600030020, 121600030030, 121600030040, 121600030050, 121600300060, 121600030140, 121600030150, 121600030270, 121600030280, 121300030290, 121600030370, 121600030380, 121600030430, 121600030450, 121600040010, 121600040020, 121600040120, 121600040220	PPWS	WWAC	•	PBCR		•		
Fort Gibson Reservoir	121600010050, 121600010200	PPWS	WWAC	•	PBCR		•		NLW

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Ranger Creek	121600010060	PPWS	WWAC	•	PBCR		•		
Fourteen Mile Creek	121600010100	PPWS	CWAC	•	PBCR		•	HQW	
Black Bird Creek	121600010130	PPWS	CWAC	•	PBCR		•		
Double Springs Creek	121600010090	PPWS	WWAC	•	PBCR		•		
Clear Creek	121600010210	PPWS	CWAC	•	PBCR		•		
Spring Creek	121600010290	PPWS	CWAC	•	PBCR		•	HQW	
Snake Creek	121600010330		CWAC	•	PBCR		•	HQW	
Little Spring Creek	121600010340	PPWS	CWAC	•	PBCR		•	HQW	
Double Spring Creek	121600010390	PPWS	CWAC	•	PBCR		•		
Chouteau Creek	121600010430	PPWS	WWAC	•	PBCR		•		
Tributary of Chouteau Creek at SE 1/4, Sec.13, T20N, R18E, IM	121600		WWAC	•	SBCR		•		
Tributary of Chouteau Creek at SE 1/4, Sec. 29, T20N, R19E, IM	121600		HLAC	•	SBCR		•		
Pryor Creek downstream from the road crossing in Sec. 30, T21N, R19E, IM	121610000010, 121610000050_00		WWAC	•	PBCR		•		
Pryor Creek upstream from the road crossing in Sec. 30, T21N, R19E, IM to the road crossing in Sec. 12, T21N, R18E, IM	121610000050_10	PPWS	WWAC	•	PBCR		•		
Pryor Creek upstream from the road crossing in Sec. 12, T21N, R18E, IM	121610000090_00, 121610000090_10		WWAC	•	SBCR		•		
Crutchfield Branch	121600010440		WWAC	•	PBCR		•		
W.R. Holway Lake	121600020050	PPWS	WWAC	•	PBCR		•		
Saline Creek	121600020030	PPWS	CWAC	•	PBCR		•	HQW	
Little Saline Creek	121600020070	PPWS	CWAC	•	PBCR		•	HQW	

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Horse Creek	121600030160	EWS	WWAC	•	PBCR		•		
Little Horse Creek	121600030190		WWAC		PBCR		•		
Spavinaw Creek below Spavinaw Lake dam	121600020150_00	PPWS	CWAC	•	PBCR		•		
Spavinaw Lake and watershed upstream of Spavinaw Lake dam	121600020150_10, 121600050010, 121600050020, 121600050030, 121600050040, 121600050050, 121600050060,	PPWS	CWAC	•	PBCR		•	SWS	NLW
Eucha Lake and watershed	121600050060, 121600050070, 121600050080, 121600050090, 121600050100, 121600050110, 121600050120, 121600050130, 121600050150, 121600050170, 121600050180, 121600050190, 121600050200, 121600050210, 121600050220	PPWS	CWAC	•	PBCR		•	SWS	NLW
Brush Creek	121600050140	PPWS	CWAC	•	PBCR		•	HQW	
Beaty Creek	121600050160	PPWS	CWAC	•	PBCR		•	HQW	
Rock Creek	121600020180	PPWS	WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Big Cabin Creek downstream from the road crossing in Sec. 10, T24N, R20E, IM	121600020190, 121600060010, 121600060060_00	PPWS	WWAC	•	PBCR		•		
Mustang Creek	121600060040		WWAC	•	PBCR		•		
Big Cabin Creek upstream from the road crossing in Sec. 10, T24N, R20E, IM to the road crossing in Sec. 8, T26N, R20E, IM	121600060060_10, 121600060220, 121600060300_00		WWAC	•	SBCR		•		
Little Cabin Creek	121600060080		WWAC	•	PBCR		•		
Bull Creek	121600060200		WWAC		PBCR		•		
Big Cabin Creek upstream from the road crossing in Sec. 8, T26N, R20E, IM	121600060300_10		WWAC	•	PBCR		•		
Drowning Creek	121600030090	PPWS	CWAC	•	PBCR		•		
Tributary of Muskrat Creek (Hollow) in Sec.36, T23N, R 23E, IM	121600		HLAC	•	SBCR		•		
Honey Creek	121600030445	PPWS	CWAC	•	PBCR		•	HQW	
Elm Creek	121600030310	PPWS	CWAC	•	PBCR		•		
Whitewater Creek	121600030320	PPWS	CWAC	•	PBCR		•		
Cave Springs Branch	121600030340	PPWS	CWAC	•	PBCR		•	HQW	
Elk River	121600030440	PPWS	CWAC	•	PBCR		•		
(Council) Hollow Creek	121600030490	PPWS	CWAC	•	PBCR		•		
Sycamore Creek	121600030510	PPWS	CWAC	•	PBCR		•		
Brush Creek	121600030520	PPWS	CWAC	•	PBCR		•		
Lost Creek	121600030560	PPWS	CWAC	•	PBCR		•		
Spring River	121600070010	PPWS	CWAC	•	PBCR		•		
Shawnee Branch	121600070020	PPWS	CWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Flint Branch	121600070040	PPWS	CWAC	•	PBCR		•		
Warren Branch	121600070050	PPWS	CWAC	•	PBCR		•	HQW	
Devil's Hollow	121600070070	PPWS	CWAC	•	PBCR		•		
Five Mile Creek	121600070110	PPWS	CWAC	•	PBCR		•		
Hudson Creek	121600040040		WWAC	•	PBCR		•		
Tributary of Hudson Creek at SE 1/4, Sec. 30, T27N, R23E, IM	121600		HLAC	•	SBCR		•		
Tar Creek	121600040060		HLAC		SBCR				
Verdigris River from its mouth to Oologah Reservoir Dam	121500010010, 121500010060, 121500010200, 121500020010, 121500020120, 121500020260, 121500030010_00, 121500030010_10	PPWS	WWAC	•	PBCR	•	•		
Tributary of Verdigris River at SW 1/4, Sec. 20, T16N, R19E, IM(Okay Creek)	121500010280		HLAC	•	SBCR		•		
Coal Creek (near Wagoner)	121500010100	PPWS	WWAC	•	PBCR		•		
Tributary of Verdigris River at SE 1/4, Sec. 34, T17N, R17E, IM(Strawberry Creek)	121500010170		HLAC	•	SBCR		•		
Coal Creek	121500010270	PPWS	WWAC	•	PBCR		•		
Inola Creek	121500020110		WWAC	•	PBCR		•		
Pea Creek	121500020100		WWAC	•	PBCR		•		
Adams Creek	121500020150	PPWS	WWAC	•	PBCR		•		
Salt Creek	121500020270		WWAC	•	SBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Salt Creek at NW 1/4, Sec. 1, T19N, R15E, IM	121500		HLAC	•	SBCR		•		
Dog Creek downstream from Lake Claremore	121500020360, 121500040010	PPWS	WWAC	•	PBCR		•		
Cat Creek	121500020390	EWS	WWAC	•	PBCR		•		
Tributary of Cat Creek at NW 1/4, Sec. 21, T21N, R16E, IM	121500	EWS	HLAC	•	SBCR		•		
Lake Claremore and Watershed	121500040010, 121500040020, 121500040030	PPWS	WWAC	•	PBCR		•	SWS	NLW
Chambers Creek	121500	EWS	HLAC	•	SBCR		•		
Mossy Creek	121500020430	EWS	HLAC	•	SBCR		•		
Spunky Creek	121500020480, 121500020470		WWAC	•	PBCR		•		
Tributary of Spunky Creek at Sec. 6, T19N, R15E	121500		HLAC	•	SBCR		•		
Tributary of Verdigris River at Sec. 28, T20N, R15E, IM	121500		HLAC	•	SBCR		•		
Bird Creek	121300010010, 121300020010. 121300030010	PPWS	WWAC	•	PBCR		•		
Mingo Creek	121300010030	EWS	WWAC	•	PBCR		•		
Unnamed tributary of Mingo Creek	121300	EWS	HLAC	•	SBCR		•		
Elm Creek	121300010020		WWAC		PBCR		•		
Owasso Creek	121300		HLAC	•	SBCR		•		
Tributary of Owasso Creek at SE1/4, Sec. 31, T21N, R14E, IM	121300		HLAC	•	SBCR		•		
Ranch Creek	121300010060		WWAC		PBCR		•		
Yahola Lake and Watershed	121300010130	PPWS	WWAC	•	PBCR		•	SWS	
Flat Rock Creek	121300010120		WWAC	•	SBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Tributary of Flat Rock Creek at SE 1/4, Sec. 18, T20N, R13E, IM (Dirty Butter Creek)	121300010140		HLAC	•	SBCR		•		
Delaware Creek	121300010150	PPWS	WWAC	•	PBCR		•		
Hominy Creek downstream from Skiatook Reservoir	121300040010, 121300040070	PPWS	WWAC	•	PBCR		•		
Hominy Creek upstream from and including Skiatook Reservoir	121300040070, 121300040080, 121300040280	PPWS	WWAC	•	PBCR		•	SWS	
Claremore Creek	121300040320	PPWS	WWAC	•	PBCR		•		
Hominy Municipal Lake and Watershed	121300040320, 121300040330	PPWS	WWAC	•	PBCR		•	SWS	
Candy Creek	121300020080	PPWS	WWAC	•	PBCR		•		
Pecan Hollow Creek	121300020090	PPWS	WWAC	•	PBCR		•	SWS	
Avant Public Utility Lake	121300020100	PPWS	WWAC	•	PBCR		•		
Lake Waxoma	121300020190	PPWS	WWAC	•	PBCR		•		
Tributary of Bird Creek at Sec. 19, T24N, R11E, IM	121300		HLAC	•	SBCR		•		
Birch Creek downstream from Birch Reservoir	121300030020	PPWS	WWAC	•	PBCR		•		
Birch Reservoir and Watershed	121300030020, 121300030030, 121300030040, 121300030050	PPWS	WWAC	•	PBCR		•	SWS	
Tributary of Birch Creek at Sec. 14, T24N, R9E, IM	121300		HLAC	•	SBCR		•	SWS	
Clear Creek	121300030200	PPWS	WWAC	•	PBCR		•		
Pawhuska Lake	121300030230	PPWS	WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Bluestem Lake and Watershed	121300030280, 121300030290, 121300030300, 121300030310	PPWS	WWAC	•	PBCR		•	SWS	
Tributary of Verdigris River at Sec. 11, T21N, R15 E, IM (Keetonville Creek)	121500030050		HLAC	•	SBCR		•		
Caney River from the mouth to the Kansas State Line	121400010010, 121400020010, 121400030010	PPWS	WWAC	•	PBCR		•		
Hulah Reservoir and watershed	121400030010, 121400030020, 121400030030, 121400030040, 121400030050, 121400030060, 121400030080, 121400030090, 121400030100, 121400030110, 121400030120, 121400030130, 121400030140, 121400030150, 121400030160, 121400030170, 121400030180, 121400030190, 121400030200	PPWS	WWAC	•	PBCR		•		NLW
Rabb Creek	121400010090	PPWS	WWAC	•	PBCR		•		
Nellie Bly Creek	121400010180	PPWS	WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Hogshooter Creek	121400010300		WWAC		PBCR		•		
Keeler Creek	121400010320		WWAC	•	PBCR		•		
Tributary of Keeler Creek at NW 1/4 Sec. 19, T25N, R13E, IM (East Keeler Creek)	121400010322		HLAC	•	SBCR		•		
Sand Creek	121400040010	PPWS	WWAC	•	PBCR		•		
Buck Creek	121400040050	PPWS	WWAC	•	PBCR		•		
Coon Creek	121400020040	PPWS	WWAC	•	PBCR		•		
Deer Creek	121400020050		WWAC	•	PBCR		•		
Lake Hudson on Butler Creek	121400020090	PPWS	WWAC	•	PBCR		•		
Little Caney River including Copan Reservoir and Watershed	121400020140, 121400050010, 121400050020, 121400050030, 121400050040, 121400050050, 121400050060, 121400050070, 121400050080	PPWS	WWAC	•	PBCR		•	SWS	
Pond Creek	121400030090	PPWS	WWAC	•	PBCR		•		
Buck Creek	121400030170	PPWS	WWAC	•	PBCR		•		
Fourmile Creek	121500030070		WWAC	•	PBCR		•		
Verdigris River from and including Oologah Reservoir to the Kansas State Line	121510010010, 121510010020, 121510020010	PPWS	WWAC	•	PBCR	•	•		
Blue Creek	121510010030	PPWS	WWAC	•	PBCR		•		
Spencer Creek including Chelsea Reservoir and Watershed	121510010040, 121510010060	PPWS	WWAC	•	PBCR		•	SWS	

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Lightning Creek	121510010130	PPWS	WWAC	•	PBCR		•		
Salt Creek	121510010190	PPWS	WWAC	•	PBCR		•		
Big Creek	121510030010, 121510020020	PPWS	WWAC	•	PBCR		•		
California Creek	121510020050	PPWS	WWAC	•	PBCR		•		
Unnamed tributary (return flow, City of Delaware)	121510	EWS	HLAC	•	SBCR		•		
Tributary to Oologah Reservoir NW 1/4, Sec. 5, T26N, R16E, IM (Delaware Creek)	121510020060	EWS	HLAC	•	SBCR		•		
Snow Creek	121510020250	PPWS	WWAC	•	PBCR		•		
Onion Creek	121510020340	PPWS	WWAC	•	PBCR		•		
Arkansas River from mouth of Verdigris River to Keystone Dam	120410010010, 120410010080_00, 120410010080_10, 120420010010_00, 120420010010_10,, 120420010130	EWS	WWAC	•	SBCR	•	•		(2)
Pecan Creek	120410010030	PPWS	WWAC	•	PBCR		•		
Cloud Creek	120410010100, 120410020010	PPWS	WWAC	•	PBCR		•		
Ash Creek	120410010110	PPWS	WWAC	•	PBCR		•		
Mountain Creek including Bixhoma Lake	120410010180	PPWS	WWAC	•	PBCR		•		
Snake Creek	120410010220	PPWS	WWAC	•	PBCR		•		
Rock Creek	120410030020	PPWS	WWAC	•	PBCR		•		
Lake Boren	120410030080	PPWS	WWAC	•	PBCR		•		
Posey Creek	120420010030		WWAC	•	PBCR		•		

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Polecat Creek downstream from Lake Heyburn	120420020050_00, 120420020050_10, 120420020290		WWAC	•	PBCR		•		
Coal Creek downstream from Sec. 35, T18N, R12E, IM	120420020030_00	PPWS	WWAC	•	PBCR		•		
Coal Creek upstream from Sec. 35, T18N, R12E, IM	120420020030_10	PPWS	HLAC	•	PBCR		•		
Rock Creek downstream from Sahoma Lake	120420020060, 120420020120		WWAC	•	PBCR		•		
Country Club Lake (Middle Lake)	120420020090	PPWS	WWAC	•	PBCR		•		
Sapulpa Lake	120420020110	PPWS	WWAC	•	PBCR		•		
Childress Creek	120420020160		HLAC	•	SBCR		•		
Jackson Creek	120420020200	PPWS	WWAC	•	PBCR		•		
Little Polecat Creek	120420020260		WWAC	•	SBCR		•		
Sahoma Reservoir and Watershed	120420020120, 120420020130, 120420020140	PPWS	WWAC	•	PBCR		•	SWS	

Waterbody Name and Sequence	Waterbody ID Numbers	Water Supply	F&W Prop	Ag	Rec	Nav	Aes	Limitations	Remarks
Heyburn Lake and Watershed	120420020290, 120420020300, 120420020310, 120420020320, 120420020330, 120420020340, 120420020350, 120420020360, 120420020370, 120420020380, 120420020390, 120420020400, 120420020410	PPWS	WWAC	•	PBCR		•	SWS	
Shell Creek downstream from Shell Lake	120420010230	PPWS	WWAC	•	PBCR		•		
Shell (Creek) Lake and Watershed	120420010230, 120420010240 120420010250, 120420010260, 120420010270	PPWS	WWAC	•	PBCR		•	SWS	

[OAR Docket #11-556; filed 4-22-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD CHAPTER 46. IMPLEMENTATION OF OKLAHOMA'S WATER QUALITY STANDARDS

[OAR Docket #11-557]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Use Support Assessment Protocols
785:46-15-4. Default protocols [AMENDED]
785:46-15-5. Assessment of Fish and Wildlife Propagation support [AMENDED]
785:46-15-6. Assessment of Primary Body Contact Recreation support [AMENDED]
785:46-15-7. Assessment of Public and Private Water Supply support [AMENDED]
785:46-15-8. Assessment of Agriculture support [AMENDED]
785:46-15-10. Nutrients [AMENDED]
785:46-15-13.1 Assessment of Navigation support [NEW]
Subchapter 19. Implementation of Dissolved Oxygen Criteria to Protect Fish and Wildlife Propagation
785:46-19-3. Reasonable potential determination [AMENDED]
AUTHORITY:
Oklahoma Water Resources Board; 82 O.S. § 1085.30; 27A O.S. § 1-3-101; and 82 O.S. § 1085.2
DATES:
Comment period:
November 15, 2010 through January 10, 2011
Public hearing:
January 11, 2011
Adoption:
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February 18, 2011
Submitted to House:
February 18, 2011
Submitted to Senate:
February 18, 2011
Gubernatorial approval:
March 29, 2011
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 14, 2011.
Final adoption:
April 14, 2011
Effective:
July 1, 2011

SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has amended various provisions of Oklahoma Administrative Code ("OAC") 785:46 as follows:

OAC 785:46-15-4, Default protocols, has been amended in (c)(2) to correct a logical error by replacing a reference to "average" and changing the wording to the term "criterion." The intended effect of this amendment is to clarify that data should be compared to the criterion.

Several amendments to OAC 785:46 Subchapter 15 have been adopted to be responsive to comments made by the U.S. Environmental Protection Agency ("EPA") regarding the State of Oklahoma's draft 2010 list of waterbodies with beneficial uses that are not supported with respect to specified pollutants (referred to as the "303(d) list"), and to address technical issues encountered by state environmental agencies in preparing the draft 2010 list. The adopted amendments include adding or modifying assessment procedures for listing and reporting beneficial use support with respect to Fish and Wildlife Propagation (regarding dissolved oxygen and temperature), Agriculture (total dissolved solids, chloride and sulfate), Primary Body Contact Recreation (regarding E. coli, enterococci and fecal coliform), Public and Private Water Supply (total coliform) and Navigation. The circumstances which created the need for these amendments are that in preparing the 2010 list state environmental agencies encountered inconsistencies in the rules, and that EPA has made an interpretation under the federal Clean Water Act and Code of Federal Regulations to the effect that the pertinent use support assessment procedures currently codified in OAC 785:46 Subchapter 15 are inadequately covered in OAC 785:45 as water quality standards. The intended effects of the proposed amendments are to satisfy EPA's comments on the draft 303(d) list for 2010, to insure that the pertinent assessment procedures are consistent with water quality standards and technically sound, and to avoid action by EPA to take over some or all of development of the 303(d) list for Oklahoma.

OAC 785:46-19-3, Reasonable potential determination for dissolved oxygen, has been revised to add increased flow or load as triggers for reasonable potential. This amendment has been requested by the Oklahoma Department of Environmental Quality. The intended effect is to eliminate an ambiguity in the current rule that could allow water quality impairment.
CONTACT PERSON:
Dean A. Couch, General Counsel, 405-530-8800.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 15. USE SUPPORT ASSESSMENT PROTOCOLS

785:46-15-4. Default protocols

(a) **General.** The protocols prescribed in this Section shall apply whenever the more specific protocols prescribed elsewhere in this Subchapter do not apply.

(b) **Short term average numerical parameters.**

(1) Short term average numerical parameters are based upon exposure periods of less than seven days. Short term average parameters to which this Section applies include, but are not limited to, sample standards and turbidity.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a short term average if 10% or less of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a short term average if at least 10% of the samples for that parameter exceed the applicable screening level prescribed in this Subchapter.

(c) **Long term average numerical parameters.**

(1) Long term average numerical parameters are based upon exposure periods of seven days or longer. Assessment decisions shall be based upon the mean of all data meeting the temporal and spatial data requirements described elsewhere in this Subchapter.

(2) A beneficial use shall be deemed to be fully supported for a given parameter whose criterion is based upon a long term average if the mean of the sample results does not exceed the long term ~~average~~ criterion.

(3) A beneficial use shall be deemed to be fully supported but threatened if the use is supported currently but the appropriate state environmental agency determines that available data indicate that during the next five years the use may become not supported due to anticipated sources or adverse trends of pollution not prevented or controlled. If data from the preceding two year period indicate a trend away from impairment, the appropriate agency shall remove the threatened status.

(4) A beneficial use shall be deemed to be not supported for a given parameter whose criterion is based upon a long term average if the mean of the sample results exceeds the criterion or screening level.

785:46-15-5. Assessment of Fish and Wildlife Propagation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Fish and Wildlife Propagation or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Dissolved oxygen.** For purposes of assessment, listing and reporting under sections 303(d) and 305(b) of the federal Clean Water Act as amended, the procedure for determining use support of the Fish and Wildlife Propagation beneficial use or any subcategory thereof with respect to dissolved oxygen shall be as follows:

(1) ~~**Screening levels for DO in streams.**~~

~~(A) Screening levels for DO in habitat limited aquatic communities shall be 4.0 mg/L from April 1 through June 15 each year and 3.0 mg/L for the remainder of the year.~~

~~(B) Screening levels for DO in warm water aquatic communities shall be 4.0 mg/L from June 16 through~~

~~October 15 each year and 5.0 mg/L for the remainder of the year.~~

~~(C) Screening levels for DO in cool water aquatic communities and trout fisheries shall be 5.0 mg/L from June 1 through October 15 each year and 6.0 mg/L for the remainder of the year.~~

~~(2) **Screening levels for DO in lakes.**~~

~~(A) The screening level for D.O. for the water column of a lake shall be 2 mg/L.~~

~~(B) The screening level for surface DO in a lake or arm of a lake shall be 4 mg/L from June 16 through October 15 each year and 5.0 mg/L for the remainder of the year.~~

~~(3) **Support tests.**~~

~~(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to the DO criterion if no more than 10% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(B) of this Section due to other than naturally occurring conditions.~~

~~(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to the DO criterion if greater than 10% of the samples from a waterbody are less than the screening level for DO prescribed in (b)(1) or (b)(2)(B) of this Section due to other than naturally occurring conditions.~~

~~(C) The Fish and Wildlife Propagation beneficial use designated for a lake or reservoir or portion thereof shall be deemed to be not supported with respect to the DO criterion if more than 50% of the water column at any given sample site has D.O. concentrations less than the screening level prescribed in (b)(2)(A) of this section due to other than naturally occurring conditions.~~ **Support tests for HLAC streams.**

(A) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the stream are less than 4.0 mg/L from April 1 through June 15 and less than 3.0 mg/L during the remainder of the year.

(B) The HLAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the stream are less than 4.0 mg/L from April 1 through June 15 or less than 3.0 mg/L during the remainder of the year due to other than naturally occurring conditions.

(2) **Support tests for WWAC streams.**

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the stream are less than 6.0 mg/L from April 1 through June 15 and less than 5.0 mg/L during the remainder of the year.

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples from the stream are less than 6.0 mg/L and 10% or less of the samples are less than 5.0 mg/L from April 1 through June 15, or more than 10% of the samples are less than 5.0 mg/L and 10% or less of the samples are less than 4.0 mg/L from June 16 through October 15.

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the stream are less than 5.0 mg/L from April 1 through June 15, or less than 4.0 mg/L from June 16 through October 15, or less than 5.0 mg/L from October 16 through March 31, due to other than naturally occurring conditions.

(3) **Support tests for CWAC and Trout streams.**

(A) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the stream are less than 7.0 mg/L from March 1 through May 31 and less than 6.0 mg/L during the remainder of the year.

(B) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples from the stream are less than 7.0 mg/L and 10% or less of the samples are less than 6.0 mg/L from March 1 through May 31, or more than 10% of the samples are less than 6.0 mg/L and 10% or less of the samples are less than 5.0 mg/L from June 1 through October 15.

(C) The CWAC or Trout subcategory of the Fish and Wildlife Propagation beneficial use designated for a stream shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the stream are less than 6.0 mg/L from March 1 through May 31, or less than 5.0 mg/L from June 1 through October 15, or less than 6.0 mg/L from October 16 through the last day of February, due to other than naturally occurring conditions.

(4) **Support tests for WWAC lakes.** The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if both the Surface and Water Column criteria prescribed in (5)(A) and (6)(A) of this subsection (b) are satisfied. If either of the Surface or Water Column criteria prescribed in (5)(B) or (6)(B) produce a result of undetermined, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined

with respect to the DO criterion; provided, if either of the Surface or Water Column criteria prescribed in (5)(C) or (6)(C) produce a result of not supported, then the WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion.

(5) **Surface criteria for WWAC lakes.**

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported with respect to the DO criterion if 10% or less of the samples from the epilimnion during periods of thermal stratification, or the entire water column when no stratification is present, are less than 6.0 mg/L from April 1 through June 15 and less than 5.0 mg/L during the remainder of the year.

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined with respect to the DO criterion if more than 10% of the samples from the epilimnion during periods of thermal stratification, or the entire water column when no stratification is present, are less than 5.0 mg/L and 10% or less of the samples are less than 4 mg/L from June 16 through October 15, or more than 10% of the samples from the surface are less than 6.0 mg/L and 10% or less of the samples are less than 5.0 mg/L from April 1 through June 15.

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported with respect to the DO criterion if more than 10% of the samples from the epilimnion during periods of thermal stratification, or the entire water column when no stratification is present, are less than 5.0 mg/L from April 1 through June 15 or less than 4.0 mg/L from June 16 through October 15, or less than 5.0 mg/L from October 16 through March 31, due to other than naturally occurring conditions.

(6) **Water Column criteria for WWAC lakes.**

(A) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be fully supported during periods of thermal stratification with respect to the DO criterion if less than 50% of the volume (if volumetric data is available) or 50% or less of the water column (if no volumetric data is available) of all sample sites in the lake are less than 2.0 mg/L.

(B) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be undetermined during periods of thermal stratification with respect to the DO criterion if 50% or more, but not greater than 70%, of the water column at any given sample site in the lake is less than 2.0 mg/L due to other than naturally occurring conditions.

(C) The WWAC subcategory of the Fish and Wildlife Propagation beneficial use designated for a lake shall be deemed to be not supported during periods of thermal stratification with respect to the DO criterion if 50% or more of the water volume (if volumetric data is available) or more than 70% of the water column (if no volumetric data is available) at any given sample site is less than 2.0 mg/L.

(D) If a lake specific study including historical analysis produces a support status which is contrary to an assessment obtained from the application of (A), (B) or (C) of (b)(6) of this section, then that lake specific result will control.

(7) **Additional application/exercise when support undetermined.** In instances where application of the tests in this subsection (b) initially produce a result that the pertinent subcategory is undetermined with respect to the DO criterion, such shall be subject to additional investigation that considers diurnal data for further application of such tests in order to resolve the determination of use support.

(c) **Toxicants.**

(1) **Test for Full Support.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if no more than one of the sample concentrations from the waterbody exceeds the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any individual toxicant parameter if not more than 1 sample concentration or not more than 10% of the sample concentrations from the waterbody exceeds the chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D), (E) and 785:45 Appendix G, Table 2.

(2) **Test for Non-Support.**

(A) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than one of the sample concentrations from the waterbody exceed the acute criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2.

(B) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to any individual toxicant parameter if more than 10 % of the sample concentrations from the waterbody exceed chronic criterion for that toxicant prescribed in the numerical criteria for toxic substances in OAC 785:45-5-12(f)(6)(D) and (E) and 785:45 Appendix G, Table 2

(d) **pH.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to pH occurring other than by naturally occurring conditions if no more than 10% of the sample concentrations from that waterbody fall outside the criteria range prescribed in 785:45-5-12(f)(3).

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to pH occurring other than by naturally occurring conditions if greater than 10% of the sample concentrations from that waterbody fall outside the criteria range prescribed in 785:45-5-12(f)(3).

(e) **Turbidity.** The criteria for turbidity stated in 785:45-5-12(f)(7) shall constitute the screening levels for turbidity. The tests for use support shall follow the default protocol in 785:46-15-4(b).

(f) **Oil and grease.**

(1) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations.

(2) The Fish and Wildlife Propagation beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations.

(g) **Suspended and Bedded Sediments.**

(1) If a stream is supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then that stream will be deemed to be supporting its assigned Fish and Wildlife Propagation beneficial use with respect to suspended and bedded sediments.

(2) If a stream is not supporting the biological criteria assigned to that stream as provided in (e) and (i) through (n) of this section, then a habitat assessment must be conducted using the habitat assessment protocols found in OWRB Technical Report TRWQ2001-1, "Unified Protocols for Beneficial Use Assignment for Oklahoma Wadable Streams." The results of the habitat assessment shall then be compared to either historical conditions or regional reference conditions in order to determine attainment with respect to suspended and bedded sediments in that stream.

(3) The method for establishing reference conditions shall meet the following requirements:

(A) a minimum of five (5) reference streams or reaches shall be assessed;

(B) all of the reference streams or reaches must be within the same ecoregion as the test stream;

(C) all of the reference streams or reaches must be streams with similar flow regimes no more than two (2) stream orders removed from the test stream; and

(D) the reference streams shall be selected from the least impacted streams in the ecoregion whose watersheds contain soils, vegetation, land uses, and topography typical of the watershed of the test stream(s).

(4) The Fish and Wildlife Propagation beneficial use will be considered to be not supported with respect to suspended and bedded sediments if any of the following habitat parameters deviate from the reference conditions by the specified amount:

(A) The total percent of clay, silt, and loose sand in the pool bottom substrate of the test stream is increased by more than 30% over the reference condition;

(B) Cobble embeddedness in the test stream is increased by 15% or more over the reference condition;

(C) The percentage of the length of the reach containing fresh (non-vegetated) point bars and/or islands in the test stream is 20 or more percentage points above that of the reference condition; or

(D) The percentage of the length of the reach dominated by pools of a depth of 0.5 meters or more in the test stream is less than 70% of that of the reference condition.

(5) If all of the habitat parameters identified in (h)(4) of this section deviate from the reference conditions by less than the amounts specified in (h)(4) of this section, then the Fish and Wildlife Propagation beneficial use is not impaired due to suspended and bedded sediments.

(h) **Metals.** The Fish and Wildlife Propagation beneficial use designated for a waterbody may be assessed using either total recoverable or dissolved metals. When available, the concentrations of dissolved metals shall be compared following the provisions of (c) of this subsection to the criteria in OAC 785:45 Appendix G converted to dissolved criteria by multiplying the total metal criterion listed in table 2 by the appropriate conversion factor listed in Table 3. Preference shall be given to the beneficial use determinations based upon dissolved metals. For those metals criteria requiring a hardness component, individual assessment results may be calculated using the average of all hardness data meeting the requirements of OAC 785:46-15-3. The segment-averaged hardness in Appendix B of this Chapter shall be used in the determination of the criterion if there is insufficient site-specific data to determine stream hardness.

(i) **Biological criteria.**

(1) If data demonstrate that an assemblage of fish or macro invertebrates from a waterbody is significantly degraded, according to 785:45-5-12(f)(5), from that expected for the subcategory of Fish and Wildlife Propagation designated in OAC 785:45 for that waterbody, then that subcategory may be deemed by the appropriate state environmental agency to be not supported.

(2) All physical assessments and biological collections shall be performed in accordance with the requirements set forth in OWRB Technical Report No. 99-3 entitled "Standard Operating Procedures for Stream Assessments and Biological Collections Related to Biological Criteria in Oklahoma".

(3) Evaluation of the biological collections shall include identification of fish samples to species level. Determinations of tolerance level shall be made according to Jester et al. 1992, "The Fishes of Oklahoma, Their Gross Habitats, and Their Tolerance of Degradation in Water Quality and Habitat", Proceedings of Oklahoma Academy of Sciences, 72:7-19.

(4) The determination of whether the use of Fish and Wildlife Propagation is supported in wadable streams in Oklahoma ecoregions shall be made according to all of the requirements of this subsection (e), the application of Appendix C of this Chapter, and the special provisions in subsections (i) through (o), where applicable, of this Section. Streams with undetermined use support status shall be subject to additional investigation that considers stream order, habitat factors and local reference streams before the use support determination is made. A finding of impairment for biocriteria due to any one of the parameters listed in this section shall trigger an evaluation of all likely causes, not precluding monitoring, assessment, and subsequent support determination of the Fish and Wildlife beneficial use for any of the other parameters in this section.

(j) **Special provisions for Ouachita Mountains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Ouachita Mountains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(k) **Special provisions for Arkansas Valley wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Arkansas Valley ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 24 or less. If a score is 25 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 27 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 18 or less. If a score is 19 to 26 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(l) **Special provisions for Boston Mountains and Ozark Highlands wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Boston Mountains and Ozark Highlands ecoregions shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 37 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 29 or less. If a score is 30 to 36 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 31 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 30 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(m) **Special provisions for Central Irregular Plains wadable streams.** The determination of whether the use of Fish and Wildlife Propagation is supported for wadable streams located in the Central Irregular Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Where designated, the subcategory of Cool Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 35 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 28 or less. If a score is 29 to 34 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(2) Where designated, the subcategory of Warm Water Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 30 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 22 or less. If a score is 23 to 29 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(3) Where designated, the subcategory of Habitat Limited Aquatic Community shall be deemed fully supported if the application of Appendix C produces a score of 25 or more. Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 16 or less. If a score is 17 to 24 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(n) **Special provisions for Central Oklahoma - Texas Plains wadable streams.** The determination of whether the Warm Water Aquatic Community subcategory of the Fish and Wildlife Propagation beneficial use is supported for wadable streams located in the Central Oklahoma - Texas Plains ecoregion shall be made according to the application of Appendix C of this Chapter, together with this subsection, as follows:

(1) Such subcategory shall be deemed fully supported if the application of Appendix C produces a score of 26 or more.

(2) Such subcategory shall be deemed not supported if the application of Appendix C produces a score of 19 or less.

(3) If the application of Appendix C produces a score of 20 to 25 inclusive, the issue of whether this subcategory is supported shall be deemed undetermined.

(o) **Special provisions for Central Great Plains wadable streams.** The subcategory of Warm Water Aquatic Community of the beneficial use of Fish and Wildlife Propagation in the wadable streams located in the Central Great Plains ecoregion shall be deemed fully supported if the application of Appendix C of this Chapter produces a score of 22 or more. Such subcategory shall be deemed not supported for the streams in this ecoregion if the application of Appendix C produces a score of 18 or less. If the application of Appendix C produces a score of 19 to 21 inclusive, the issue of whether this subcategory is supported for the streams in this ecoregion shall be deemed undetermined. Provided, however, this subsection does not apply to the area bounded by State Highway 54 on the west, U.S. Highway 62 on the south, U.S. Highway 281 on the east and State Highway 19 on the north.

785:46-15-6. Assessment of Primary Body Contact Recreation support

(a) **Scope.** The provisions of this Section shall be used to determine whether the subcategory of Primary Body Contact of the beneficial use of Recreation designated in OAC 785:45 for a waterbody is supported during the recreation season from May 1 through September 30 each year. Where data exist for multiple bacterial indicators on the same waterbody or waterbody segment, the determination of use support shall be based upon the use and application of all applicable tests and data.

(b) ~~**Screening levels.**~~

~~(1) The screening level for fecal coliform shall be a density of 400 colonies per 100ml.~~

~~(2) The screening level for Escherichia coli shall be a density of 235 colonies per 100 ml in streams designated in OAC 785:45 as Scenic Rivers and in lakes, and 406 colonies per 100 ml in all other waters of the state designated as Primary Body Contact Recreation.~~

~~(3) The screening level for enterococci shall be a density of 61 colonies per 100 ml in streams designated in OAC 785:45 as Scenic Rivers and in lakes, and 406 colonies per 100 ml in all other waters of the state designated as Primary Body Contact Recreation.~~

~~(c) **Fecal coliform.**~~

~~(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to fecal coliform if the geometric mean of 400 colonies per 100 ml is met and no greater than 25% of the sample concentrations from that waterbody exceed the screening level prescribed in (b) of this Section.~~

~~(2) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to fecal coliform if the geometric mean of 400 colonies per 100 ml is not met, or greater than 25% of the sample concentrations from that waterbody exceed the screening level prescribed in (b) of this Section, or both such conditions exist.~~

~~(d)~~ **Escherichia coli (*E. coli*).**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is met~~, or the sample concentrations from that waterbody taken during the recreation season do not exceed the screening level prescribed in (b) of this Section, or both such conditions exist~~. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

(2) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to *E. coli* if the geometric mean of 126 colonies per 100 ml is not met ~~and any of the sample concentrations from that waterbody taken during the recreation season exceed a screening level prescribed in (b) of this Section~~. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

(~~e~~c) **Enterococci.**

(1) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be fully supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is met~~, or the sample concentrations from that waterbody taken during the recreation season do not exceed the screening level prescribed in (b) of this Section, or both such conditions exist~~. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

(2) The Primary Body Contact Recreation subcategory designated for a waterbody shall be deemed to be not supported with respect to enterococci if the geometric mean of 33 colonies per 100 ml is not met ~~and any of the sample concentrations from that waterbody taken during the recreation season exceed a screening level prescribed in (b) of this Section~~. These values are based upon all samples collected over the recreation period in accordance with OAC 785:46-15-3(c).

785:46-15-7. Assessment of Public and Private Water Supply support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Public and Private Water Supply or any subcategory thereof designated in OAC 785:45 for a waterbody is supported.

(b) **Toxicants.**

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to any substance with criteria for such use listed in OAC 785:45 Appendix G if the sample concentrations from that waterbody do not exceed the criterion for that substance prescribed in OAC 785:45 Appendix G more than 10% of the ~~time~~ measurements, or drinking water use restrictions are not in effect.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to any substance with criteria for such use listed in OAC 785:45 Appendix G if the sample concentrations from that waterbody exceed the criterion for that substance prescribed in OAC 785:45 Appendix G more than 10% of the time, or drinking water use restrictions imposed by an agency with jurisdiction in effect require closure of the water supply.

(c) **Bacteria.** The screening level for ~~fecal~~ total coliform bacteria shall be 5000 colonies per 100 ml. The tests for use support shall follow the default protocol in 785:46-15-4.

(d) **Threatened water supplies.** Waters of the state designated in OAC 785:45 as Public and Private Water Supply shall be presumed to be threatened when toxicants are detected but do not exceed the applicable criteria prescribed in OAC 785:45 Appendix G, or some drinking water use restrictions have been put into effect by an agency with jurisdiction, or the potential for adverse impacts to water quality exists, or more than one such conditions exist.

(e) **Oil and grease.**

(1) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be fully supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in 10% or less of the observations, and drinking water use restrictions that require more than conventional treatment related to oil and grease have not been put into effect by an agency with jurisdiction.

(2) The Public and Private Water Supply beneficial use designated for a waterbody shall be deemed to be not supported with respect to oil and grease if a visible sheen or bottom deposits of oil or grease are observed on that waterbody in more than 10% of the observations, or drinking water use restrictions that require more than conventional treatment related to oil and grease have been put into effect by an agency with jurisdiction.

785:46-15-8. Assessment of Agriculture support

(a) **Scope.** The provisions of this Section shall be used to determine whether the beneficial use of Agriculture designated in OAC 785:45 for a waterbody is supported.

(b) **General support tests for chlorides, sulfates and TDS.**

(1) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to chloride if the mean of all chloride sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. ~~Provided, if the chloride sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to chloride.~~

(2) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to chloride if the mean of all chloride sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. Provided, if the chloride sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to chloride.

(3) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. ~~Provided, if the sulfate sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to sulfate.~~

(4) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to sulfate if the mean of all sulfate sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45, or greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. Provided, if the sulfate sample concentrations are each less than 250 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to sulfate.

(5) The Agriculture beneficial use designated for a waterbody shall be deemed to be fully supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody do not exceed the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45 and no more than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. ~~Provided, if the TDS sample concentrations are each less than 700 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to TDS.~~

(6) The Agriculture beneficial use designated for a waterbody shall be deemed to be not supported with respect to TDS if the mean of all TDS sample concentrations from that waterbody exceeds the yearly mean standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45, or ~~at least~~ greater than 10% of the sample concentrations from that waterbody exceed the sample standard prescribed in Appendix F or site specific criteria promulgated in Appendix E of OAC 785:45. Provided, if the TDS sample concentrations are each less than 700 mg/L, then the Agriculture beneficial use shall be deemed to be fully supported with respect to TDS.

(c) **Use of site specific data.** If the appropriate state environmental agency determines that the stream segment averages prescribed in Appendix F of OAC 785:45 are not appropriate for the entirety of a given stream segment or there is no value listed in Appendix F or site specific criteria promulgated in Appendix E for the stream segment average for the parameter of concern, then yearly mean standards and sample standards developed from site specific data may be used to assess whether the use of Agriculture is supported for that waterbody.

(d) **Use of data for lakes.**

(1) **Lakes with one WBID segment.** For support assessment in lakes with a single WBID segment, the segment averaged value prescribed in Appendix F to that same WQM segment shall be used.

(2) **Lakes with multiple WBID segments.** For support assessment in lakes with multiple WBID segments, each segment shall use the segment averaged value prescribed in Appendix F to that same WQM segment when available. If a WBID segment in a lake has no corresponding WQM segment data available in Appendix F, the segment averaged value prescribed in Appendix F to the WQM segment immediately downstream of the lake shall be used.

785:46-15-10. Nutrients

(a) **General.** OAC 785:45-3-2(c) prohibits water quality degradation by nutrients which will interfere with the attainment or maintenance of any existing or designated beneficial use. OAC 785:46-13-3(a)(1) requires maintenance of any existing or designated beneficial use. This Section provides a framework which shall be used in assessing threats or impairments to beneficial uses and waterbodies and watersheds caused by nutrients, and the consequences of such assessments.

(b) **Determining whether a stream is nutrient-threatened.** The dichotomous process stated in this subsection shall be used in the determination of whether a stream is nutrient-threatened.

(1) The stream order shall be identified. If the stream order is 1, 2 or 3, then proceed to paragraph (2). If the stream order is not 1, 2 or 3, then proceed to paragraph (9).

(2) The stream slope shall be identified. If the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (3). If the stream slope is less than 17 feet per mile, then proceed to paragraph (4).

(3) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.24 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 4.95 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(4) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.15 mg/L or if nitrite plus nitrate concentrations in the stream are greater than 2.4 mg/L, then proceed to paragraph (5). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(5) Subject to the application of the foregoing paragraphs of this subsection, if the percentage of canopy shading is greater than or equal to 80%, then the stream is not threatened by nutrients. If the percentage of canopy shading is less than 80%, then proceed to paragraph (6).

(6) Subject to the application of the foregoing paragraphs of this subsection, if the stream's turbidity is organic, then proceed to paragraph (7). If the stream's turbidity is inorganic, then proceed to paragraph (8).

(7) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is not threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is threatened by nutrients.

(8) Subject to the application of the foregoing paragraphs of this subsection, if turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened by nutrients. If turbidity measured at seasonal base flow conditions is 20 or more NTU, then the stream is not threatened by nutrients.

(9) Subject to the application of the foregoing paragraphs of this subsection, if the stream slope is greater than or equal to 17 feet per mile, then proceed to paragraph (10). If the stream slope is less than 17 feet per mile, then proceed to paragraph (11).

(10) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 1.00 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 4.65 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(11) Subject to the application of the foregoing paragraphs of this subsection, if phosphorus concentrations in the stream are greater than 0.36 mg/L, or if nitrite plus nitrate concentrations in the stream are greater than 5.0 mg/L, then proceed to paragraph (12). If such nutrient concentrations are less than the levels specified in this paragraph, then the stream is not threatened by nutrients.

(12) Subject to the application of the foregoing paragraphs of this subsection, if the stream's inorganic turbidity measured at seasonal base flow conditions is greater than or equal to 20 NTU, then the stream is not threatened

by nutrients. If the stream's inorganic turbidity measured at seasonal base flow conditions is less than 20 NTU, then the stream is threatened.

(c) **Alternative to dichotomous process for streams.**

(1) A wadable stream shall be deemed threatened by nutrients if the arithmetic mean of benthic chlorophyll-a data exceeds 100 mg per square meter under seasonal base flow conditions, or if two or more benthic chlorophyll-a measurements exceed 200 mg per square meter under seasonal base flow conditions. A non-wadable stream shall be deemed threatened by nutrients if planktonic chlorophyll-a values in the water column indicate it has a Trophic State Index of 62 or greater.

(2) If clear and convincing evidence indicates a result for a stream different from that obtained from application of the dichotomous process in (b) of this Section, then the appropriate state environmental agency may, after completing the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101, accordingly identify the stream as threatened or not threatened by nutrients.

(d) **Demonstration that nutrients may be adversely impacting a beneficial use.** If it is demonstrated by the Trophic State Index or by other relevant data as provided in 785:46-15-1(c) that nutrient loading in a waterbody may be adversely impacting a beneficial use designated for that waterbody, then the Board may determine that the waterbody and its watershed is an NLW, and shall identify the waterbody and watershed as NLW in Appendix A of OAC 785:45.

(e) **Consequence of identification as NLW.** If a waterbody or its watershed is identified as NLW in Appendix A of OAC 785:45, then the Board or other appropriate state environmental agency may cause an impairment study to be performed. Provided, if an impairment study demonstrates that the uses are not threatened, then the Board shall consider deleting the NLW identification.

(f) **Consequence of assessment that use is threatened by nutrients.** If it is determined that one or more beneficial uses designated for a waterbody are threatened by nutrients, then that waterbody shall be presumed to be nutrient-threatened. If it is determined or presumed, in accordance with this Section, that a waterbody is nutrient-threatened, then before the waterbody is determined to be nutrient-impaired, an impairment study must be completed by the appropriate state environmental agency.

(g) **Result of impairment study.**

(1) **Impaired.** If, independent of or in addition to the process set forth in this Section, an impairment study of a waterbody demonstrates that any beneficial use designated for a waterbody is impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate listing procedure in accordance with the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101 for each such beneficial use.

(2) **Not impaired.** If, independent of or in addition to the process set forth in this Section, an impairment study of a waterbody demonstrates that all beneficial uses designated for that waterbody are not impaired by nutrients, then the appropriate state environmental agency shall initiate the appropriate de-listing procedure in accordance with the public participation process developed by the Secretary of Environment pursuant to 27A O.S. 1-2-101.

785:46-15-13.1. Assessment of Navigation support

The beneficial use of Navigation designated for a waterbody shall be deemed to be fully supported for the purpose of water quality reporting.

SUBCHAPTER 19. IMPLEMENTATION OF DISSOLVED OXYGEN CRITERIA TO PROTECT FISH AND WILDLIFE PROPAGATION

785:46-19-3. Reasonable potential determination

(a) A permit limit for oxygen demanding substances is required if there is a reasonable potential that the dissolved oxygen criteria will not be satisfied. Such a reasonable potential is demonstrated whenever an existing discharger proposes to increase the concentration or load of oxygen demanding substances, a new discharge of oxygen demanding substances is created, or a receiving waterbody is reclassified to a subcategory of the Fish and Wildlife Propagation beneficial use with a more stringent dissolved oxygen criterion.

(b) The permitting authority may base its determination of the reasonable potential upon meeting the dissolved oxygen standard at the applicable regulatory low flow and at the applicable seasonal temperatures.

[OAR Docket #11-557; filed 4-22-11]

TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 50. FINANCIAL ASSISTANCE

[OAR Docket #11-558]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Projects and Entities Eligible
785:50-3-1. Project eligibility [AMENDED]
785:50-3-2. Eligible entities [AMENDED]
Subchapter 9. Clean Water State Revolving Fund Regulations
Part 1. General Provisions
785:50-9-9. Definitions [AMENDED]
Part 3. General Program Requirements [AMENDED]
785:50-9-21. Eligible Project [AMENDED]
785:50-9-23. Clean Water SRF Project Priority System [AMENDED]
785:50-9-24. Intended Use Plan [AMENDED]
785:50-9-30. Planning Documents [AMENDED]
785:50-9-45. Compliance with Federal Authorities [AMENDED]
Part 7. SRF Environmental Review Process
785:50-9-62. Environmental Review by the Board [AMENDED]

AUTHORITY:

Oklahoma Water Resources Board; 82 O.S. § 1085.2; 82 O.S. §§ 1085.31 et seq.; 82 O.S. §§ 1085.51 et seq.; 62 O.S. § 2003.

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ANALYSIS:
The Oklahoma Water Resources Board ("OWRB") has adopted amendments to various provisions of Oklahoma Administrative Code ("OAC") 785:50 as follows:

Sections 785:50-3-1, 785:50-9-9, 785:50-9-21, 785:50-9-23, and 785:50-9-24 have been amended to change language regarding "urban storm water activities" to "storm water" and "Brownfield activities". These changes modify language so that it corresponds with the other sections of Chapter 50. The intended use is to make this language consistent throughout Chapter 50.

Section 785:50-3-2 has been amended to change "REP" to "REAP". This change corrects a typographical error. The intended effect is to provide the correct acronym for the Rural Economic Action Plan.

Section 785:50-9-9 has been amended to include a definition of "consultant". This change clarifies who may act and be paid as a consultant under the State Revolving Fund ("SRF") Loan programs. The intended effect is to ensure service providers are meeting the requirements of Oklahoma law.

Sections 785:50-9-21 and 785:50-9-30 have been amended to provide for greater flexibility in engineering requirements of loans for the Clean Water SRF projects. These amendments will correspond to the changes created by the Environmental Protection Agency ("EPA"). The intended effect is to make the rules consistent with the engineering process and other loan terms allowed by state and federal law.

Section 785:50-9-23 has been amended to include programmatic priorities set forth by the EPA or the OWRB. The intended effect is to allow flexibility in the scoring criteria to reflect the current priorities of the EPA or the OWRB.

Section 785:50-9-23 has also been amended to change "non-point" source to "nonpoint" source. This change corrects a typographical error. The intended effect is to make this language consistent throughout Chapter 50.

Section 785:50-9-30 has been amended to include planning documents that do not require the findings of an engineer. These changes incorporate projects that have a design plan that is not completed by an engineer but are still considered eligible projects under EPA guidelines. The intended effect is to increase the flexibility of the planning document criteria.

Another amendment of Section 785:50-9-30 is to include the term "registered financial advisor" in place of "financial advisor". This change clarifies who may act and be paid as a financial advisor under the SRF programs. The intended effect is to ensure all financial advisors are meeting the requirements of Oklahoma law.

Section 785:50-9-45 has been amended to include those laws that are required to be included in loan agreements and other funding documents under the Clean Water SRF Program. The intended effect is to remain current with EPA regulations.

Section 785:50-9-62 has been amended to provide for greater flexibility in environmental requirements of loans for the Clean Water SRF projects. These amendments correspond to the changes created by the EPA. The intended effect is to make the rules consistent with the environmental process and other loan terms allowed by state and federal law.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2011:

SUBCHAPTER 3. PROJECTS AND ENTITIES ELIGIBLE

785:50-3-1. Project eligibility

(a) **Purposes for which assistance may be provided.**

(1) The financial assistance contemplated under the Water and Sewer program may be made available for the purpose of providing or assisting in providing for the acquisition, development and utilization of water and sewage storage and control facilities for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities constructed or hereafter constructed, modified or enlarged within the State of Oklahoma by the United States of America or Oklahoma or any agency, department, subdivision or instrumentality thereof and for the refinancing of existing indebtedness related to water and sewer systems.

(2) The financial assistance contemplated under the Clean Water SRF and Drinking Water SRF programs may be made available for projects as provided and authorized under the applicable federal legislation, and Sections 1085.51 through 1085.65 and Sections 1085.71 through 1085.84 of Title 82 of the Oklahoma Statutes.

(b) **Projects for which assistance may be obtained.**

(1) **Water and Sewer, REAP projects; exception for certain unqualified projects.**

(A) Financial assistance may be obtained through the Water and Sewer program and REAP grant program for any project within the State of Oklahoma which qualifies as *any engineering undertaking or work to conserve and develop surface or subsurface water resources or to control or develop sewage treatment facilities of the State for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including but not limited to underground storage projects, filtration and water treatment plants,* including *any system necessary to distribute water from storage or filtration plants to points of distribution, or from storage to filtration and treatment plants, facilities for distributing water therefrom to wholesale or retail purchasers, [82:1085.32(1)]* floodplain restoration including but not limited to home relocations, bank stabilization, storm sewer and drainage improvements and *any system necessary to improve or develop sewage*

treatment, collection or distribution capabilities [82:1085.32(1)] of any area of the State. Such qualified projects are additionally understood to include financial assistance to acquire and own the lands required for the project, and to obtain the water supply and to construct appropriate treatment facilities.

(B) Notwithstanding any of the foregoing, a project is not qualified to receive financial assistance by emergency grant pursuant to Title 82 O.S. Section 1085.39 or REAP grant pursuant to Title 62 O.S. Section 2003 if the project is or would be subject to an arrangement whereby a person who is not a state or local governmental entity has or would have a right to use or make use of the project on a basis not available to members of the general public.

(2) **CWSRF projects.** Financial assistance may be obtained through the CWSRF program for any project within the State of Oklahoma which qualifies as any engineering undertaking or work to control of develop sewage treatment facilities of the state for all useful and lawful purposes, any system necessary to improve of develop sewage *treatment, collection or distribution capabilities,* ~~*urban*~~ *storm water* and Brownfield *activities that are administered under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or the Oklahoma Pollution Discharge Elimination Act, or any implementation of nonpoint source management programs as authorized by the federal Water Quality Act of 1987 and Section* [82:1085.52(1)] 1085.65 of Title 82 of the Oklahoma Statutes.

(3) **DWSRF projects.** Financial assistance may be obtained through the DWSRF program for any project within the State of Oklahoma which qualifies as any engineering undertaking or work to control or develop drinking water facilities of the State for all useful and lawful purposes, any system necessary to improve or develop drinking water treatment, collection or distribution capabilities as authorized by the federal Drinking Water Act and Section 1085.72 of Title 82 of the Oklahoma Statutes.

(c) **Project costs for which assistance funds may be expended.**

(1) Project financial assistance funds made available by the Board to an applicant for approved projects may be utilized and expended by an applicant toward applicant's payment and financing of project costs, as approved by the Board.

(2) Eligibility for project costs funded under the CWSRF program described in 785:50-1-3(b)(2) is limited to the restrictions of the federal Water Quality Act as amended.

(3) Eligibility for drinking water project costs funded under the DWSRF program described in 785:50-1-3(b)(3) is limited to the restrictions of the federal State Drinking Water Act as amended.

(4) For purposes of the Water and Sewer program, the REAP grant program, and subject to controlling federal and state law for the CWSRF and DWSRF programs, project costs include, but shall not be limited to, the following miscellaneous and general project cost items:

(A) Costs of acquiring the facilities comprising the project;

(B) Costs of acquiring and constructing other items included in the facilities, including obligations incurred for labor and materials by contractors, builders and materialmen;

(C) Costs of restoration or relocation of property damaged or destroyed in connection with any construction;

(D) Costs of premiums of contractors' performance, payment and completion bonds;

(E) Costs of title insurance premiums;

(F) Costs of machinery, equipment and related facilities acquired or purchased for inclusion in and identification primarily with the facilities and the cost of shipping, transportation and installation thereof;

(G) Taxes or other municipal or governmental charges levied or lawfully assessed against the facilities acquired during the period of acquisition;

(H) Costs of insurance premiums in connection with acquisition of the facilities;

(I) Costs of architects' and engineers' services related to the project prior to and during the period of acquisition;

(J) Payment or reimbursement of the applicant for interim financing loans and advances and all costs thereof made in contemplation of receiving financial assistance;

(K) Abstract and title opinion costs;

(L) Costs of project legal fees and expenses of counsel for the applicant;

(M) Costs of fees of other consultants of applicant;

(N) Recording fees;

(O) Loan insurance expenses;

(P) Other costs of publishing and printing proceedings incident thereto; and

(Q) Such other reasonable and necessary expenses as may be required to complete the proposed project.

(5) Force account labor costs may be eligible, under certain conditions as determined by the Board, for project financial assistance.

785:50-3-2. Eligible entities

(a) **Entities eligible for assistance.** The financial assistance made available through the Water and Sewer program, the REAP grant program, the CWSRF program, and the DWSRF program may be obtained, for an eligible project, by any duly constituted and existing political subdivision of the State of Oklahoma, including but not limited to counties, cities, towns and municipalities, and, by any duly constituted and existing special purpose water resource district, including but not limited to rural water districts, irrigation conservancy districts, and by any duly qualified and existing public trusts or authorities, individually or as agents, representatives or instrumentalities of any political subdivision.

(b) **Combination of eligible entities.** For purposes of qualifying for and obtaining the financial assistance contemplated herein, any group of eligible entities may combine and join in making application for project assistance, provided, each separate entity within the group so combined is eligible under (a) of this Section.

(c) **Proof of eligibility.** For purposes of qualifying for and obtaining the financial assistance contemplated in this Chapter, entities shall submit appropriate proof of eligibility.

SUBCHAPTER 9. CLEAN WATER STATE REVOLVING FUND REGULATIONS

PART 1. GENERAL PROVISIONS

785:50-9-9. Definitions

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

"303(d) List" means the list of impaired waters of the State, or most recent approved revision thereof, developed pursuant to Section 303(d) of the Clean Water Act as amended and maintained on file at the Board.

"Act" means The Federal Clean Water Act, as amended.

"Applicant" means any municipality, as defined, that submits a preapplication/application for financial assistance in accordande with this subchapter.

"Architectural or **engineering services"** means consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering.

"As a result of" means funds in the Clean Water SRF including the capitalization grant, repayments of first round loans, bond proceeds, and the State match.

"Binding commitment" means binding commitments are legal obligations by the State to the local recipient that define the terms and the timing for assistance under Clean Water SRF.

"Board" means the Oklahoma Water Resources Board authorized by law to make final adjudications, execute contracts, adopt rules and carry out other powers and duties set forth by law or, for duties authorized by law to be delegated to the Executive Director, the Executive Director or any employee or agent or staff member thereof as assigned by the Executive Director.

"Brownfield" *means an abandoned, idled or underused industrial or commercial facility or other redevelopment of the real property is complicated by environmental contamination caused by regulated substances* [27A:2-15-103(2)].

"Brownfield activities" means those activities which are conducted under the Oklahoma Brownfields Voluntary Redevelopment Act for eligible entities that have obtained a draft or final permit pursuant to the National Pollution Discharge Elimination Act or Oklahoma Pollutant Discharge Elimination System Act, which are designed to improve water quality, and which are exempt from funds administered under the Nonpoint Source Management Program of the federal Clean Water Act.

"Brownfield assessment" means any phase I, phase II, phase III or other study required by the Department which is used to assess a brownfield.

"Building" means the erection, acquisition, alteration, remodeling, improvement or extension of treatment works.

"Capitalization grant" means an agreement between EPA and State whereby federal dollars are made available to partially fund a Clean Water SRF.

"Collector sewer" means the common lateral sewers, within a publicly owned treatment system which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections designed for connection with those facilities including:

(A) Crossover sewers connected more than one property on one side of a major street, road, or highway to a lateral sewer on the other side when more cost effective than parallel sewers; and

(B) Pumping units and small diameter lines serving individual structures or groups of structures.

"Combined sewer" means a sewer that is designed as a sanitary sewer and a storm sewer.

"Conservation Commission" means the Oklahoma Conservation Commission.

"Construction" means any one or more of the following: brownfield assessment; preliminary planning to determine feasibility, engineering, architectural, legal, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other actions or undertakings necessary to a project; erection, building, acquisition, alteration, remodeling, improvement, or extension of a project; or the inspection or supervision of any of the foregoing items.

"Consultant" means a person duly licensed, registered or certified to practice a profession as required by Oklahoma law who is providing services or advice in that professional capacity. Examples include, but are not limited to, accountants, architects, attorneys, engineers, and financial advisors.

"Contingency section" means that portion of the planning portion of the priority list consisting of projects which may receive loans due to bypass provision or due to additional funds becoming available.

"Cross-cutting laws and orders" means Federal laws and authorities that apply to all activities supported with funds "directly made available by" capitalization grants.

"DBE" means Disadvantaged Business Enterprises.

"DBE participation" means the federal requirement for negotiation of a "fair share" objective for minority, disadvantaged and women owned businesses applies to assistance in an amount equal to the capitalization grant.

"Department" means the Oklahoma Department of Environmental Quality.

"Enforceable requirements of the Act" means those conditions or limitations of NPDES or other discharge permits which, if violated, could result in the issuance of a compliance order or initiation of a civil or criminal action. If a permit has not been issued, the term shall include any requirement which

would be included in the permit when issued. Where no permit applies, the term shall include any requirement which is necessary to meet applicable criteria for best practicable wastewater treatment technology (BPWTT).

"Equivalency projects" means project cited by the Board as meeting the requirement of the capitalization grant.

"Excessive infiltration/inflow" means the quantities of infiltration/inflow above 120 gallons per capita per day (GPCD), which can be economically eliminated from a sewer system as determined in a cost-effectiveness analysis that compares the costs for correcting the infiltration/inflow conditions to the total costs for transportation and treatment of the infiltration/inflow.

"Fundable portion" means that portion of the Project Priority List which includes projects scheduled for financial assistance during the funding year.

"Funding year" means the first year of the planning period represented by a project priority list.

"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

"In perpetuity" means maintaining the principal amounts of the federal capitalization grants and state matching funds within the CWSRF.

"Intended Use Plan" means a document prepared each year by the State, which identifies the intended uses of the funds in the CWSRF and describes how those uses support the goals of the CWSRF.

"Interceptor sewer" means a sewer which is designed for one or more of the following purposes:

(A) To intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor.

(B) To replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant.

(C) To transport wastewater from one or more municipal collector sewers to another municipality or to a regional plant for treatment.

(D) To intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

"Loan" means an agreement between the State and the local recipient through which the Clean Water SRF provides funds for eligible assistance on terms consistent with the federal Water Quality Act of 1987 or otherwise approved by the Environmental Protection Agency.

"MGD" means millions of gallons per day.

"Municipality" means a city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization, having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency consistent with the State Water Quality Management Plan.

"NEPA" means the National Environmental Policy Act.

"Nonexcessive infiltration" means the quantity of infiltration which cannot be economically and effectively eliminated from a sewer system as determined in a cost-effectiveness analysis.

"Nonexcessive inflow" means the rainfall induced peak inflow rate which does not result in chronic operational problems related to hydraulic overloading of the treatment works during storm events. These problems may include surcharging, backups, bypasses, and overflows.

"Nonpoint source" means a source of pollution which is diffuse and does not have a single point of origin or is introduced into a receiving stream from a specific outlet.

"Nonpoint source activities" means capital works, capital improvements, capital equipment, environmental cleanups, land acquisition, or implementation of management practices for the purpose of protecting or improving surface or underground water quality through watershed management or reduction of nonpoint source pollution as authorized by the Act.

"NPDES" means National Pollutant Discharge Elimination System.

"Operable treatment works" means a treatment works that, upon completion, will meet the enforceable requirements of the Act.

"Operation and maintenance" means activities required to assure the dependable and economical function of treatment works.

(A) **"Maintenance"** means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment.

(B) **"Operation"** means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"OWQS" means the Oklahoma Water Quality Standards promulgated by the Board at Oklahoma Administrative Code Title 785, Chapter 45, as amended.

"Planning" means the process of evaluating alternative solutions to water pollution problems, and through a systematic screening procedure, selecting the most cost effective environmentally sound alternative.

"Planning portion" means that part of the Project Priority List containing all projects outside the fundable portion of the list that may, under anticipated allotment levels, receive

funding during the five-year planning period represented by the list.

"Project" means the water quality project for which Clean Water SRF assistance is provided. Water quality projects include:

(A) construction and design, or construction of an operable treatment works or segment thereof the principal purpose of which is for the treatment of domestic users' discharges within the jurisdiction, community, sewer service area, region or district concerned; ~~or~~

(B) ~~urban~~ storm water and Brownfield activities;

(C) nonpoint source activities; or

(D) other water quality projects as defined by 82 O.S. §1085.52, as amended.

"Project completion" means the date operations of the project are initiated or are capable of being initiated, whichever is earlier.

"Project Priority List" means a contiguous list of projects in order of priority for which Clean Water SRF assistance is expected during a five-year planning period.

"Project priority points" means the total number of points assigned to a project by using the priority ranking formula.

"Reallotment" means allotment of previously allotted unused funds.

"Recipient" means a municipality or other entity which receives assistance under the Clean Water SRF program.

"Repayment" means principal and interest payments on loans which must be credited directly to the Clean Water SRF.

"Replacement" means those expenditures for obtaining and installing equipment, accessories, or appurtenances during the useful life of the treatment works necessary to maintain the capacity and performance for which such works are designed and constructed.

"Responsible bidder" means a prospective contractor that currently meets the minimum standards of financial and technical ability to perform the tasks identified in the project specifications.

"Revenue programs" means a formally documented determination of sewer use charges which is designed to provide revenues for operation and maintenance (including replacement) cost, and/or any combination of revenue generating programs necessary to meet local debt service requirements.

"Sewer System Evaluation Survey (SSES)" means a study which shall identify the location, estimated flow rate, method of rehabilitation, and cost of rehabilitation versus the cost of transportation and treatment for each defined source of infiltration/inflow.

"State match" means funds equaling at least 20% of the amount of the capitalization grant which the State must deposit into the Clean Water SRF.

"State Revolving Fund" or **"SRF"** means funds for loans or providing other assistance for pollution control projects established through capitalization grants from EPA and State matching funds.

"Storm sewer" means a sewer designed to carry only storm waters, surface runoff, street wash waters, and drainage.

"Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances. In addition **"treatment works"** means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, including on-site systems and waste in combined storm water and sanitary sewer systems.

"User charge" means a charge levied on users of a treatment works for the user's share of the cost of operation and maintenance (including replacement) of such works.

PART 3. GENERAL PROGRAM REQUIREMENTS

785:50-9-21. Eligible project

(a) The categories of wastewater treatment projects eligible for assistance are as follows:

(1) Category I - Secondary Treatment. The treatment facility necessary to discharge an effluent meeting the secondary treatment definition. This category may include outfall lines and lines which take existing treatment plants out of operation by transporting the effluent to a different plant;

(2) Category II - Advanced Treatment. The additional treatment necessary to meet more stringent than secondary effluent requirements as established in water quality management plans;

(3) Category IIIA -- Infiltration/Inflow Correction. The correction of infiltration/inflow conditions including all costs necessary for removing excessive I/I from the sewer system, such as replacement or relining sewer sections, flow routing systems, etc;

(4) Category IIIB -- Sewer System Rehabilitation. Replacement or major rehabilitation of sewers, where it has been determined that such replacement or rehabilitation is necessary to the total integrity and performance of the wastewater treatment works;

(5) Category IVA -- New Collector Sewer Systems. Sewage collection system is the common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual structures or from private property, and which include service connection "Y" fittings designed for connection with those facilities. Pumping units, and pressurized lines, for individual structures or groups of structures when such units are cost effective and are owned and maintained by the applicant are included in this category;

(6) Category IVB - New Interceptor Sewer Systems and Appurtenances. A sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility;

(7) Category V -- Combined Sewer Overflow Correction. Correction of combined sewer overflows including

cost of new collectors, interceptors, storm sewers, retention basin, etc., necessary to alleviate the overflow problem;

(8) Category VI - Storm Sewers. ~~Urban~~ storm water and Brownfield activities;

(9) Category VII - Nonpoint source activities; and

(10) Other water quality projects as defined under 82 O.S. §1085.51, as amended.

(b) The Board will determine annually the amount of funding necessary and the project categories that will be placed on the fundable portion of the Priority List.

(c) Costs associated with the planning or assessing, design and building of the eligible categories of projects are considered allowable by the Board. Eligible construction costs will be based on the lowest responsible bidder.

(d) Eligibility for equivalency projects is subject to the applicable Federal requirements including those identified in 785:50-9-38(e) and 785:50-9-45(2) through (4).

(e) Additionally, the Board shall consider the following issues in determining project eligibility:

(1) **Capacity funding limitations.** The eligible capacity shall be determined using average dry weather flow and peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.

(A) Eligible capacity for treatment plants will be up to a period of ~~20 years~~ the design life of the project from the estimated date of initiation of construction.

(B) Eligible capacity for interceptors and outfalls will be up to 40 years from the estimated date of initiation of construction.

(C) Eligible capacity shall be calculated by multiplying the Board approved local population projection by an appropriate local per capita flow figure. The flow thus calculated will be deemed to include all the eligible project flows (residential, commercial, federal facilities, industrial, and infiltration/inflow). Eligible capacity will be determined during the development of the planning documents.

(D) The applicant will be responsible for documenting, in the planning document, the peaking factors used for the project.

(E) Eligible capacity will be determined when planning documents are approved by the Board.

(2) **Collection systems.** The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewaters directly from facilities which convey wastewater from individual systems, or from private property, and which include service "Y" connections.

(3) **Population and flow projections.** Section 208 Areawide Water Quality Management Plan population and flow projections will be used to determine the eligible project capacity. A discussion of the local projections should be included in the planning document.

(4) **Land costs.** Allowable costs for land and rights-of-way include the cost (including associated legal, administrative and engineering costs) of land acquired in fee simple or by lease or easement that will be an integral part of the treatment process or that will be used for the ultimate disposal of residues resulting from such treatment, including:

(A) The cost of a reasonable amount of land, considering irregularities in application patterns and the need for buffer areas, berms, and dikes;

(B) The cost of land acquired for a soil absorption system for a group of two or more homes;

(C) The cost of land acquired for composting or temporary storage of compost residues which result from wastewater treatment; and

(D) The cost of land acquired for storage of treated wastewater in land treatment systems before land application. The total land area for construction of a pond for both treatment and storage of wastewater is allowable if the volume necessary for storage is greater than the volume necessary for treatment. Otherwise, the allowable cost will be determined by the ratio of storage volume to the total volume of the pond.

(5) **On-site systems.** Treatment and collection systems constructed at or near the wastewater source where the system serving individual structures or groups of structures are cost-effective and are owned and operated by the loan recipient.

(6) **Brownfield remediation.** The types of ~~urban~~ storm water and Brownfield activities that may be qualified for Clean Water SRF funding include, but are not limited to: excavation and disposal of underground storage tanks; constructing wetlands or other filtering mechanisms; capping wells; excavation, removal and disposal of contaminated soil or sediments; tunnel demolition; well abandonment; and all phases or brownfield assessments or planning required by the Department.

785:50-9-23. Clean Water SRF Project Priority System

(a) **Preparation.** The Board shall prepare and maintain a current Clean Water SRF Project Priority Listing of potential eligible projects in the order of priority.

(b) **Projects included.**

(1) **Fundable portion.** The fundable portion includes projects scheduled for financial assistance during the current fiscal year, and which are within the limits of currently available funds.

(2) **Planning portion.** The planning portion includes that portion of the priority list containing all of those projects outside the fundable portion of the list, and which are anticipated to receive financial assistance in future fiscal years. The planning portion may also include contingency projects which are scheduled for assistance during the current fiscal year, but for which adequate funds are not available to provide financial assistance. Contingency projects may receive assistance due to bypass provisions or due to additional funds becoming available.

(c) **Public participation.** Before the beginning of each fiscal year, the Board shall insure that adequate public participation has taken place. A public meeting will be held to discuss the Clean Water SRF Project Priority List and any revisions that were made to the Clean Water SRF Project Priority System. The notice of public meeting shall precede the public meeting by 30 days and shall be published in a statewide publication. At this time, the Board shall circulate information about the Project Priority List including a description of each proposed project. Attenders of the public meeting will be allowed to express their views concerning the list and system.

(d) **Clean Water SRF Project Priority List.** A Clean Water SRF Project Priority List shall become effective and supersede all previous lists upon the beginning of the fiscal year for which it is designated. A Clean Water SRF Project Priority List, as updated during the funding year, shall remain effective until such time as it is superseded by a new list.

(e) **CWSRF Integrated Priority Rating System.** The Board will utilize an integrated priority ranking system to evaluate and rank proposed projects, including treatment works, ~~nonpoint source activities,~~ Brownfield activities, and ~~urban~~ storm water activities, based on the relative impact of the project in achieving the water quality objectives of the Act. This system consists of criteria integrating public health protection and Oklahoma's Water Quality Standards beneficial use maintenance and protection goals and Anti-degradation policy, including project type, water quality restoration, water quality protection, programmatic priorities, and readiness to proceed.

(1) **Project Type Factor.** The Project Type Factor provides a maximum of seventy (70) points for proposed water quality projects based on the following:

(A) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation within a watershed of a waterbody being utilized as a public water supply shall receive seventy (70) points.

(B) Treatment works or water quality projects designed to effectively eliminate or reduce a documented source of human health threat and/or discharge permit limit violation shall receive sixty (60) points.

(C) Treatment works or water quality projects designed to sustain compliance with or provide a degree of treatment beyond permit limits; increase capacity, reliability, or efficiency; reclaim/reuse wastewater; reduce a documented water quality threat, or otherwise maintain beneficial uses shall receive thirty (30) points.

(D) All other eligible treatment works or pollution control projects shall receive twenty (20) points.

(2) **Water Quality Restoration Factor.** The Water Quality Restoration Factor provides a maximum of twenty (20) points for proposed projects located on waterbodies which are not meeting the beneficial uses assigned to them in Oklahoma's Water Quality Standards and which are listed on Oklahoma's 303(d) list as threatened or impaired. The water quality restoration factor will be subject to change whenever the 303(d) List is revised. Water quality projects meeting the following criteria shall receive additional priority points:

(A) A project located in a watershed listed as a "Top Ten NPS Priority Watershed" in Oklahoma's Nonpoint Source Management Program shall receive an additional ten (10) points.

(B) A project listed on Oklahoma's 303(d) list of threatened or impaired stream segments shall receive an additional five (5) points.

(C) A project that implements the recommendations of a conservation plan, site-specific water quality remediation plan, TMDL or modified 208 water quality management plan, which has been approved by an agency of competent jurisdiction, in a sub-watershed where discharge or runoff from nonpoint sources are identified as causing, or significantly contributing to water quality degradation shall receive an additional five (5) points.

(3) **Water Quality Protection Factor.** The Water Quality Protection Factor provides a maximum of ten (10) priority points to proposed water quality projects that provide maintenance of beneficial uses and protection for water bodies afforded special protection under OWQS. Projects shall receive ten (10) points for satisfying the following criteria:

(A) A water quality project located within the watershed of a stream segment or in a groundwater basin underlying a watershed of a stream segment (known as "Special Source" groundwater):

(i) listed in OWQS Appendix A. as an Outstanding Resources Water, High Quality Water, Sensitive Water Supply, Scenic River or Culturally Significant Water;

(ii) listed in OWQS Appendix B.--"Areas with Waters of Recreational and/or Ecological Significance"; or

(iii) located in a delineated "source water protection area"; or

(B) A water quality project located in an area overlying a groundwater classified in OWQS with a vulnerability level of Very High, High, Moderate, or Nutrient Vulnerable.

(4) **Programmatic Priority Factor.** The Programmatic Priority Factor provides a maximum of one hundred (100) priority bonus points to projects that address specific programmatic priorities set forth by the Environmental Protection Agency or Board and detailed in the Annual Intended Use Plan.

(5) **Readiness to Proceed Factor.** The Readiness to Proceed Factor provides a maximum of four hundred (400) points depending on the relative "readiness to proceed" with a loan commitment among proposed projects.

(A) A project requesting to be considered for funding within the five-year planning period shall receive one hundred (100) points.

(B) In addition to a request for funding, a project for which preliminary planning documents have

been submitted shall receive two hundred (200) points. Preliminary planning documents include a preliminary engineering report and a preliminary environmental information document, and must be submitted to the Board and to the Department or the Conservation Commission as appropriate.

(C) In addition to a request for funding and preliminary planning documents, a project for which a completed loan application has been submitted shall receive three hundred (300) points.

(D) In addition to a request for funding, preliminary planning documents, and a completed loan application, a project for which the appropriate technical plans and specifications necessary to implement the project have been approved by the Department or the Conservation Commission, as appropriate, shall receive four hundred (400) points.

(f) **Management of the Project Priority List.**

(1) **Tie breaking procedure.** A tie breaking procedure shall be utilized when two or more projects have equal points under the Project Priority System and are in competition for funds. Projects will be ranked according to existing population. According to the most recent 208 Water Quality Management Plan, i.e., the project with the greatest existing population will receive the higher ranking.

(2) **Project bypass.** A project on the fundable portion of the list may be bypassed if it is determined that the project will not be ready to proceed during the funding year. This determination will be made on projects that are unable to meet the schedule established on the priority list. The applicant whose project is affected shall be given written notices that the project is to be bypassed. Projects that have been bypassed may be reinstated on the funded portion of the list if sufficient funds are available, and the project completes the necessary tasks to proceed. Funds which become available due to the utilization of these bypass procedures will be treated in the same manner as additional allotments.

(3) **Project Priority List update.** The priority list is continually reviewed and changes (i.e., loan award dates, estimated construction assistance amounts, project bypass, addition of new projects, etc.) may occur as necessary.

(4) **Additional allotments.** After defining the fundable portion of the Clean Water SRF Project Priority List, the Board may determine that it is necessary or desirable to obligate additional funds that are available and the list may be extended to include the next highest ranked project or projects on the planning portion of the list. Any sum made available to a state by reallotment or deobligation shall be treated in the same manner as the most recent allotment.

(5) **Project removal.** The Board may remove a project from the Clean Water SRF Project Priority List when the project has been funded, the project is found to be ineligible, it is indicated that the applicant does not intend to continue in the Clean Water State Revolving Loan Program, or the Board has determined that the applicant does not have financial, legal, or managerial capability to construct the project.

(6) **Amount of financial assistance.** The amount of financial assistance shall be the sum of the total eligible costs related to construction. The amount is contingent upon the availability of funds for this purpose. During each funding year, loans totaling twenty-five (25) percent of the funds available from the capitalization grant and state match for that year shall be provided to those eligible small municipalities with a population of 10,000 or less. However, if the state has not met the federal requirement of making binding commitments in an amount equal to one hundred and twenty (120) percent of each quarterly grant payment within one year of receipt of each quarterly payment, other eligible applicants may apply for a loan or an increase to an existing loan to utilize the small community set aside, if such actions will permit the state to comply with the federal binding commitment requirement.

(7) **Addition of new projects to the Clean Water SRF Project Priority List.**

(A) **General.** Prior to the placement of any new projects on the Clean Water SRF Project Priority List, the applicant must submit a request for such placement to the Board. The request must specify that the applicant intends to apply for financial assistance from the Clean Water SRF. The Board will evaluate the request, and if it is indicated that a viable project could result which would be in conformance with Clean Water SRF requirements, the potential project will be added to the Clean Water SRF Priority List.

(B) **Brownfield Activities.** Requests received for Brownfield activity projects must satisfy the following requirements before they will be placed on the Clean Water SRF fundable portion of the project priority list:

(i) Submit a certification from the Department that the project is a Brownfield project;

(ii) Submit a certification from the Department that urban runoff from the project site potentially impacts water quality; and

(iii) Submit project documents which determine the water quality benefits of the proposed project.

(C) **Nonpoint source activities.** Requests received for nonpoint source activity projects must satisfy the requirements of 82 O.S. §1085.58(G), as amended, before they will be placed on the Clean Water SRF fundable portion of the project priority list.

(8) **Categories of need.** All projects receiving financial assistance must fit into at least one of the categories of need listed in 785:50-9-21(a).

(A) A project may include all eligible categories of need.

(B) If a point source project consists of more than one category including a ~~non-point~~ nonpoint source project, its project ranking calculation will be based on that category which will result in the greatest priority points.

(9) **Change of scope.** A change of scope, such as the addition of new construction items, will not be eligible after loan closing unless:

(A) The change of scope is necessary to result in an operable treatment works due to an oversight and not to replace faulty construction or equipment already funded, or

(B) The change of scope is necessary due to changes in Federal or State requirements

785:50-9-24. Intended use plan

(a) Each fiscal year the Board shall prepare an Intended Use Plan (IUP) which shall be subjected to a public participation. The IUP will identify projects anticipated to receive financial assistance from that year's available funds. The IUP will comply with Federal Clean Water Act SRF guidance and shall include the following items:

(1) A description of both the short and long term goals and objectives of the fund.

(2) A list of projects for construction of sewage facilities and ~~urban~~ storm water and Brownfield activities which are included on the priority list and a list of activities eligible for assistance under Section 319 of the Act. The list of projects will include the following items:

(A) Name of the recipient,

(B) Facility description,

(C) Project treatment/use categories,

(D) Treatment requirements,

(E) Terms of financial assistance,

(F) Type of Assistance,

(G) NPDES or other Discharge Permit Number,

(H) Projects that require an EIS,

(I) Projected assistance amount, and

(J) Clean Water SRF policies on types of assistance.

(3) Assurances for meeting the requirements of Section 602(b) of the Act:

(A) The Board will enter into binding commitments equal to 120% of the capitalization grant payments within one year after the receipt of the grant payment,

(B) All funds will be expended in an expeditious manner,

(C) All capitalization grant funds will first be used toward compliance with the enforceable requirements of the Act, including the municipal compliance deadline of July 1, 1988.

(4) A payment and disbursement schedule.

(b) Included in the IUP are the criteria and method that are established for distribution of funds.

(1) The Board shall prepare a preliminary IUP prior to the beginning of each fiscal year. The applicants considered for funding will be those legal entities that have indicated to the Board that they desire to receive assistance within the next fiscal year. The preliminary IUP will be subjected to public comments and review before being submitted to EPA.

(2) Each project to be included in the IUP shall be ranked according to priority points and shall be rated under the priority rating process set out in Section 785:50-9-23 of this chapter.

(3) Projects will be ranked as follows:

(A) Each project shall be ranked according to the priority ranking system.

(B) Projects which are to be refinanced shall be rated on facility conditions which existed prior to start of construction on their treatment works.

(4) The apportionment of funds shall be as follows:

(A) Projects within the range of available funds shall be eligible to receive financial assistance. Other projects shall be eligible for financial assistance at such time funds become available.

(B) Applicants designated to receive financial assistance must submit an approvable application.

785:50-9-30. Planning documents

The purpose of the planning document is to present the findings of the engineer or other qualified professional as approved by the Board in a precise fashion with enough attention given to detail so as to allow adequate review of the project by the owner and applicable regulatory agencies. The plan will allow the review of the alternatives from the viewpoints of function, operation, economics, reliability, safety, efficiency, cost-effectiveness and environmental compatibility. A planning document must be submitted to the Board. The document shall contain but not be limited to the following information:

(1) Identification of the planning area boundaries and characteristics, the existing problems and needs related to wastewater management, and the projected needs and problems ~~up to the next 20 years~~ through the design life of the project.

(2) Cost-effective analysis of feasible wastewater treatment or conveyance alternatives capable of meeting State and federal water quality and public health requirements. The cost effective analysis shall detail all monetary costs including but not limited to the present worth or equivalent annual value of all capital costs and operation.

(3) All basic information necessary for the design of the sewage system and/or treatment works.

(4) Adequate evaluation of the environmental impacts of alternatives in accordance with Part 7 of this subchapter (relating to Environmental Review and Determination) to support the cost effectiveness analysis together with a resolution passed by the applicant which accepts the planning documents and provides a commitment to build the proposed project.

(5) A demonstration that the project is consistent with the State's approved Water Quality Management Plan established by Section 208 of the Act.

(6) The applicant shall submit a statement of the project engineer's most current estimate of project cost itemized as to major facilities or items including land and right-of-way costs, fees of engineers, brownfield assessment fees, all legal fees, fees of registered financial advisors and/or

consultants, contingencies (10%), and interest during construction.

785:50-9-45. Compliance with federal authorities

The recipients who construct equivalency projects must comply with all applicable federal laws, executive orders, and other sources of authority. These include but are not limited to the following:

(1) **Environmental.**

(A) Archeological and Historic Preservation Act of 1974, PL 93-291

(B) Clean Air Act, 42 U.S.C. 7506(c)

(C) Coastal Barrier Resources Act, 16 U.S.C. 3501 et seq.

(D) Coastal Zone Management Act of 1972, as amended.

(E) Endangered Species Act 16 U.S.C. 1531, et seq.

(F) Executive Order 12898, Environmental Justice

(G) Executive Order 11988, Floodplain Management

(H) Executive Order 11990, Protection of Wetlands

(I) Farmland Protection Policy Act, 7 U.S.C. 4201 et seq.

(J) Fish and Wildlife Coordination Act, PL 85-624, as amended

(K) National Historic Preservation Act of 1966, PL 89-665, as amended

(L) Safe Drinking Water Act, section 1424(e), PL 92-523, as amended

(M) Wild and Scenic Rivers Act, PL 90-542, as amended

(N) Magnunson-Stevens Fishery Conservation and Management Act, Pub. L. 94-265

(2) **Economic.**

(A) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended

(B) Section 306 of the Clean Air Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

(C) Drug-Free Workplace Act, Pub. L. 100-690

(D) New Restrictions on Lobbying, Section 319 of Pub. L. 101-121

(E) Davis-Bacon Act, 40 U.S.C. 276a to 276a-7, and related guidance and regulations

(3) **Social Legislation.**

(A) Age Discrimination Act, PL 94-135

(B) Civil Rights Act of 1964, PL 88-352

(C) Section 13 of PL 92-500; Prohibition against sex discrimination under the Federal Water Pollution Control Act

(D) Executive Order 11246, Equal Employment Opportunity

(E) Executive Order 11625 and 12138, Women's and Minority Business Enterprise

(F) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250)

(G) Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

(H) Executive Order 13208, Preservation of Open Competition and Government Neutrality Toward Government Contractors' Labor Relations on Federal Construction Contracts

(I) Byrd Anti-Lobbying Amendment, Title 40 CFR 34

(J) Trafficking Victim Protection Act of 2000, Section 106

(4) **Miscellaneous authority.**

(A) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646

(B) Executive Order 12549, Debarment and Suspension

PART 7. SRF ENVIRONMENTAL REVIEW PROCESS

785:50-9-62. Environmental review by the Board

(a) When the Board has determined that an applicant's proposed project may be excluded from a formal environmental review or has determined that a categorical exclusion is to be rescinded, the Board will prepare a public notice of the determination to categorically exclude the project and stating the availability of supporting documentation for public inspection. The Board, concurrent with the publication, will distribute the notice to all interested parties.

(b) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the Board to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the Board may require the applicant to submit additional information or undertake additional public participation and coordination to support its environmental determination. Based on the environmental review, the Board will prepare an environmental assessment, describing:

(1) the purpose and need for the proposed project;

(2) the proposed project, including its costs;

(3) the alternatives considered and the reasons for their rejection or acceptance;

(4) the existing environment;

(5) any potential adverse impacts and mitigative measures~~; and~~

(6) any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions; and

(7) other environmental laws and executive orders as applicable.

(c) Based upon this environmental assessment, the Board will issue a FNSI or a notice of intent to prepare an EIS. The FNSI will include a brief description of the proposed project, its costs, any mitigative measures required of the applicant as a

condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the FNSI may be submitted for consideration by the Board. The environmental assessment will be attached when mitigative measures are specified by conditions of the financial assistance. The FNSI will be distributed to all parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding approval of the facilities plan or the provision of financial assistance will be taken by the Board for at least thirty (30) days after the issuance of a FNSI.

(d) Following the comment period and public hearings on the final EIS and at the time of the decision to approve the facilities plan or to provide or deny financial assistance to the proposed project, the Board will prepare a concise public record of decision. The record of decision will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable.

(e) In accordance with this Part, the Board will conduct environmental reviews and issue public notices or amended determinations, as appropriate.

[OAR Docket #11-558; filed 4-22-11]

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

1:2010-2b.

AMENDED EXECUTIVE ORDER 2010-2

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the powers vested in me by the Oklahoma Statutes in 25 O.S. Section 82.1, hereby order the following dates be observed as holidays by the State of Oklahoma in 2011:

Friday	December 31, 2010	New Year's Day
Monday	January 17, 2011	Martin Luther King, Jr. Day
Monday	February 21, 2011	President's Day
Monday	May 30, 2011	Memorial Day
Monday	July 4, 2011	Independence Day
Monday	September 5, 2011	Labor Day
Friday	November 11, 2011	Veterans Day
Thursday & Friday	November 24 & 25, 2011	Thanksgiving
Monday & Tuesday	December 26 & 27, 2011	Christmas

This Executive Order shall be forwarded to the Director of the Office of Personnel Management 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 19th day of April, 2011.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #11-478; filed 4-20-11]

1:2011-15.

EXECUTIVE ORDER 2011-15

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Sections 1 and 2 of Article VI, hereby establish the Governor's Science and Technology Council.

The Council shall consist of eighteen (18) members, who shall be appointed by the Governor and serve at the pleasure of the Governor and the Secretary of Science and Technology. The Secretary of Science and Technology shall chair the Council and will select a vice-chair and such other officers as the Council deems appropriate.

The purpose of the Council shall be to review all aspects of science and technology (S&T) in the State of Oklahoma including science, technology, engineering and mathematics (STEM) education and economic development and capital investment in S&T, and to propose recommendations to the Governor. As part of this process the Council shall define and periodically review a Science & Technology Strategic Plan for the State of Oklahoma, and present such a Plan, and any proposed changes to existing Plans, to the Governor for approval.

Administrative support for the Council including, but not limited to, personnel necessary to ensure the proper performance of the duties and responsibilities of the Council shall be provided by the Oklahoma Center for the Advancement of Science and Technology.

Council members employed by a state agency shall be reimbursed travel expenses related to their service on the Council as

authorized by state law by their respective agency. Legislative members of the Council shall be reimbursed by their respective legislative bodies for necessary travel expenses incurred in the performance of their duties as authorized by state law. Remaining Council members shall be reimbursed travel expenses related to their services on the Council as authorized by state law by the Oklahoma Center for the Advancement of Science and Technology.

This Executive Order shall be distributed to the Oklahoma Center for the Advancement of Science and Technology, which shall cause the provisions of this Order to be implemented.

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 27th day of April, 2011.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #11-578; filed 4-28-11]

1:2011-16.

EXECUTIVE ORDER 2011-16

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution hereby declare the following:

1. Tornadoes, severe storms, straight line winds and flooding beginning April 21, 2011, and that are continuing have caused extensive damage to public and private properties within the State of Oklahoma; and said damages have caused an undue hardship on the citizens of this state.

2. It may be necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State with respect to carrying out disaster emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

3. There is hereby declared a disaster emergency caused by the tornadoes, severe storms, straight line winds and flooding in the State of Oklahoma that threatens the lives and property of the people of this State and the public's peace, health and safety. The counties included in this declaration are:

Adair, Cherokee, Delaware, Haskell, LeFlore, McCurtain, Muskogee, Okfuskee, Ottawa, Pittsburg, and Sequoyah.

This declaration may be amended to add counties as conditions warrant.

4. The State Emergency Operations Plan was activated on April 21, 2011, and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to protect lives and to prevent, minimize, and repair injury and damage. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

5. State agencies, in responding to this disaster emergency, may make necessary emergency acquisitions to fulfill the purposes of this proclamation without regard to limitations or bidding requirements on such acquisitions.

6. This Executive Order shall terminate at the end of thirty (30) days.

Copies of this Executive Order shall be distributed to the Director of Emergency Management who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 27th day of April 2011.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Mary Fallin

ATTEST:
Michelle R. Day
Assistant Secretary of State

[OAR Docket #11-579; filed 4-28-11]